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# SEXUAL HARASSMENT OF A WOMEN- VIOLATION OF HUMAN RIGHTS

Ad. Kirti Ghate,  
Jagjivan Law College, Nasik  
Dr Kavita Tiwade,  
Vivekanad College, Kolhapur

**Abstract:** Women are unique creation of god on this earth. They have great power of courage, energy and leadership. Because of this, they played a vital role in each and every walk of life be it social, religious or domestic. Both man and woman should be given equal importance and should be treated equally because both are the creation of god. If this balance is lost, it will be detrimental to the society. In ancient times, women are regarded as Luxmai, Devi, Shakti and so on. But with the passage of time, the condition of women kept on deteriorating and discriminated in every sphere of life. The balance of equal importance, opportunity and equal treatment has not been mentioned in our society. Despite of various laws in favour of women, they have been subjected to various injustices. In India, an unjustifiable discrimination between male and female has been continuing since pre historic times. Women are considered as chattels and objects of sense gratification. She can do sacrifice, serve the man and even to commit suicide for maintaining her picture. But women are always considered as symbol of sincerity, efficiency, tolerance, patience in spite of this her success and satisfaction is always controversial. In India sexual harassment of women at workplace is a pressing problem.

**Key Words:** Molestation. Sexual Harassment, POSH Act

**Introduction:** India is a developing country and progress of the country demands that men and women should work jointly and women shall take responsibilities outside their home also. This demand increases the number of working women. But at the workplace women are not safe. They are harassed by their colleague and supervisor. They face eve-teasing, molestation and sexual harassment at their workplace. Equality among sex has been recognized as a basic human right in all civilized nations. This principle is also enshrined in the Indian Constitution in its Preamble, Fundamental Rights (FRs), and Directive Principles of State Policies (DPSP) and Fundamental Duties (FD). India also recognized various



International Conventions and human rights to secure equal rights of women and several national commissions have been set up by the government to look into the matter related to women. Before 2013 amendment, the matter of sexual harassment comes under Section 354 read with section 509 Indian Penal Code, 1860. But now section 354A of Indian Penal Code is related to sexual harassment and 2013 Act, related to sexual harassment at workplace. Most of working women face sexual harassment by their owner, supervisor and by their male colleague at the workplace. Sexual harassment is an age old problem. But today, increasing participation of women in all fields of work changes the social attitude towards women. The problem of sexual harassment was first recognized in Vishaka Case in 1997. The Supreme Court issued guidelines which will be followed until a legislative enactment has come. Now in 2013, a special law for working women has been passed. This is a progressive step to stop sexual harassment at workplaces. Thus, we can say that sexual harassment in any form is unacceptable behavior and will not be tolerated. This kind of act affects the progress of the country.

**Meaning of Sexual Harassment:** Sexual harassment is any sexually oriented practice that endangers an individual's continued employment, negatively affects his or her work performance, or undermines his or her sense of personal dignity.<sup>1</sup> Sexual harassment can manifest itself both physically and psychologically. In its milder forms it can involve innuendo and inappropriate affectionate gesture. It can, however, escalate to extreme behavior amounting to attempted rape. Physically the recipient may be the victim of pinching, grabbing, hugging, patting, leering brushing against and touching. Psychological harassment can involve a relentless proposal of physical intimacy, beginning with subtle hints which may lead to overt requests for dates and sexual favors.<sup>2</sup> Sexual Harassment (SH) at workplace involves the use of authority by any person in charge of the management or any individual by it to exploit the sexuality and sexual identity of any subordinate employee to harass the women in any manner which impairs or prevents the employee's full utilization of employment opportunities or benefits. Thus, sexual harassment means any unwelcome sexual advance or conduct on the workplace or job that creates a hostile, intimidating or offensive working environment. Any conduct of a sexual nature that makes

<sup>1</sup> Arjun P. Aggarwal, 2000, —Sexual Harassment in the workplace. Toronto: Butterworths.

<sup>2</sup> Secret Oppression: Sexual Harassment of working women by Constance Backhouse and Leach Cohen

an employee uncomfortable has the potentials to be sexually harassed. And the courts including the Human Rights Tribunal, worldwide have recognized a broad scope of conduct that may fall under the definition of sexual harassment depending on the circumstances. Such conduct may be verbal, non-verbal or physical. The International Labour Organization has identified the following most common forms of harassment at the workplaces:

Verbal harassment the verbal harassment includes. Comments of sexual nature about figure, size, shape, body weight, unwelcome remark and private life jokes. ii. Graphic sexual description, chatting of sexual nature. iii. Telephone calls with sexual tones. Non-Verbal Harassment or Gestural Harassment Gestures are the movement of the body, head, arms, face and eye that are expression of an idea, opinion, emotion, following may constitute sexual harassment:<sup>3</sup>

- i. Looking a woman up and down (sexual looks such as leering and calling with sexual tones),
- ii. Licking lips or teeth, holding or eating food provocatively. Visual Sexual Harassment It includes showing pornography, nude poster, cartoon, sexually explicit picture, dropping down pant in front of women's.
- iii. Physical Sexual Harassment It includes actual attempt for patting, kissing, touching or pinching in a sexual manner and other physical attempt to sexual harassment at work place.
- iv. Psychological Sexual Harassment It includes calling every day for work and retain her for excessive hours, and staring on her face, neck, breast, eye and other part of the body and repeated unwanted invitation for dinner, drinks and movies, proposal for sexual favour, requiring to wear saree, suit, dress and to adopt suggestive hairstyle, lipstick etc. In the present situation, all working women of any age, social status, physical appearance, post and economic status, may face sexual harassment. The only difference between the higher level working women and lower level

<sup>3</sup> Ms. Kalindri — Women as Victims of Sexual Harassment At Workplacel All India Reporter 2013, vol. 100 at page no. 162 16



working women is that the women working at the bottom of economic level are subjected to the mere gross expression of sexual harassment.

**Definition of Sexual Harassment of Women:** According to Lin Farley, —Sexual harassment means unsolicited nonreciprocal male behaviour that asserts a woman's sex role over her function as a worker. It can be any or all of the following: staring at, commenting on, or touching a woman's body, requests for acquiescence in sexual behavior; repeated no reciprocated propositions for dates, demands for sexual intercourse and rape. These forms of male behaviour frequently rely on superior male status in the culture, sheer numbers, or the threat of higher rank at work to exact compliance or levy penalties for refusal.<sup>4</sup>

The United State Equal Employment Opportunity Commission, defines —sexual harassment as, —unwelcome sexual advances, requests for sexual favours and other verbal, non verbal or physical conduct of a sexual nature when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.<sup>5</sup>

The Supreme Court of India in a landmark judgment *Vishaka v. State of Rajasthan*<sup>6</sup> has defined the term sexual harassment for the first time in the year 1997. The Supreme Court relied on International Convention, particularly General Recommendation No. 23 of CEDAW Committee under Article 11 and formulated the following definition: —

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<sup>4</sup> Lin Farelly, *Sexual shakedown: The Sexual Harassment of Women on the Job*, 14-15(New York: McGraw Hill, 1978)

<sup>5</sup> US Equal Employment Opportunity Commission (EEOC), *Guidelines on Discrimination Because of Sex*, 29 CFR1604, 11 (1985)

<sup>6</sup> AIR 1997 SC 3011

Sexual Harassment includes such unwelcome sexually determined behaviour, whether directly or by implication, as under: a. Physical contact and advances. b. A demand or request of sexual favours. c. Showing pornography. d. Sexually colored remarks.

**Constitutional Framework:** The fundamental rights includes; right to equality, freedom from gender discrimination, the right to work and right to live dignity. Certain fundamental rights have been extended to all persons, regardless of citizenship.<sup>7</sup> These constitutionally protected fundamental rights support the elimination of sexual harassment at workplace. The provisions dealing with the Fundamental Rights is contained in the part III of the Constitution of India. Part III of the Constitution of India comprises Articles 12 to 35A.

Article 14 of the Constitution guarantees equality before the law and equal protection under the law, and has been interpreted as a prohibition against unreasonable classification. The Supreme Court has held that the equality guarantees do not require that the law treat all individuals same, but rather that any classification made between similarly situated person be reasonable. According to this doctrine of reasonable classification, only those individuals who are similarly situated must be treated the same in law.<sup>8</sup> Therefore, the supreme court has held that there is no discrimination when the classifications meets two conditions, namely (1) that the classification is founded on intelligible criteria, which distinguish persons or things that are grouped together from others left out of the group; and (2) that the criteria have a rational relation to the object sought to be achieved by the impugned legislative or executive action.<sup>9</sup>

In *State of Kerala v. N.M. Thomas*,<sup>10</sup> the Supreme Court of India addressed the question of the appropriate relationship between Articles 14, 15 and 16, holding that Article 15 and 16 of the Indian Constitution must be seen as facets of Article 14 rather than exceptions to it. Mathew J., making an unequivocal statement in favour of the substantive equality model, observed: —Though complete identity of equality of opportunity is impossible in this world, measures compensatory in character and which are calculated to mitigate

<sup>7</sup> See Articles 14 and 21 of the Indian Constitution 1950

<sup>8</sup> *State of Kerala v. N.M. Thomas* (1976) 2 SCC 310

<sup>9</sup> See *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3; *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

<sup>10</sup> AIR 1976 2 SCC 310



surmountable obstacles to ensure equality of opportunity can never incur the wrath of Article 16(1). In a famous case *Maneka Gandhi v. Union of India*,<sup>11</sup> the Supreme Court further emphasized the dynamic content of Article 14 by stating: —the principle of reasonableness, which legally and philosophically, is an essential element of equality and non-arbitrariness pervades Article 14 like a brooding omnipresence. —The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.”<sup>12</sup>

In *Vishaka v. State of Rajasthan*,<sup>13</sup> the Apex court held that each incident of sexual harassment of women at the workplace is a violation of the right to life under Article 21 that implies the right to dignity. According to the court, the principle of gender equality includes protection from sexual harassment and the right to work with dignity, wherein had been reflected in International Conventions and Norms. The court explicitly stated that the legislature and executive and primarily responsible for ensuring the safety and dignity of women through legislation and creation of enforcement mechanisms. However, in the absence of existing protective mechanisms, the court in *Vishaka* case evolved guidelines prescribing sexual harassment at workplace as a violation of women worker’s fundamental rights under Article 14,19,and 21. In the landmark judgment, the Supreme Court has laid down exhaustive guidelines to prevent Sexual Harassment of the working women in places of their work until law is enacted for the purpose. The court held that it is the duty of the employer or other responsible person in work places or other institutions, whether public or private to prevent sexual harassment of working women.

**Prevention of Sexual Harassment at the Workplace (POSH):** India’s first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) was enacted by the Ministry of Women and Child Development, India in 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“POSH Rules”). The year 2013 also witnessed the promulgation of the Criminal Law

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<sup>11</sup> (1978) 1 SCC 248

<sup>12</sup> Article 15 of the Indian Constitution

<sup>13</sup> (2000) 2 SCC 465



(Amendment) Act, 2013 (“Criminal Law Amendment Act”) which has criminalized offences such as sexual harassment, stalking and voyeurism. The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge. Although the law preventing sexual harassment at workplace has been in force since 2013, there remains lack of clarity on various aspects pertaining to the statute, including what constitutes sexual harassment, obligations of an employer, remedies/ safeguards available to the victim, procedure of investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment. Lewd jokes, inappropriate comments etc. are dismissed as normal, with women being hesitant to initiate actions due to apprehension of being disbelieved or ridiculed; which underpins the need for greater awareness and greater enforcement.

As per the POSH Act, an ‘aggrieved woman’ in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.<sup>14</sup> Given that the definition does not necessitate the woman to be an employee, even a customer/client who may be sexually harassed at a workplace can claim protection under the POSH Act. The POSH Act further stipulates that a woman shall not be subjected to sexual harassment at her workplace.<sup>15</sup> Accordingly, it may be noted that in order for a woman to claim protection under the POSH Act, the incident of sexual harassment should have taken place at the ‘workplace’. The POSH Act is not a gender-neutral legislation and protects only women. Therefore, the safeguards under the POSH Act are not applicable to ‘men’ victims although employers may choose to extend the protection through their policy.

The POSH Act applies to both the organized and unorganized sectors<sup>16</sup> in India. It inter alia, applies to government bodies, private and public sector organizations, nongovernmental organizations, organizations carrying out commercial, vocational,

<sup>14</sup> Section 2(a) of the Prevention of Workplace Sexual Harassment Act

<sup>15</sup> Section 3 of the Prevention of Workplace Sexual Harassment Act

<sup>16</sup> Having less than 10 workers

educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.<sup>17</sup>

The definition of an 'employee' under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.<sup>18</sup>

An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum. Internal Committee<sup>16</sup> The POSH Act requires an employer to set up an 'internal committee' ("IC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.<sup>19</sup> Failure to constitute the IC has led to imposition of a fine under the POSH Act.<sup>20</sup> The members of the committee should not be less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge. External member From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.<sup>21</sup>

At the district level, the government is required to set up a 'local committee' ("LC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where. As per Repealing and Amending Act, 2016, the nomenclature of Local Complaints Committee was changed to Local Committee. the IC has not been constituted on account of the establishment having less than 10 employees or if the

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<sup>17</sup> Section 2(o) of the Prevention of Workplace Sexual Harassment Act

<sup>18</sup> Section 2(f) of the Prevention of Workplace Sexual Harassment Act

<sup>19</sup> Section 4 of the Prevention of Workplace Sexual Harassment Act

<sup>20</sup> Global Health Private Limited & Mr. Arvinder Bagga v. Local Complaints Committee, District Indore and Others (W.P. No.22314 and 22317 of 2017)

<sup>21</sup> A person who has expertise on issues relating to sexual harassment and includes a social worker with atleast 5 years of experience in the field of social work towards empowerment of women and in particular in addressing workplace sexual harassment; or someone who is familiar with labour, service, civil or criminal law (as per Rule 4 of the POSH Rules).



complaint is against the employer.<sup>22</sup> The LC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

The POSH Act stipulates that the IC and LC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of: i. summoning and enforcing the attendance of any person and examining him on oath; ii. requiring the discovery and production of documents; and iii. any other matter which may be prescribed.<sup>23</sup>

An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents names and addresses of the witnesses to the IC or LC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated. In instances where sufficient cause is demonstrated by the complainant for the delay in filing the complaint, the IC/LC may extend the timeline for filing the complaint, for reasons to be recorded in-writing. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.<sup>24</sup>

Before initiating action on a complaint, the IC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement. Conciliation is basically an informal method of resolving complaints before the complaint escalates into a fully blown formal inquiry. Thus, after a complaint of sexual harassment has been lodged, the aggrieved woman may request the IC to resolve the matter by conciliating between the parties before commencement of the

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<sup>22</sup> Section 5 of the Prevention of Workplace Sexual Harassment Act

<sup>23</sup> Section 11(3) of the Prevention of Workplace Sexual Harassment Act

<sup>24</sup> Section 6 of the Prevention of Workplace Sexual Harassment Act

inquiry proceedings, although monetary settlement should not be made as a basis of conciliation.<sup>25</sup>

The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment: i. punishment prescribed under the service rules of the organization; ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.<sup>26</sup> The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator; and
- v. feasibility of such payment in lump sum or in installments.<sup>26</sup> In the event that the respondent fails to pay the aforesaid sum, IC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

If an employer fails to constitute an IC or does not comply with the requirements prescribed under the POSH Act, a monetary penalty of up to INR 50,000 (approx. US\$ 700) may be imposed. A repetition of the same offence could result in the punishment being doubled and/or de-registration of the entity or revocation of any statutory business licenses. It is however unclear as to which business licenses are being referred to in this case.<sup>27</sup> It is also pertinent to note that all offences under POSH Act are non-cognizable.<sup>28</sup>

<sup>25</sup> Section 10 of the Prevention of Workplace Sexual Harassment Act

<sup>26</sup> Section 13 of the Prevention of Workplace Sexual Harassment Act

<sup>27</sup> Section 26 of the Prevention of Workplace Sexual Harassment Act



**Conclusions:** Long bygone are the days when men used to be the sole bread-winners of a family. Globalization has brought a radical change in the status of women worldwide. However, with the larger influx of women in the mainstream workforce of India, sexual harassment at workplace has assumed greater dimensions. Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental right to equality and right to life, guaranteed under Articles 14, 15 and 21 of the Constitution of India ("Constitution"). Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.