

## SEXUAL HARASSMENT LAW IN INDIA

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### Introduction

Since ancient time male dominance in Indian society is seen. Women in India is always treated as property of men but time is changing slowly and gradually as women are coming forward and raising their voices. Changes can only be made by raising voice because law supports those who seek justice and not those who sleep on their rights. Supreme Court said in <sup>1</sup>Joseph Shine vs Union of India, that husband is not the master of wife and also held that section 497 of Indian penal code violated women's right to dignity, resulting in the infringement of Article 21 of constitution of India . This is one of the biggest decision to bring equality in India but there is a long route to go as India's ranking in Human Development Index is 130 out of 189 countries in year 2018.

Women are viewed as dowry burden, the weaker gender and not worthy of equal social status as compared to men . The despair is that 586.49 million ( women ration as per 2011 census ) people of our country are still struggling for just being recognised by society.

Sexual harassment at workplace not only affect the victim's mental and physical health but it also affects that corporation as performance of victim will crumble. .

Although sexual harassment is a global issue, it is particularly problematic in a situation where women are being viewed culturally "as less able" and where the work force comprises largely of young women with little formal education or previous work experience.

1. *Joseph Shine vs Union Of India* on 8 December 2017, WP(Crl.)No.194/17

The need for preventing such injustice and appropriately dealing with such cases, The Sexual Harassment Act, 2013 was brought into effect.. The Act explains what are the types of sexual harassment and how workplaces need to be proactive about ensuring a protection of the dignity of a woman.

The paper is an attempt to explain what measures are provided in Law and how an organisation can handle such issues. .

### **Sexual harassment**

In India, the absence of any statutory definition of the term sexual harassment, the Supreme court defines the term sexual harassment for the first time in the year 1997 in <sup>2</sup>Vishaka and others v. state of Rajasthan. Which read as under :

“Sexual harassment includes such unwelcome sexually- determined behaviours (whether directly or by implication) as:

Any unwelcome:

- a) physical contact and advances by touching her inappropriately and act like it was a friendly touch;
- b) a demand or request for sexual favours like casting couch, asking directly to do sexual favour if they hire her;
- c) sexually coloured remarks means giving her name with respect to her body part like booty, sexy etc;
- d) showing pornography forcefully;
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.<sup>2</sup>

Same definition was later on added in Sexual Harassment Act , 2013 under section 2(n) but it took 16years to codify law on such crucial issue in India . 2013 Act was codified after the heinous crime of Nirbhaya <sup>3</sup>(Mukesh & another vs NCT of Delhi & and.) took place and government was under pressure to come up with some strong law against rape and sexual harassment. But it is never too late for anything as this is one of the best Act for providing justice to females of our country. With the enforcement of this Act women in India are feeling much safer than before.

<sup>2</sup> *Vishaka and others v. State of Rajasthan and others* (1997) 6 SCC 241, AIR 1997 SC 3011, (1998) BHRC 261, (1997) 3 LRC 361, (1997) 2 CHRLD 202

<sup>3</sup> *Mukesh & another vs NCT of Delhi & and, arising out of S.L.P. (Criminal) Nos. 3119-3120 of 2014)*

## Measures against sexual harassment

### I<sup>4</sup> Sexual harassment of women at workplace ( Prevention, Prohibition and Redressal) Act, 2013

a. Section 4 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – employer, by order in writing, constitute a Committee called Internal Complaints Committee and including at such places where there are offices or administrative units of the workplace.

i. The committee shall have one member from amongst non-governmental organisations or associations committed to the cause of women or a person who deals with the issues relating to sexual harassment and shall be paid such fees as may be prescribed.

ii. One half of the total members in the Committee shall be women.

iii. The members along with the presiding officer shall hold office for a period not exceeding three years from the date of nomination.

b. Section 11(3) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 vests same powers to the committee as are vested in the civil courts under the Code of Civil Procedure, 1908 when trying a suit with respect to the following matters-

i. Summoning or enforcing the attendance of any person and examining him on oath;

ii. Requiring the discovery and production of documents; and

iii. Any other matter as may be prescribed. However, nothing has been prescribed as of yet in this regard.

c. Further section 19 of 2013 Act, talked about duties of employer.

### II Indian Penal Code, 1860

Some Sexual Harassment laws were inserted under the Indian penal code after the codification of 2013 Act like 354 A IPC and 354 D IPC were no offence before this Act came into force. Now the law deals with all types of sexual harassment and also provide punishment for them. Following are -

Section 354- Outraging the modesty of women –Outrage means a physical violence as it involve assault and criminal force . Modesty is the self- esteem of the women that is the

sense of protection and conservation of women regarding her dignity and sense of protection regarding her sexual body parts . Women always keep her sexual dignity in extreme sanctity . The essence of women modesty is her sex and from her very birth she posses a sexual modesty and even if she herself may not be conscious about it. It is the societal consciousness which matters and even a small girl or unsound women hold that sanctity. Whoever outrages her modesty is punishable for imprisonment not less than one year but may extend to five years.

One of the leading case on sexual harassment is <sup>5</sup>Rupam Deol Bajaj vs Kanwar Pal Singh Gill, 1995 SC

**Section 354-A Sexual harassment**

- i. Any contact established by a man to touch a woman is liable for sexual harassment. Example – a woman in bus and a man standing too close to her that he touches her body .
- ii. Asking her for sexual favours by oral or written means .
- iii. Showing pornography to woman against her will.
- iv. Making sexual comment.

**Section 354-B** Assault or use of criminal force to woman with intend to disrobe – Disrobing her means take away any cloth from her body in such a manner that some sexual organ of the women is seen.

**Section 354-C** Voyeurism – Any man capturing the image of the woman engaged in some private act like when she is taking bath or disseminating such pictures is a punishable offence

**Section 354- D** Stalking - Any man who follows any woman in order to make any contact even after she refuses to make any contact or monitor her on social media or through any other means. Such an act is a punishable offence.

**Section 509** Insulting the modesty of a woman- Any man passing any sexual remarks against a woman or making any gestures with intent that those words and gestures are heard and seen by her then it is a punishable offence.

All these are cognisable offences and on receiving such information of offence, the police can arrest any person without warrant .

*5 Rupam Deol Bajaj vs. K.P.S.Gill : 1996 AIR 309, 1995 SCC (6) 194*

### **Procedure under Code of Criminal Procedure 1973**

- File an FIR under section 154 of Cr.P.C.
- Investigation
- Arrest
- Chargesheet
- Court Hearing
- Sentencing

### **How to file a complaint**

Most police stations have a 'Rapid Response Desk for Women, Children and Senior Citizens' where at least one lady officer is seated at all times. The victim must approach the officials at this desk. In an off-chance when such a desk is not accessible, the victim may approach the officer on duty.

In case there is no lady officer, a lady constable is called to take the statement; in case the latter is also unavailable, a lady representative from an NGO is called.

Complaint can be filed in English or in any other regional language, once a complaint is filed it is read over to the victim. If complaint is taken in any other language it is translated to the victim in the language which she understands as it is. The police station that registers the complaint forwards the details to the police station nearest to where the crime was committed (if the two are not the same) and they take over.

Once a FIR is filed, police will investigate the case by collecting evidence and examining witnesses. After investigation is over police will file a chargesheet to the court and arrest the accused. Once the accused is arrested, he should be presented before the magistrate within 24 hours and then the court will start judicial proceedings.

### **Complaint mechanism**

<sup>6</sup> It shall be mandatory for every workplace and every employer in charge of a work place to constitute an Internal Complaints Committee as prescribed under this Act.

Provided that, where, the district officer or the appropriate government, is of the opinion that any workplace should constitute an Internal Complaints Committee in that establishment, the appropriate government or the District officer as the case may be shall direct the employer in charge of that workplace to do so.

*6 Harassment at workplace by Vishnu s warrier*

**Who May File A Complaint:-**

<sup>7</sup> (1) A complaint may be lodged by:

(i) An aggrieved woman

(ii) In case victim died then complaint can be registered by her legal heir or representative;

(iii) In case of more than one aggrieved woman, all or any one or more of them on behalf of herself and others, Or

(iv) With the written consent on behalf of persons covered by clauses (i) (ii) and (iii) above:

(a) A registered trade union

(b) A women's Organization or a non-governmental organization;

(c) A co-employee

May file the complaint on behalf of the complainant in so far it relates to initiating the action under the provisions of this Act.<sup>4</sup>

**Analysis**

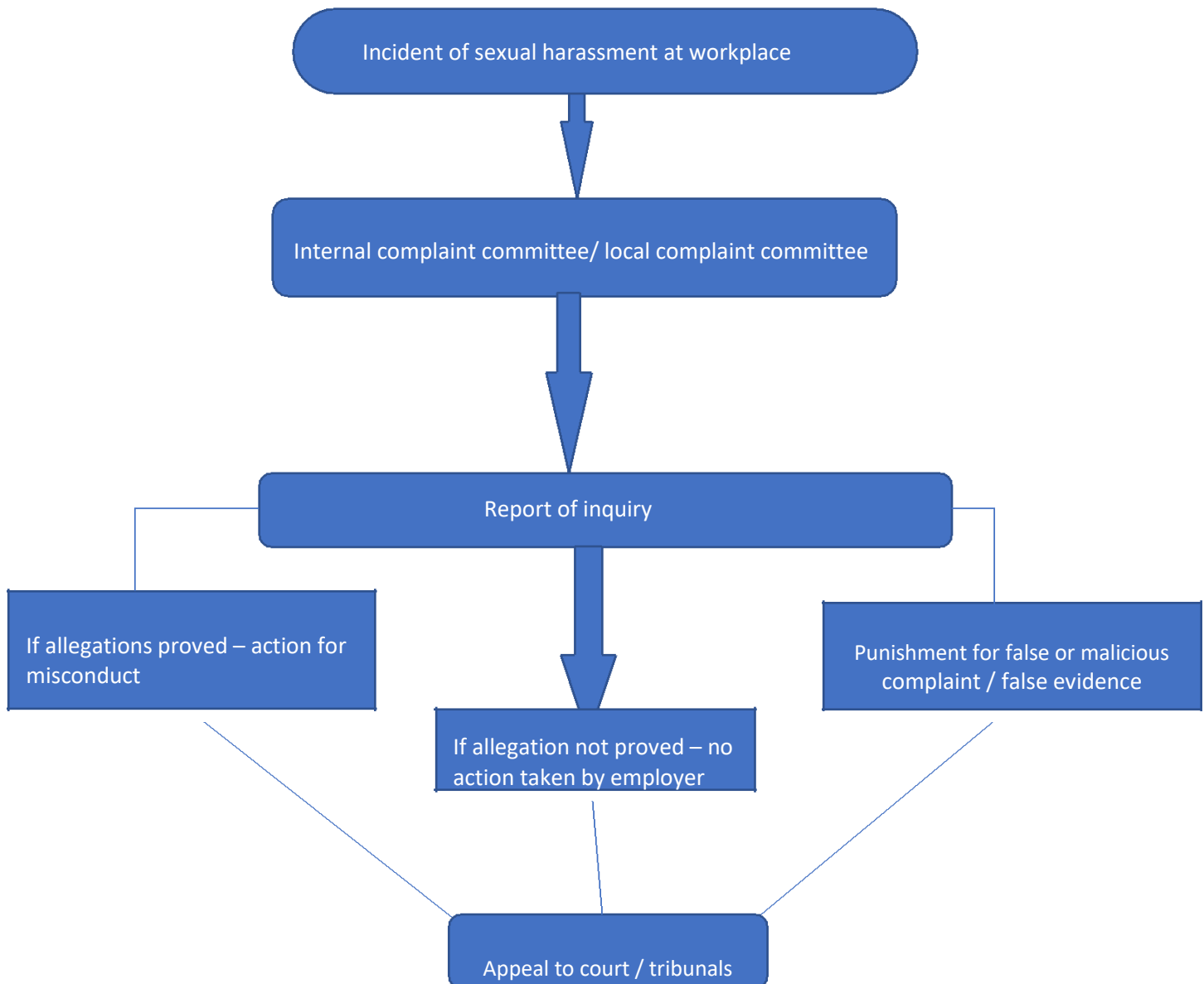
From this study my analysis is that problem of sexual harassment in general or at workplace is not new but there was no codified law to deal with it, the whole burden is on Supreme Court to decide when any case comes forward. As there was no law there was no awareness about such harassment. Women were not aware whether they can file complaint or not when some road side Romeo pass comment on them or touches them inappropriately. This issue is a very sensitive issue as women hesitate to speak about it when such things happen. This problem is faced by women of every age. Girls under 18 year of age, are not aware of their rights and also by other age woman in urban or rural areas. For school girls there should be some law camp programs in vacation time where experts should tell them about their rights. In rural areas also woman are not aware so panchayat should take this responsibility and organise a law camp for awareness about sexual harassment.

Now law is codified and there is special law against workplace sexual harassment and it helped so many women to fight for their rights against any abuse of such kind. But law is not enough as most women don't want to involve in years and years of court proceedings. We can take the example of #metoo as so many women came forward and speak about the harassment they face but no FIR was filed. These women are not from rural areas or underaged but they are educated and very well aware of their rights but still not a single FIR, this may be because of years and years of court proceedings.

*7Sexual harassment at work, first edition 2007, by Alok Bhasin*

Today life is very busy and nobody has time to go to court again and again for god knows how much time . This is one of the drawbacks of our judicial system, there should be fast trials for sensitive issues like this. Other reasons may be the social stigma, as victim-blaming is what society does when such matters are disclosed. When victim needs support and comfort from people, they are under the trial of society where victim’s character assassination is done, it is more like a second -assault and called “secondary victimisation”. Loopholes in law can be improve by just making fast track courts . But what about society ? We are the society and we have to stop victim shaming, these victims are our daughters or mothers, we have to take this responsibility to support them and help them in every possible way .

**Procedure to be followed**



### **Misuse of law**

Now the time has changed and with the passing time women are standing shoulders to shoulders with men. Women in Indian society are always considered as innocent and trustworthy but the scenario has changed. Now women's are involved in so many crimes like dacoity, dowry death, miscarriage etc . So Judges are no more gender favourable and rely only on evidence, as the policy of our justice system is that no innocent shall be punished even if 100 culprits may go free. Women can use these laws to frame some innocent or to blackmail someone as there are so many fake cases has been filed . According to National Violence Resource centre, studies say that the prevalence of false reporting of sexual assault is between 2% and 10%.

When women are accusing someone and not filing FIR this could be one of the reasons that the accusation is false . With respect to #metoo men also started one campaign fake#metoo. Once an accusation is made that person is treated like a culprit in our society because of media trails. There is law against false complaint but no law against false accusation. There should be law against false accusation or law like unless a court decides the matter, media will not disclose the name of that person and also the woman who is making such accusation should not disclose name of person unless she files a complaint and the court decides the matter. This can be a publicity stunt for one but it is a life time baggage for another. Media today is very strong. People easily get influence by it so there should be no such media trails against anyone even if he is culprit unless matter is decided as no one has the right to spoil anyone's names unless he is proved guilty as our judicial system also believes a person is innocent unless proven guilty .

### **Conclusion**

There are pros and cons of every issue, Likewise this issue has it own pros and cons . Which are :

This issue is least reported issue, so to end or at-least reduce such problems women's need to come forward and not only speak about suchlike issues in #metoo movement but also file FIR . 2013Act and Indian Penal code1860, deals with all type of sexual harassment and provide redressal also to victims. There is need of greater public awareness and NGO's should play pro-active role and demand for judicial activism. Steps should be taken for creating gender-friendly environment. This problem is not a new concept as it existed even before Vishakha case i:e 1997, so it will not vanish in one night but nothing is impossible, as every single step



brings us closer to gender-friendly environment. Such step is already taken as in one of the appreciable judgement of Supreme Court in Josph shine case, where Supreme Court Made it clear that women are equal to men . Equality is equity which can resolve many problems like these . When men treat women equal to them instead of treating them as weaker section of society and respect them, their decision and their privacy etc, such issues can be easily resolved Equality is the first step to reach final destination when as the first step is taken soon we will reach our final goal.

Misuse of law by filing false complaint or making false accusation. This is also the main problem with this issue as all complaints are not true. These are very sensitive issue and private also, sometimes there is no evidence of such problem as it is between 2 individuals. Finding evidence in such cases is a difficult task and sometime court also rely on circumstantial evidences. Circumstantial evidences are not substantial evidence but they are corroborative evidences and this is the reason most offenders are set free, which is traumatic for the victim as after a lot of courage she didn't get justice. Another problem which is our police system as police officers refuse to take FIR on the basis of jurisdiction which is wrong they cannot deny taking of an FIR. People are not aware of their rights which give them opportunity to avoid taking FIR. But there is concept like Zero FIR which means person can file FIR in any police station irrespective of place of incident and which can be later transferred to a police station which has jurisdiction. Awareness of such type of rights should be spread by every possible means like in Pink movie they gave a social message with awareness about Zero FIR which is appreciable. Media trail and victim shaming are such problems that should be stopped as the former spoil the life of an innocent and the later is like a second assault for the victims.

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