

## The right to a harassment free work environment: A descript reality or a fail

Towseef Ahmad\*

University of Kashmir, Srinagar, India

### \*Correspondence Info:

Towseef Ahmad

University of Kashmir, Srinagar, India

E-mail: [towseefahmad7@gmail.com](mailto:towseefahmad7@gmail.com)

### Abstract

Sexual harassment at workplace is a form of violence against women which renders a sexually assaulted woman to emotional stress, social stigma and financially crippled with many other deprivations, restraints and limitations as she undergoes the worst trauma. The Supreme Court in the heydays of 1997 against Sexual harassment actually set out the guidelines for prohibition of Sexual harassment at Workplace. These are popularly known as "Vishakha Guidelines". The Vishakha Guidelines recognized that Sexual harassment at Workplace is a violation of human rights and therefore all employers and responsible heads of the institutions must prepare certain rules of conduct at their respective Workplaces. The Court utilized Convention on the Elimination of Discrimination against Women as an interpretive dispositional aid.

**Keywords:** Workplace, Women, Harassment, Guidelines, Complaint, Monism, Dualism and Convention.

### 1. Introduction

The Sexual harassment at Workplace is a form of violence against women which renders a sexually assaulted Woman to emotional stress, social stigma and financially crippled with many other deprivations, restraints and limitations as she undergoes the worst trauma. It is a crude fact that Women have been subjected to violence, social oppression, economic depravity, injustice and subjugation, time and again. The Parliament has therefore enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This Act got assent of the President on 22nd April 2013 and came into effect from 9<sup>th</sup> December 2013. [1] Besides the Act, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 have also been enacted. [2]

In *Bodhisattwa Gautam v. Subhra Chakraborty* [3], the Supreme Court of India has aptly described the vulgarity of rape as "deathless shame and the gravest crime against human dignity". Meanwhile, in 1997, the Supreme Court in the case of *Vishakha v. the State of Rajasthan* laid down for the first time strictures that aimed at protecting a woman employee by giving her right to a safe and healthy working environment.

In the decision, the Court also defined sexual harassment and recognised it to be a paramount violation of human dignity and human rights. [4] The Court thereby laid down certain mandatory and binding guidelines to be followed by all workplaces, belonging to the public and private sectors and made it imperative for every employer to ensure a safe, harassment free working environment for the women. These strictures can be applied uniformly to educational institutions, autonomous bodies and PSU's as well as any other institution or workplace. Although there was a clear link to international law in *Vishakha*, there was no clear articulation of the horizontal application of fundamental rights.

The protection against Sexual harassment can be examined in the International dimension as well as in the national dimension.

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responsible heads of the institutions must prepare certain rules of conduct at their respective workplaces.

## 2. International Awakening and Retrospect

The International retrospect and awakening will relate to the International norms. In this case it was (Convention on the Elimination of Discrimination against women), CEDAW. The Court utilized Convention on the Elimination of Discrimination against Women as an interpretive aid.

The fact of the matter is that decision was reached by recourse to the International Convention and the theory of Monism. Monism is based on the doctrine of Incorporation which states that International law and Municipal law in a particular legal system will be treated as parts of a one integrated system. Thus, in those countries which follow a theory of monism, rules of International law *ipso facto* become the part of the domestic legal system and further if there is a clash between the rule of International law and the municipal law, the International law should prevail.

On the other hand, dualism is based on the doctrine of transformation which requires the intervention of parliament for application of international law to be incorporated in the domestic legal order through enabling legislations. In this case, since there was no specific legislation on Sexual Harassment in India, thence the Apex Court followed the Incorporation theory of Monism, till the law was made in India.

The international recognition of sexual harassment as a human rights issue has now a global acceptance through various International Conventions and norms. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW 1979), Vienna Convention of 1993 and the Beijing Declaration are relevant regarding Sexual harassment of women at work place [5] and enshrine that Equality in employment could be seriously impaired when women are subjected to gender specific violence, such as Sexual harassment at Work Places. The Human rights of women and of the girl child are inalienable, sacrosanct, immutable, integral and indivisible part of universal human rights. It directs all States to take all appropriate measures to prevent discrimination of all forms against women besides taking steps to safeguard and protect the honour and dignity of women in all circumstances. It recommended that States should provide effective complaints procedures and remedies mechanism, including compensation.

CEDAW was ratified by the government of India on 25th June 1993.

The United Nations on 23rd December 2000 passed a new Complaint Procedure for female victims of discrimination which allow women to submit sexual harassment complaints to the UN, if the home country is unwilling to respond to this sensitive issue and investigate such allegations. This was a historic step in giving women the right of redress at the international level. It will act as an incentive for governments to take a fresh look at the means currently available to women at the domestic level to enforce their rights”.

Many countries are developing sexual harassment laws. These laws vary widely from country to country influenced by the cultures and legal systems. While interpreting and elucidating the fundamental rights, the apex Court of India has relied on international Conventions and therefore any international norm not inconsistent with the fundamental rights proclaimed by the Indian Constitution and which is in consonance with its inherent spirit must be read to promote the objects of the Constitutional Guarantees. This is evident from Art. 51(c) of the Constitution and the enabling power of the Parliament of India to enact laws for implementing the International Conventions by virtue of Art. 253 read with entry 14 of the Union List of the Indian Constitution.[6]

The US Supreme Court's rulings should also be transformed into the legal system, depending upon the feasibility of the home conditions, which among other things includes to establish and disseminate an effective anti-sexual harassment policy at the workplace with effective investigative mechanisms and to organise training and awareness workshops on Sexual harassment with the aim to develop non-threatening and non-intimidating Sexual harassment free environment.

## 3. Indian Perspective

The national dimension will relate to the Constitutional guarantees on the welfare and development of nation's women and girl children enshrined in several provisions viz. Article 14, 15, clause (3) of Article 15, 19 (1) (a), 21, 21(A), 23 (1), 24, Clauses (e) and (f) of Articles 39, and Article 45 and responsibilities flowing from other statutes such as, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, the Protection of Human Rights Act, 1993, GOI's Instructions and health laws. Article 263

provides for formation of an Inter-State Council for making recommendations upon any subject, particularly for the better coordination of policy. An example of such Council is the Central Council of Health and Family Welfare. [7]

The various countries as well as States differ not only in defining the term “sexual harassment”, but also in its implementation. [8] Thus, the recourse to the theory of Monism meant that the judgment would be a guarantee against the State but not necessarily against employees in the private sector, since human rights and fundamental rights are primarily available against the State. The Sexual harassment is a clear violation of the rights embodied under Arts.14, 15, 19 (1) (g) and 21 of the Constitution of India besides Articles 42, 51A and other universally recognized basic human rights.

The term ‘Sexual Harassment’ was defined by the Honourable Supreme Court of India very ardently in the case of Vishakha Vs State of Rajasthan in 1997 as, “Sexual Harassment”, “means any unwelcome sexually determined behaviour (whether directly or by implications) as physical contact and advances, a demand or request for sexual favours, sexually-coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal contact of sexual nature”.

The fact situation in Vishakha Vs State of Rajasthan was that Bhanwari Devi, a village-level social worker of a development programme run by the State Government, was fighting against the child and multiple marriages in villages. As part of this programme, Bhanwari Devi, with the assistance from the local administration, tried to stop the marriage of one Ramkaran Gujjar’s infant daughter who was less than one year old. The marriage took place nevertheless, and Bhanwari earned the ire of the Gujjar family. She was subjected to social boycott, and in September 1992 five men including Ramkaran Gujjar, gang raped Bhanwari Devi in front of her husband, while they were working in their fields. The days that followed were filled with hostility and humiliation for Bhanwari and her husband. The only male doctor in the Primary Health Centre refused to examine Bhanwari Devi and the doctor at Jaipur only confirmed her age without making any reference to rape in his medical report.

The trial court acquitted the accused, but Bhanwari was determined to fight further and get justice. She said that she had nothing to be ashamed of and that the men should be ashamed due to what they had done. Her fighting spirit inspired fellow saathins and women’s groups countrywide. In the months that followed they launched a concerted

campaign for justice for Bhanwari. On December 1993, the High Court said, “it is a case of gang-rape which was committed out of vengeance”. As part of this concerted and determined campaign, the women groups had filed a petition in the Supreme Court of India, under the name ‘Vishaka’, asking the court to give certain directions regarding the sexual harassment that women face at the workplaces. The result was the Supreme Court judgement, which came on 13th August 1997, and are known as the Vishaka guidelines.

The Supreme Court of India in the case of Apparel Export Promotion Council v. A.K.Chopra, [9] had said that each incident of sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty, the most precious fundamental rights guaranteed by the Constitution of India.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 put in place two-tier mechanism for enquiry into grievances. An aggrieved woman will have to depose before the Internal Complaints Committee and when the Internal Complaints Committee (ICC) recommends action against the person concerned in terms of service rules, then again before the Committee in which employer will nominate his own enquiry officer, not being a woman.

#### 4. Conclusion

The information regarding the sexual harassment should be disseminated regularly through production, distribution and circulation of printed materials, posters and handouts. The public offices and sensitive institutions, particularly the educational institutions must exercise due diligence, prudence and reasonable care to ensure a safe and sexual harassment free work environment by promoting gender harmony among students and employees.

Sexual harassment and molestation is still rampant in many parts of India. Effective policy statements, effective investigatory procedures, and effective training programs shall establish an atmosphere of trust that will encourage individuals to come forward with their complaints of sexual harassment.

Nothing should be taken as a fail or fad. Tamil Nadu has rightly delinked the Sexual harassment from the employment rules by the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and to guarantee them a secure future, the Maharashtra State Government has started a scheme ensuring the victims financial assistance as well as

support services for their rehabilitation known as “Manodhairya” scheme.

The role of the Judiciary is Sentinel on the qui vive. The role of the Judiciary in combating Crime against Women has been very rightly stated by Arijt Pasayat, J. in the case of State of Punjab v. Ramdev Singh, reported in AIR 2004 SC 1290, aptly as: “A socially sensitized Judge, in our opinion, is better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos”.

## References

- [1] S.O. 3606(E) of the Central Government, Ministry of Women and Child Development of 9th December, 2013, New Delhi.
- [2] G.S.R. 769(E) of the Central Government of 9th December, 2013, New Delhi. Available from URL: <http://wcdodisha.gov.in/>
- [3] AIR 1996 SC 922. Available from URL: <http://www.escr-net.org/>
- [4] AIR 1997 SC 3011 Available from URL: <http://www.equalrightstrust.org/>
- [5] Shastri., M. Human Rights and Women: A Study with Special reference to Sexual harassment of Women at Work-Places in India. NALSAR Law Review. Pp.121-122.
- [6] Tripathi, M.N.B. Jurisprudence: *Legal theory* (18<sup>th</sup> ed.2008). Allahabad Law Agency: Faridabad.
- [7] Gupta, C., M. Health and Law: A Guide for Professionals and Activists. (1<sup>st</sup> edition 2002), Kanishka Publishers, New Delhi. Pp. 37-38.
- [8] “Manodhairya” scheme. Available from URL: <https://mscw.maharashtra.gov.in>
- [9] AIR 1999 SC 625. Available from URL: <http://nmew.gov.in/>