

PROTECTION OF WOMEN AGAINST SEXUAL HARASSMENT AT WORKPLACE: INDIAN SCENARIO

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I. INTRODUCTION

Sexual harassment includes sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature prohibited by law (**Black's law dictionary**). Sexual harassment may occur at any workplace, or other professional or social situation. The problem of sexual harassment is centuries old, but recognition of this problem and passing of legislation for its prohibition and prevention is recent in most of the countries like India. However, the laws passed fails to prove itself, as gender neutral, because no provisions are laid down for sexual harassment of men. In India, year 1992, **Bhanwari Devi**, a social worker from Bhatari, Rajasthan was gang raped. Based on facts of Bhanwari Devi rape case, in 1997 **Public Interest Litigation (PIL)** was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court.¹ This case recognised that sexual harassment of women at the workplace violates the fundamental rights of women provided under Article 14, 15, 19 and 21 of the Indian Constitution. As an outcome of the landmark judgment of the **Vishaka v. State of Rajasthan**, the twelve guidelines were issued by the Supreme Court known as **Vishaka Guideline** for protection of women from sexual harassment at workplace. The **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill** pending from year 2007 was passed by both houses of Parliament in 2012, receiving the assent of President on 22 April, 2013. Other than year 2013 act, different penal and procedural provisions has been provided with regard to sexual harassment of women at workplace under the **Indian Penal Code, 1860** (**Section 294-** Obscene acts and songs, **Section 354-** Assault or criminal force to woman with intent to outrage her modesty, **Section 354A-** Sexual harassment and its punishment, **Section 509-** Word, gesture or act intended to insult the modesty of a woman), the **Indecent Representation of Women Act, 1986** (Section 3, 4, 6, 7), the **Code of Criminal Procedure, 1973** (Section 53A, 154, 164A, 309, 327, 357A) and the **Indian Evidence Act, 1872** (Section 53A, 114A, 146).

¹ The Genesis, Ministry of Women and Child Development (Nov. 04, 2017, 7:30 PM), <http://wcd.nic.in/sites/default/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf>.

II. WHO IS PROTECTED?

(Highlights of Sexual Harassment of Women at Work Place Act, 2013).

- Act includes 30 Sections and is applicable to the whole of India.
- Consistent with the Vishaka Judgement, the act aspire to ensure women's right to workplace equality, free from sexual harassment through compliance with the three key elements i.e. Prohibition, Prevention and Redress.
- The act recognises the rights of every woman to a safe and secure workplace environment irrespective of her employment and work status or age. Hence, the rights of women working or visiting any workplace whether in the capacity of temporary, regular, adhoc or daily wage basis is protected under the Act.
- It **includes all women whether** engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. She could be a contract worker, co-worker, probationer, trainee, apprentice etc.
- The act also covers a woman working in a dwelling place or house.
- Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse of both civil and criminal proceedings.

III. BEHAVIOUR CONSTITUTING SEXUAL HARASSMENT

Under *Section 2 (n)* of Sexual Harassment of Women at Workplace Act, 2013 sexual harassment includes any one or more of the following unwelcome acts or behaviour whether directly or by implication namely:-

1. Physical contact and advances.

- **Example** – Rape or violent sexual physical contact with women.

2. A demand or request for sexual favours.

- **Example** - Employer asking a woman for sexual favours for her promotion in organisation.

3. Making sexually coloured remarks.

- **Example** - Reprimanding a women by relating her work performance to her gender. E.g. statement- “She is only good for secretarial work, not manager level tasks. That’s a better role for a woman”.

4. Showing pornography.

- **Example** – Sharing pornography videos via Whatsapp or other app.

5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

- **Example** – Spreading rumours about a colleague's sex life and whistling at a colleague.

IV. WORKPLACE UNDER SEXUAL HARASSMENT OF WOMEN ACT, 2013

Under the *Section 2* of Sexual Harassment of Women at Workplace Act, 2013 workplace includes:-

1. Any department, undertaking, organisation, establishment, institution, enterprise, office, branch or unit which is owned, established, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society.
2. Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, trust, society, non-government organisation, unit or service provider carrying on commercial, vocational, educational, professional, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service.
3. Nursing homes and hospitals.
4. Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.
5. Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
6. **A dwelling place or house.**
7. Unorganised sector which means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

V. DUTIES OF THE EMPLOYER

As per *Section 19*, Sexual Harassment of Women at Workplace Act, 2013 following are the duties of employer:-

1. Provide a **safe working environment** including safety from the persons coming into contact at the workplace.
2. **Display** at any conspicuous place in the workplace, the **penal consequences** of sexual harassments.
3. **Organise workshops and awareness programme** for sensitising the employees with the provisions of the Act.

*Empanelled Institutes/ Organisations

To ensure safety and security of women at all workplaces, **Ministry for Women and Child Development** is empanelling institutions/organisations willing to conduct awareness raising exercises around the provisions of the Sexual Harassment Act. In the first round, 29 institutes/organisations were selected and empanelled. To widen the outreach of the organisations/institutes working in various parts of the country, ministry has invited fresh proposals from the organisations, both public and private, conducting training programs/workshops on sexual harassment through an advertisement on 31 August, 2017. Out of the huge number who applied, **112 are selected both from first and second round**. The list is uploaded in the SHe-Box. These **empanelled institute has to submit quarterly reports through SHe-Box of all the training programs/workshop conducted by them.**²

4. Provide necessary **facilities** to the Internal Committee and the Local Committee.
5. **Assist** in securing the attendance of respondent and witnesses before the Internal Committee and the Local Committee.
6. Make available required **information** to the Internal Committee and the Local Committee.
7. Provide **assistance** to the woman if she so chooses to file a complaint in relation to the offence under the IPC (1860) or any other law.
8. **Cause to initiate action**, under the IPC (1860) or any other law, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.

² Empanelled Institutes/Resource Persons, Ministry of Women and Child Development (Nov. 06, 2017, 11:05AM), http://www.shebox.nic.in/user/about_shebox.

9. **Treat** sexual harassment as a misconduct under the service rules and **initiate** action for such misconduct.

10. **Monitor** the timely submission of reports by the Internal Committee.

VI. COMPLAINT COMMITTEES

The Sexual Harassment of Women at Workplace Act, 2013 envisages the setting up of two grievance redressal committee for both organised and unorganised sectors:-

1. **Internal Complaints Committee (ICC):-**

Under *Section 4* of the Act, every employer of workplace shall constitute Internal Complaints Committee (ICC) at every unit of workplace. The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

- Presiding officer who will be woman employed at a senior level at workplace.
- Not less than two employees who are committed to the cause of woman or who have had experience in social work or have legal knowledge.
- One member from the non-governmental organisation or association.
- Woman should constitute at least **50 percent** of overall committee members.

2. **Local Complaints Committee (LCC):-**

Under *Section 5*, any **District Magistrate, Collector or Deputy Collector** may be appointed as District officer for District under this Act. District officer shall constitute Local Complaints Committee (LCC) to entertain complaints of sexual harassment where the Internal Complaint Committee has not been constituted due to having less than 10 workers or complaint of sexual harassment is against the employer himself.

The Local Complaints Committee shall consist of the following members nominated by the District Officer:-

- **Chairperson** who is an eminent **woman** in the field of social work and committed to the cause of women.
- One woman member is nominated from the block, taluka or tehsil or ward or municipality.
- Two members from non-governmental organisation or association, at least one member should be woman who belongs to the Scheduled Caste or Scheduled Tribe or Other Backward Class or Minority and also at least one member should preferably, have background in law.
- Social welfare or women and child development officer in the district will be **ex-officio** member of Committee.

VII. FILING OF COMPLAINT

As per *Section 9* of Sexual Harassment of Women at Workplace Act, 2013 aggrieved woman has to make **complaint in writing** before Internal Committee, if not constituted than before Local Committee, within period of **3 months** from the date of incident and in case of a series of incidents, complaint within a period of 3 months from the date of last incident. In case, where the **aggrieved woman** is unable to make a complaint on account of her **physical or mental incapacity** or death or otherwise, **her legal heir** or such other person as may be prescribed can make a complaint under this section.

Online complaint portal for sexual harassment (SHe-Box)

➤ www.shebox.nic.in

This Sexual Harassment electronic Box (SHe-Box) **launched on 24 July, 2017** is an effort of **Ministry of Women and Child Development**, Government of India to provide a single window access to every woman, irrespective of her work status, whether working in organised or unorganised, private or public sector, to facilitate the **registration of complaint** related to sexual harassment. Any woman facing sexual harassment at workplace can register their complaint through this portal and can check **status of her complaint**. Once a complaint is submitted to the 'SHe-Box', it will be directly sent to the **concerned authority** having jurisdiction to take action into the matter.³

VIII. CONCILIATION AND ITS CONDITIONS

Under *Section 10* of the Sexual Harassment of Women at Workplace Act, 2013 there is provision of Conciliation. Following are the conditions:-

1. The Internal or Local Committee before initiating an inquiry and at the request of the aggrieved woman can take steps to settle the matter between her and the respondent through conciliation. But **no monetary settlement can be made as a basis of conciliation**.
2. Where a settlement has been arrived the Internal or Local Committee, have to record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
3. The copies of the settlement shall be provided to the aggrieved woman and the respondent by the Internal and Local Committee.

³ SHe-Box, Ministry of Women and Child Development, (Nov. 13, 2017, 04:10 PM), http://www.shebox.nic.in/user/about_shebox.

IX. RIGHTS DURING PENDENCY OF INQUIRY

Under *Section 12*, Sexual Harassment of Women at Workplace Act, 2013, on a written request made by the aggrieved woman, the Internal or the Local Committee may recommend to the employer to **transfer** the aggrieved woman or the respondent to any other Workplace, Grant **leave** to the aggrieved woman up to a period of **3 months**, Grant such other **relief** to the aggrieved woman as may be prescribed. It is the legal duty of employer to implement the recommendations made by any of the committee and send the report of such implementation to them.

X. INQUIRY REPORT

After completion of inquiry, the inquiry report must be submitted by the committees in compliance with the provision of *Section 13*, Sexual Harassment of Women Act, 2013:-

1. The Internal or the Local Committee, shall provide a **report of its findings** to the employer or the District Officer **within a period of 10 days** from the date of completion of the inquiry and such report be also made available to the concern parties.
2. Where the Internal or the Local Committee arrives at the conclusion that the **allegation** against the respondent has **not been proved**, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
3. When the **allegation** against the respondent has been **proved**, the Internal or the Local Committee, shall recommend to the employer or the District Officer to -
 - Take action for sexual harassment as a misconduct in accordance with the provisions of the **service rules** or where no such service rules have been made, in such manner as may be prescribed.
 - **To deduct amount from the salary** of the respondent and such amount as it may consider appropriate to be paid to the aggrieved woman. In case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may **direct** to the respondent to pay such amount to the aggrieved woman. Then also in case the respondent fails to pay the amount, Committee may forward the **order for recovery** of the amount as an arrear of land revenue to the concerned District Officer.
4. The employer and the District Officer have to **act upon the recommendation** of committee within **60 days** of its receipt.

XI. COMPENSATION TO BE PAID TO AGGRIEVED WOMEN

The compensation to be paid to aggrieved woman is determined by the Internal and Local Committee on the following basis and regard to:-

- a. The **mental trauma, suffering, pain and emotional distress** caused to her.
- b. The loss in her **career opportunity** due to the incident of sexual harassment.
- c. The **medical expenses** incurred by the woman for treatment.
- d. **The income and financial status of the respondent.**
- e. Feasibility of such payment in **lump sum or in instalments.**

XII. IDENTITY AND ADDRESS TO BE KEPT CONFIDENTIAL

As per the provision of *Section 16*, Sexual Harassment of Women at Workplace Act, 2013, the content of complaint, the identity and address of the **aggrieved woman, respondent and witnesses**, any information relating to conciliation and inquiry proceedings, recommendation of the committees and action taken by the employer or the District Officer shall not be published, communicated or made known to the public, press and media. The information cannot be also taken through help Right to Information Act, 2005.

If any person contravenes the provisions of Section 16, he shall be liable to **penalty** in accordance with the provisions of the **service rules** and where no such service rules exist, in such manner as may be prescribed (*Section 17*).

XIII. PENALTY FOR NON-COMPLIANCE WITH PROVISIONS OF ACT

As per *Section 26*, Sexual Harassment of Women at Workplace Act, 2013, if the employer fails to constitute an Internal Committee, fails to take actions, Contravenes or attempts to contravene or abets contravention of provisions of this Act or any rules made thereunder, he shall be liable for punishable with fine which may extend to **50 thousand rupees**. If the employer subsequently commits same offence under this act there may be **cancellation, withdrawal, non-renewal of his licence or cancellation of the registration** by the Government or local authority required for carrying on his business or activity.

XIV. EFFECT OF CRIMES AGAINST WOMEN/GIRLS

Women at workplace and girls at schools/colleges are sexual harassed by their employers, seniors, principal, professors, non-teaching staffs etc. leading to mental and physical illness. Even after passing of the act yet, **70 per cent women** said they did not report sexual harassment by superiors because they feared the repercussions, according to a survey conducted by the Indian Bar Association in 2017 of 6,047 respondents and **36 per cent of Indian companies and 25 per cent of MNCs** had not yet constituted their ICC, the 2015 research study by the Federation of Indian Chamber of Commerce and Industry (FICCI) showed⁴. On October, 2017 **Raya Sarkar**, a law student from University of California released a list on social media of **58 academics from 29 Indian colleges** who have allegedly **sexually harassed** their students. The list was compiled by her after asking people to send in names of professors who have allegedly harassed them. The names of the complainants were kept anonymous.⁵ Quoted by **Kailash Satyarthi** in popular Television show in India, Kaun Banega Crorepati on 6th November, 2017...it is very shameful for all of us, in our nation **13 years old girl** from Delhi is sexually abused by her father even after her several time request...please leave me...don't abuse and next day she is required to go the police station with her mother to file a complaint against her father. After tweet of **Alyssa Milano**, an American actress and activist, on 16 October, 2017, "If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet". This two word '**me too**' #metoo goes viral on Facebook, Tweeter and Instagram in October month by millions of women and even men to give people around them, a sense of the magnitude of problem of sexual harassment and assault. Women/girls should be respected.

Following are the effect of sexual harassment and such other crimes:-

- Depression, frustration, anxiety and helpless.
- Loss of confidence and self-esteem.
- Lack of concentration.
- Angry behaviour towards the harasser, colleagues, friends and family members.
- Feeling of isolation and suicidal thoughts or attempts.
- Change in the plans made for achieving goal or dreams.
- Increased absenteeism to avoid harassment, or because of illness from the stress.

⁴ **Manisha Chachra**, Despite Law 70% Working Women Don't Report Sexual Harassment At Workplace Shows Study, NDTV (Nov. 06, 2017, 9:10 PM), <https://everylifecounts.ndtv.com/despite-law-70-working-women-dont-report-sexual-harassment-workplace-shows-study-10878>.

⁵ Rajyasree Sen, The Name-and-Shame Game, The Economic Times, November 11, 2017, at 8.

- Being objectified and humiliated by scrutiny and gossip.
- Defamation of character and reputation.
- Impact on references and recommendations.
- Loss of carrier.
- Financial instability.
- Sometimes irritation due to media trial.

XV. ANALYSIS

1. The Sexual Harassment of Women Act, 2013 talks about the **rights of women only**. Therefore this act is not gender neutral.
2. It may be **difficult for employer** to constitute the Internal Committee at all administrative units or offices.
3. The compensation to be paid to the aggrieved woman is determined with regard to the income and financial status of the respondent.⁶This leads to **injustice** with person with good finance condition.
4. There are so many scopes of **false allegations** against respondent for personal benefit. All employer should use latest technology like CCTV etc.
5. There may be situation where employer will not get **co-operation** of employees and witnesses while constituting Internal Committee and addressing the grievances in respect of sexual harassment.
6. The platform provided by Ministry of Women and Child Development for **online filing** of sexual harassment complaint is very good.
7. The **news column** of online complaint portal **www.shebox.nic.in** is **completely blank**. (Last checked on November 20, 2017, 10:13 PM).
8. The proper **execution** of law fails because there is lack of awareness regarding provisions of the act. E.g. Employers are not aware about their duties and women are not aware about their rights.

⁶ Determination of compensation, Advocate Khoj (Nov. 15, 2017, 10:02 AM), [http://www.advocatekhoj.com/library/bareacts/sexualharrasment2013/15.php?Title=Sexual%20Harassment%20of%20Women%20at%20Workplace%20\(Prevention,%20Prohibition%20and%20Redressal\)%20Act,%202013&STitle=Determination%20of%20compensation](http://www.advocatekhoj.com/library/bareacts/sexualharrasment2013/15.php?Title=Sexual%20Harassment%20of%20Women%20at%20Workplace%20(Prevention,%20Prohibition%20and%20Redressal)%20Act,%202013&STitle=Determination%20of%20compensation).

XVI. CONCLUSION

The foundation of law regarding sexual harassment of women at workplace was Bhanwari Devi rape case and case of Vishaka v. State of Rajasthan which asserted rights of women to a safe working environment and issued guidelines for employers directing them to provide a safe and gender friendly working atmosphere for women. In India sexual harassment of women at workplace act, 2013 has been passed to deal with the complaints of sexual harassment against women. But no mechanism has been provided under this act to deal with sexual harassment against men. Encouraging women to complaint against sexual harassment is identified as one of the way to prevent such crime. Women are having fear of their character getting maligned, reputation getting damaged, becoming topic of discussion in the organisation etc. Indian Judiciary also need to establish more fast track courts, appoint more judges and legal officers to deal with the lakhs of pending cases. However, the initiative by Central Government, Ministry of Women and Child Development of providing online complaint portal (SHe-Box) is remarkable.

XVII. SUGGESTIONS

1. There is also need to provide **mechanism** for sexual harassment against men.
2. The Government (Central and State), Ministry of Women and Child Development should take more **steps** and keep security and safety of women in top **priority**.
3. The **NGOs and other institutions** should also come forward for fighting against such heinous crime.
4. Government should increase the **grants** for overall development of Judiciary.
5. Ministry should keep **updating** necessary news and information on SHe- Box website.
6. To increase awareness more **camp, workshops and training programmes** are required.
7. Every **law universities and colleges** should organise free legal aid camps at least 1 in every academic session.
8. Instead of big posters for politician's birthday wishing, more **posters** can be pasted based on awareness of crimes like sexual harassment, child abuse etc.
9. The **media** can play a very important role in changing mind-set of people and creating awareness.