

A STUDY ON CONSTITUTIONAL AND JUDICIAL RESPONSES AGAINST SEXUAL HARASSMENT OF WOMEN AT THE WORK PLACES

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Abstract

In all the strata of the society irrespective of Socio-Economic, Political and educational classes, women are facing gender-based discrimination. Gender-Based discrimination is predominant expression of Violence against women. Violence against women has various dimensions. World Health Organization (WHO) states that physical or sexual violence against women are global health problems and human right issue. Sexual harassment of women is a serious problem our society is confronting with. In our society women is used, in maximum cases, as a sexual object of enjoyment. Millions of women irrespective of professional category are found vulnerable to Sexual harassment at the work places. The Constitution of India is pre supposed to foster right to equality, right to life and liberty. Sexual harassment at the work place is the infringement of the Constitutional rights. The Supreme Court of India is the custodian of all the Constitutional rights. The Apex Court of India in Vishaka v. State of Rajasthan (AIR 1997 SC 301) case for the first time has defied sexual harassment and provided exclusive guidelines in respect of safeguarding women against sexual harassment at the Workplace. This study aims to showcase constitutional rights of women against sexual harassment and promotes the importance of judicial verdicts of Supreme Court and High Courts for protection of women from sexual harassment at workplace.

Key words: *Discrimination, violence, sexual harassment, infringement, custodian, vulnerable*

INTRODUCTION:

Though the term ‘Sexual harassment’ is a modern term but unwanted and unwelcome acts of sexual nature are very old practices all over the world. In India and other parts of the world, women are found vulnerable to sexual harassment and they become victims of Sexual and Gender-Based Violence (SGBV). Any kind of sexual harassment and gender-based violence promotes violation of women’s dignity and human rights. Sexual harassment of women remained unobserved, denied, neglected and ignore for a long period of time. The term came into existence in the America during the 1970s by a group called Working Women United, constituted under the towering leadership of the Human Affairs Programme at Cornell University. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in its Preamble declared that “extensive discrimination against women continues to exist” and such discrimination “violates the principles of equality of rights and respect for human dignity”. In India, cases of sexual harassment are alarmingly

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rising high day by day. There are several reasons for growing tendencies of sexual harassment cases in India and overseas. The reasons are low status of women, growing number of working women, soft law and order, lack of consciousness etc. Taking all these reasons as serious issues in Vishaka vs. State of Rajasthan (Bhanwari Devi case), the Supreme Court of India for the first time give recognition and definition of sexual harassment of women at workplaces.

OBJECTIVES OF THE STUDY:

The study aims –

1. To show constitutional provisions pertaining to sexual harassment of women;
2. To showcase judicial approach in safeguarding women from sexual harassment.

METHODOLOGY:

This paper explores the issue of sexual harassment of women at the workplace through a detailed study of constitutional provisions and key judgment of Supreme Court. The research paper is based on secondary data drawing from the Constitution of India, legal journals, books, websites and judgment of Supreme Court and High Courts. The study primarily focuses on judicial interpretations, particularly landmark cases like Vishaka v. State of Rajasthan and subsequent rulings that have shaped legal protections.

DEFINITION OF ‘SEXUAL HARASSMENT’:

Sexual harassment is a serious issue at the workplace that undermines the right to equality and dignity.¹ Everyone irrespective of gender deserves a safe and supportive work environment, free from discrimination and violence. Sexual harassment refers to unwelcome sexual advances or verbal or physical conduct of a sexual nature which has effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment.² The Supreme Court of India delivered verdict and formulated guiding principle regarding sexual harassment at the work place in

¹ (ILO, Report of the Committee of Experts on the Application of Conventions and Recommendations (Article 19, 22 and 35 of the Constitution): General Report and Observations concerning particular countries, Report III (part 1A), 91st Session of the International Labour Conference, Geneva, 2003, Page 463.)

² ILO Thesaurus, 2011

Vishaka v. State of Rajasthan³. In this case, the Apex court of India for the first time recognized acknowledged and defined sexual harassment of women at the work place.

‘The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013’ gives a broad definition of sexual harassment. This act includes any one or more following unwelcome acts or behavior as sexual harassment-

- i. Physical contact and advances
- ii. A demand or request for sexual favours
- iii. Making sexually coloured remarks
- iv. Showing pornography
- v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.⁴

Constitutional Provisions against Sexual Harassment at Workplaces:

The basic objective of the Constitution of India is to provide to its citizens justice, liberty equality fraternity and dignity. Preamble of the Constitution assures “dignity of the individual”. There are a good many provisions in the Constitution of India which renders safeguard to the women from the sexual harassment.

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

According to Article 19(1) (g) of the Constitution, all citizens shall have the right to practice any profession, or to carry on any occupation, trade, or business. But on the other hand sexual harassment of women at the work place of work exposes her to big risk and hazard. Risk and hazards place women at an inequitable position vis-a vis other employees and this adversely affects her ability to realize her constitutional rights under Article 19(1) (g). Each woman has a constitutional right to participate in public employment as per provisions in article 19(1) (g) but owing to sexual harassment women are denied to enjoy this particular constitutional rights.

³ AIR 1997 SC 301

⁴ Preventing and Responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India, p.18

For the meaningful enjoyment of the right to life under Article 21 of the Constitution of India (“No person shall be deprived of his life or personal liberty except according to procedure established by law”). 1950, every woman is constitutionally entitled to remain free to the eradication of obstacles and of discrimination based on gender.

However, the concept of gender equality embedded in the Constitution of India would be a futile exercise if a woman’s rights to live with dignity and right to privacy guaranteed by article 21 are violated. The fact is that sexual harassment of women at workplace perishes their sense of dignity and right to even a living with dignity. Living with dignity of women is absolutely their fundamental rights and it is also adhered to their human rights.

JUDICIAL RESPONSES AGAINST SEXUAL HARASSMENT OF WOMEN AT THE WORK PLACES

Sexual harassment of women at the workplace is a serious violation of fundamental rights and gender equality. In India, the Supreme Court and various High Courts have played a crucial role in interpreting laws, formulating guidelines and ensuring justice for victims. Sexual harassment of women is one important obstacle at the workplace and it violates human dignity. The Supreme Court of India in **Vishaka v. State of Rajasthan** for the first time recognized, acknowledged and defined sexual harassment of women. This case was a historic ruling by the Supreme Court of India that laid the foundation for laws against sexual harassment at the workplace. It emerged after the brutal gage rape of Bhanwari Devi, a social worker in Rajasthan who was targeted for preventing child marriages. The Apex Court of India in this case acknowledged sexual harassment as a violation of fundamental rights under Articles 14, 19 and 21 of the Indian Constitution. In this case, the Supreme Court held that “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right”.

For preventing sexual harassment at Indian Supreme Court has been laid down Vishaka Guidelines. The guidelines of the Supreme Court based on the international conventions and norms including CEDAW. The guideline as follows:

1. Definition of Sexual Harassment: Any unwelcome physical, verbal or non-verbal conduct of a sexual nature.
2. Safe working Environment: Employer must provide a safe working environment.

3. A Complaints Committee: A complaints Committee in the workplace headed by a woman and external members must be established.
4. Regular Workshops and Sensitization programmes: For awareness and prevention of sexual harassment Employers must notify employees about the policy against sexual harassment. Regular workshops and sensitization programs should be conducted.

These guidelines remained the Primary legal framework until the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 was enacted.

APPAREL EXPORT PROMOTION COUNCIL V. A.K CHOPRA (AIR 1999 SC625)

This case is a landmark decision where the Supreme Court of India reaffirmed the principles set in the Vishaka case (1997) regarding the sexual harassment at the workplace. This judgment strengthened women's rights by expanding the definition of sexual harassment. In this case Apex Court broadened the definition of sexual harassment and declared that: "Physical contact is not necessary to constitute sexual harassment. Any act which results in a hostile work environment and violates the dignity of a woman amounts to sexual harassment." The Court further stated that: "there is no gainsaying that each incident of sexual harassment at the place of work, results in violation of the Fundamental Rights to Gender Equality and Right to Life and Liberty- the two most precious Fundamental Rights guaranteed by the Constitution of India".⁵

In another case, **Rupan Deol Bajaj v. K.P.S. Gill**⁶, Apex Court of India in its judgment gives priority of ensuring a safe and respectful workplace for women. In this case court clearly stated that: "It is imperative that women in public offices are treated with respect and dignity, and any violation must be dealt with strictly". Basic observations by the court on women workplace harassment are as follows:

1. Workplace dignity and safety are fundamental rights. Apex Court stated that: "A person's status or position in society cannot be a shield against accountability for actions that violate the fundamental rights of another."

⁵ Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625 – Available on Indian Kanoon: <https://indiankanoon.org/doc/1765464/>

⁶(1995) 6 SCC194

2. All are under the law; no official irrespective of status is under the law.
3. It is the right of women to report sexual harassment cases without fear. The court stated that: "The law does not require that a woman should suffer indignity in silence. Her word must be given due weight".

MEDHA KOTWAL LELE & ORS. V. UNION OF INDIA & ORS. (2013) 1 SCC 297

is a landmark case in India's legal fight against sexual harassment at the workplace of women. In its judgment the Supreme Court clearly stated that sexual harassment violates fundamental rights enshrined Articles 14, 15, 19 and 21 of the Constitution. In this case Supreme Court directed all the states and union territories strictly follow the Vishaka Guidelines and take steps to form Internal Complaints Committees (ICCs) in the workplaces. Not only that the Apex Court also urged the Parliament to pass a comprehensive law to prevent sexual harassment at the workplace. This judgment played a crucial role in pushing for the enactment of the 'Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

CONCLUSION:

Sexual Harassment of women at the workplace is a violation of human right. Not only that it also violation of Fundamental Rights enshrined in the Constitution of India. In *Bodhisattwa Gautam v. Subhra Chakraborty* 1996 AIR 922 case, Supreme of India observed that rape is a crime against basic human rights and violation of fundamental right to live and liberty guaranteed by Article 21 of the Constitution. Sexual Harassment violates right to equality enshrined in Article 14 of the Constitution of India. Finally, we can say that the role of judiciary in maintaining women rights at the workplace from sexual harassment is very positive. When state failed to protect constitutional obligation of women's right against sexual harassment at the workplace, then judiciary come forward to protect women's rights. In real sense, the judiciary has played a crucial role in imposing positive obligations on government authorities to maintain and improve women's right at the workplace from sexual harassment.

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