

## Legal Awareness among Women against Sexual Harassment at Workplace

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### Abstract

The Sexual Harassment of Women at Workplace Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha on 3 September 2012. It was passed by the Rajya Sabha on 26 February 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labor Organization that very few Indian employers were compliant to this statute. Most Indian employer's have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. The government has threatened to take stern action against employers who fail to comply with this law. The paper tries to delineate the legal awareness among the women at their workplace. The purpose is to make the women awaked about the legal laws, implications and procedure for making the complaints against the harassment.

**KEYWORDS:** Sexual Harassment, Faow

### Introduction

Sexual Harassment at the Workplace has remained one of the central concerns of the women's movement in India since the early-'80s (Patel, 2002). During the 1980s, militant action by the Forum Against Oppression of Women (Mumbai) against the sexual harassment of nurses in public and private hospitals by patients and their male relatives, ward-boys and other hospital staff; of air-hostesses by their colleagues and passengers; of teachers by their colleagues, principals and management representatives; of PhD students by their guides and so on and so forth received a lukewarm response from the trade unions and adverse publicity in the media (FAOW, 1991). But this trivialization did not deter the women's rights activists. More and more working women started taking systematic action against SHW. *Baailancho Saad* ('Women's Voice') in Goa mobilised public opinion against the chief minister, who allegedly harassed his secretary, through demonstrations, rallies and sit-ins till the minister was forced to resign.

Before 1997, women experiencing Sexual Harassment at work had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. These sections left the interpretation of 'outraging women's modesty' to the discretion of the police officer.

In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue (Mathew, 2002).

The bill introduced in Parliament is known as the Sexual Harassment Of Women At The Workplace (Prevention And Redressal) Bill, 2004. The bill provides for the prevention and redressal of sexual harassment of women at the workplace, or arising during and in the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India.

### **Scenario in the post-Vishakha guidelines period**

Several organisations have carried out research on Sexual Harassment at work that has been widely disseminated. According to a survey 80% of respondents revealed that Sexual harassment at work exists, 49% had encountered SHW, 41% had experienced SHW, 53% women and men did not have equal opportunities, 53% were treated unfairly by supervisors, employers and co-workers, 58% had not heard of the Supreme Court's directive of 1997, and only 20% of organisations had implemented the Vishakha guidelines (Dalal, 2003).

A Sophia Centre for Women's Studies and Development study shows that awareness and implementation of the Supreme Court's guidelines is very low and there is a need to spread awareness about the same

### **Definition of sexual harassment at work**

The Supreme Court directive of 1997 clearly and unambiguously provides an answer to the question 'What is sexual harassment?'

- Physical contact
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example, leering, telling dirty jokes, making sexual remarks about a person's body, etc

### **The Vishakha guidelines categorically state that:**

All women who draw a regular salary, receive an honorarium, or work in a voluntary capacity in the government, private sector or unorganised sector come under the purview of these guidelines.

It is the duty of the employer or other responsible persons in the workplace or institution to:

Prevent sexual harassment

Provide mechanisms for the resolution of complaints

### **Complaints mechanism**

- All workplaces should have an appropriate complaints mechanism with a complaints committee, special counsellor or other support services.
- A woman must head the complaints committee and no less than half its members should be women.
- The committee should include an NGO/individual familiar with the issue of sexual harassment.
- The complaints procedure must be time-bound.

- Confidentiality must be maintained.
- Complainants/witnesses should not experience victimisation/discrimination during the process.

#### **Employers' responsibilities**

- Recognise sexual harassment as a serious offence.
- Recognise the responsibility of the company/ factory/workplace to prevent and deal with sexual harassment at the workplace.
- Recognise the liability of the company, etc, for sexual harassment by the employees or management. Employers are not necessarily insulated from that liability because they were not aware of sexual harassment by staff.

#### **Media**

- There is a need to sensitise the media regarding the repeated relay of incidents relating to violence against women. This has negative repercussions on society, especially on children.
- The National Commission for Women directs the media not to intrude on the privacy of the victim.

#### **Need:**

Sexual harassment at the workplace is a universal problem. Even though the occurrence of sexual harassment at the workplace is widespread in India and elsewhere, this is the first time it has been recognised as an infringement of the fundamental rights of a woman, under Article 19(1)(g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business".

Of late, the problem of sexual harassment at the workplace has assumed serious proportions, with a meteoric rise in the number of cases. Surprisingly, however, in most cases women do not report the matter to the concerned authorities. India is rapidly advancing in its developmental goals and more and more women are joining the workforce. It is the duty of the state to provide for the wellbeing and respect of its citizens to prevent frustration, low self-esteem, insecurity and emotional disturbance, which, in turn, could affect business efficacy. It is also a step towards providing women independence, equality of opportunity and the right to work with dignity.

#### **Conclusion:**

A Bill to Prevent Sexual Harassment at the Workplace, 2005, has already been introduced in the Indian Parliament. For any sexual harassment law to be successful in India, it is important to be aware of the difficulties confronting our society and ways to overcome them. We all know that India is a patriarchal society and most cases of sexual harassment remain unreported. Women are reluctant to complain and prefer silence due to lack of sensitivity on the part of Indian society. There is a need to gender-sensitise our society so that the victim does not feel guilty and is encouraged to report any form of harassment. The victim's privacy must be protected. The police and the judiciary, in particular, also need to be gender-sensitised. There should be speedy redressal and an increase in the conviction rate. Women themselves should be made aware of their right to a safe and harassment-free work environment. The concept and definition of sexual harassment should be clearly laid down, and the redressal mechanism made known to

women in each and every sector of the economy. In any civilised society, it is the fundamental right of people to be able to lead their lives with dignity, free from mental or physical torture.

To effectively prevent SHW we need both a top-down initiative by the state and employers and civil society initiatives from citizens' groups, women's organisations and trade unions.

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