

## **Assorted Harassments of Women at Workplace**

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### **Abstract**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act 2013 applies to all regular, ad hoc employees, probationers, apprentices, contract laborers and even individuals engaged on daily wage basis. The scope of this law not only covers government bodies, private and public sector organizations but also non- governmental organization and even places that an employee needs to visit for official purpose which means transportation provided by the employer for commutation purpose also comes under the ambit of this law. This law came into effect after the Supreme Court of India, in its landmark judgment in Vishaka and others v. State of Rajasthan (“Vishaka Judgement“) acknowledged sexual harassment at the workplace as a human rights violation. Vishaka, a non- governmental organization, filed a petition when Bhanwari Devi a social worker in Rajasthan was brutally gang raped by some upper caste men when she tried to prevent a child marriage, part of her work profile as she worked in Women’s Development Project Rajasthan, and faced injustice by the trial court when all accused were acquitted.

***Keywords : Harassment of Women, Women Harassment at Workplace, Workplace Harassment***

### **Introduction**

Through the Criminal Law (Amendment) Act, 2013, Section 354 A was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.

According to the Press Information Bureau of the Government of India:

*The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.*

This Act was essentially derived from the Vishaka Guidelines. The Vishaka Guidelines were certain procedures to be followed in cases of workplace sexual abuse. These guidelines were formulated after the landmark case Vishaka and others v. State of Rajasthan. This case was brought to the Supreme Court because of the sheer inability of the High Court of Rajasthan to provide justice to Bhanwari Devi who was part of Women's Development Program of the Rajasthan Government. She was brutally gang raped for stopping a child marriage being conducted in a town.

This was a part of her duties as a member of the Development Program to stop any illegal activity conducted against children and women. Moreover, this Act uses the definition of

sexual harassment laid down by the Supreme Court in Vishakha and others v State of Rajasthan.

Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. This case established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling established that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury. This case ruling had issued Vishaka guidelines under Article 32 of the Constitution of India. The Supreme Court had made it mandatory that these had to be followed by all organization until a legislative framework on the subject has been drawn-up and enacted. However, the legislative void continued and the Supreme Court in Apparel Export Promotion Council v. A.K Chopra ((1999) 1 SCC 759) reiterated the law laid down in the Vishakha Judgment.

Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishakha Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishakha Guidelines across the country. The Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishakha Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

The legislative progress of the Act was a long process where the Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011. In May 2012, the Union Cabinet approved an

amendment to include domestic workers. The amended Bill was finally passed by the Lok Sabha on 3 September 2012. The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013. The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.

The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.

The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

An employer has been defined as any person who is responsible for management, supervision, and control of the workplace and includes persons who formulate and administer policies of such an organization under Section 2(g).

While the "workplace" in the Vishakha Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.

The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days. Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.

The Complaints Committees have the powers of civil courts for gathering evidence. The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant. The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality. The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations. The objective of Awareness Building can be achieved through Banners and Poster displayed in the premises, eLearning courses for the employees, managers and Internal Committee members, Classroom training sessions, Communication of Organizational Sexual Harassment Policy through emails, eLearning or Classroom Training. It is recommended that the eLearning or Classroom Training be delivered in the primary communication language of the employee.

Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Repeated violations may lead to higher penalties and cancellation of licence or deregistration to conduct business.

### **Conclusion**

Through the Criminal Law (Amendment) Act, 2013, Section 354 A was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three

years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences. Government can order an officer to inspect workplace and records related to sexual harassment in any organization. Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

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