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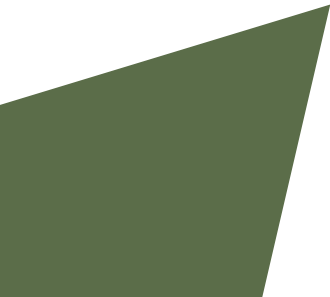
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Sexual Harassment at Workplace

Navdha Maheshwari & Mamta Gohar

ABSTRACT

Sexual Harassment at the Workplace has stayed one of the paramount perturbs of the women's manoeuvre in India. With the increasing number of working women, there is an ascent in the cases of sexual harassment at workplace. Presently, sexual harassment is considered as a worldwide phenomenon that sways all working class regardless of their age, ethnicity, colour or work category. The Supreme Court of India, in 1997, in the Vishaka Judgment, out of the blue, acknowledged sexual harassment at the workplace as a human rights infringement. The Supreme Court credenced upon the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both ratified and signed. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill got the President's acquiescence on April 22, 2013. The Supreme Court epitomized that such contingencies of harassment at the workplace violates the Fundamental Rights of women. Since there prevailed no domestic law to scrutinize and proffer remedial measures against Harassment of women at workplace, therefore Judiciary laid down certain principles and guidelines, known as Vishaka Guidelines, which were in congruence with the Treaties and International conventions regarding gender equality. In order to obviate such activities, certain amendments and curtailments need to be made in the Indian Penal laws and later provisions, contemplating the past as well as the future and the endless desire or lust of sexual pleasure of the offenders. The Indian Judiciary should set a paradigm to dissuade the criminals from committing offences. Women should not panic to come forward with their grievances and complaints. There must be Social Acceptability and prodigious entanglement of public in awareness programmes and women should play a substantial participatory role in governance.

INTRODUCTION

Sexual Harassment has been characterized as an unwelcome conduct of sexual nature. It is one of the major problems which the women are facing nowadays in various sectors of life. Sexual Harassment at the Workplace has stayed one of the paramount perturb of the women's manoeuvre in India. We seldom pass through a week without a nudge of these types of events which shall be termed as "Social problems".¹With the increasing number of working women, there is an ascent in the cases of sexual harassment at workplace. Sexual Harassment at workplace is a rampant obstacle in the world whether it is a developing nation or a developed nation or an undeveloped nation, abominations against women is recurrent all around. It is a global issue inflicting negative repercussions on both men and women. It is occurring more with women gender specifically. How much ever one attempt to prohibit, protect, anticipate and give cures, such infringement will dependably happen. It is a crime against women, who are contemplated to be the most vulnerable section of the society. This is the reason they have to suffer the ill effects of human trafficking, female foeticide, sexual abuse, stalking, human trafficking and sexual harassment to the most grievous offence Rape.

The employer's outlook holds equal significance as well. It has been perceived that in light of the expanding number of accusations since the passing of The Sexual Harassment Act,² the employers feel demoralized from recruiting women all together. More and more employers shall not favour the unnecessary peril of any such allegations and would indeed hire a male employee. This could turn into a significant step backward in advancing equal opportunity to women, eventually hurting them in a recalcitrant manner.³Women workplaces are everywhere, be it formal or informal sector, and there is no agency to avert the everyday kinds of sexual harassment which they may encounter.⁴It is illegal to harass a person because of that person's sex. Sexual Harassment is an unsolicited sexual conduct, which could be relied upon to meet a person feel humiliated, offended or intimidated. It can be verbal, physical and written. A victim may agree or consent to certain behaviour and effectively partake in it, despite the fact that it is hostile and frightful. Subsequently, sexual conduct is unwelcome at whatever point, the individual subjected to it thinks of it as unwelcome. The term Sexual Harassment has been interpreted by the Supreme Court as an

¹*Sexual Harassment of Women at Workplace*, Legal Service, available at <http://www.legalservicesindia.com/article/article/sexual-harassment-of-women-at-workplace-2114-1.html>, last seen on 24/05/2020.

² Sexual Harassment of Women At Workplace(Prevention, Prohibition and Redressal) Act, 2013

³*Workplace Act could end up hurting women*, available at <http://blogs.economictimes.indiatimes.com/SilkStalkings/entry/workplace-act-could-end-up-hurtingwomen>, last seen on 25/05/2020.

⁴*Blurred Lines*, available at <http://indianexpress.com/article/opinion/columns/blurred-lines-2/>, last seen on 26/05/2020.

unwanted sexually determined act (whether expressed or implied) such as; Demand or request for sexual favours, Physical contact and advances, Showing pornography, Sexually collared remarks, Any other unwelcomed verbal, physical or non-verbal conduct of sexual nature. A key part of this definition is the interpretation of the word unwelcome. Such unwelcomed or uninvited act or conduct is prohibited in totality. Romantic or sexual interaction among consenting people at work might be offensive to observers and may also lead to the violation of the workplace policy, but is not sexual harassment. It is an augmenting hurdle and it is being tried by all to combat this obstacle by adopting new measures and policies.⁵

In 1997, the Supreme Court of India, in the case of *Vishaka and Others v. State of Rajasthan and Others*⁶, conceded the gravity of sexual harassment of the working women at the workplaces, and set down rules making it compulsory for employers to avert the commission of acts of sexual harassment and to impart the methodology for the settlement, resolution or prosecution of acts of sexual harassment. The guidelines issued by the Hon'ble Supreme Court were treated as law announced by the Hon'ble Supreme Court under Article 141 of the Constitution of India. It was held by the Hon'ble Supreme Court that the rules confined by the Supreme Court would be strictly complied within all the work places for the enforcement and prevention of the right to gender equality of the working women. It was observed by various Courts now and again in the past that the rules and standards constituted by the Hon'ble Supreme Court in *Vishaka Judgment*⁷ have not been followed in workplaces stringently.⁸ The expanding work participation rate of women made it indispensable for enacting an extensive enactment pivoting on prevention of sexual harassment as well as proffering a redressal mechanism.

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

Sexual harassment can be directed by a man of any position in an association, organization or workplace. It is also important to say that, Sexual harassment is not constrained to making unseemly sexual or physical advances. Sexual harassment incorporates any unwelcome verbal or physical conduct that makes a threatening, humiliating and mortifying workplace.

⁵Ibid .

⁶*Vishaka & Ors vs State of Rajasthan &Ors*, AIR (1997) 6 SCC 241.

⁷Ibid.

⁸*Overview of Sexual Harassment of Women at Workplace*, Mondaq, available at <http://www.mondaq.com/india/x/348338/employment+litigation+tribunals/Overview+Of+The+Sexual+Harassment+Of+Women+At+Workplace>, last seen on 27/05/2020.

Sexual harassment incorporates the following acts:⁹

- Attempt or actual sexual assault or rape.
- Unwanted touching, hanging over, cornering, or squeezing.
- Unwanted sexual prodding, jokes, comments, or inquiries.
- Whistling at somebody.
- Kissing sounds, howling, and smacking lips.
- Touching worker's apparel, hair, or body.
- Touching or rubbing oneself sexually around someone else.
- Sexually explicit images or posters.
- Intrusive questions about private life or body.
- Sexually explicit mails or SMS text messages.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines sexual harassment. The act is a legislative act in India which tries to protect women from sexual harassment at their work environment. It was passed by the Lok Sabha on 3 September 2012 and by the Rajya Sabha on 26 February 2013.¹⁰ The Bill got the consent of the President on 23 April 2013.¹¹ The Act came into constrain from 9 December 2013.¹² This statute superseded the Vishaka Guidelines for counteractive action of sexual harassment presented by the Supreme Court of India

“Sexual Harassment”¹³ consists of any one or more of the following acts or behaviour namely:—

- (i) Physical contact, advances; or
- (ii) A request or demand for sexual favours; or
- (iii) Making of sexually coloured remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcomed verbal, non verbal or physical conduct of sexual nature;

⁹The Legal Definition of Sexual Harassment, Australian Human Rights Commission, <https://www.humanrights.gov.au/publications/sexual-harassment-workplace-legal-definition-sexual-harassment>, last seen on 28/05/2020.

¹⁰Naina Kapur, *The Sexual Harassment Bill undermines the innovative spirit of Vishaka*, Bar and Bench (2013), <https://barandbench.com/brief/4/3251/the-sexual-harassment-bill-undermines-the-innovative-spirit-of-vishaka-naina-kapur-lawyer-and-equality-consultant->, last seen on 29/05/2020.

¹¹ Ministry of Law & Justice, Government of India, *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* published in The Gazette of India, <http://pib.nic.in/newsite/erelease.aspx?relid=95069>, last seen on 30/05/2020.

¹²*Law against sexual harassment at workplace comes into effect*, The Times Of India (13/12/2013), <https://timesofindia.indiatimes.com/india/Law-against-sexual-harassment-at-workplace-comes-into-effect/articleshow/27308194.cms>, last seen on 31/05/2020.

¹³ S.2(n), Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

“Workplace” consists of any organisation, department, establishment, undertaking, enterprise, office, institution, unit or branch which is established, owned and is controlled by the Government, Appropriate Government or the local authority or a corporation or a Government company or a co-operative society;

The initial move towards aversion of Sexual Harassment is the acknowledgment of the offence. Women generally dust off an awkward experience of harassment under the rugs, since they do not have a comprehension of the way that the unseemly occurrence she was subjected to, really amounted to in sexual harassment. An offended women should remember that any undesirable or unwanted act, by a man at workplace, which they do not respond, which influences them to feel terrible, frail, uncomfortable, attacking, disparaging, and illegal and causes negative confidence and influences them to feel furious or tragic, is an act of Sexual harassment. It likewise does not need to be a repeated act to be qualified as Sexual Harassment. One act or instance of sheer uneasiness caused to women due to an unwelcome and sexual conduct is sufficient to be called “Sexual Harassment”.

There have been a few instances where an aggrieved woman would complaint against an associate for conspicuously staring at her for unknown reason, for being threatened by a co-worker and prurient method for talking, or for coming uncomfortably near her. Sadly these activities were not perceived as an instance of sexual harassment by the employer on the grounds that as per normal conviction, it is inappropriate behaviour just when there is an express instance of lewd gestures towards a woman. People need to realize that the meaning of sexual harassment is definitely not limited. This is a wide definition which incorporates any activity that influences a woman to feel awkward, uncomfortable, threatened and traded off, when submitted by the respondent at a workplace.¹⁴

REASONS

The Supreme Court’s Vishaka Guidelines¹⁵ are the substratum of the legislation we have now, which addresses sexual harassment of women at the workplace.¹⁶ Presently, sexual harassment is considered as a worldwide phenomenon that sways all working class regardless of their age, ethnicity, colour or work category. The Supreme Court of India, in 1997, in the Vishaka Judgment, out of the blue, acknowledged sexual harassment at the workplace as a human rights infringement.

¹⁴ *Sexual Harassment and Vishaka guidelines: All you need to know*, First post. <http://www.firstpost.com/india/sexual-harassment-and-vishakha-guidelines-all-you-need-to-know-1241649.html> , last seen on 31/05/2020.

¹⁵ Supra 6.

¹⁶ Sonam Saigal, *Sexual Harassment at Work: The limits of the law*, The Hindu (02/04/2017), <http://www.thehindu.com/news/cities/mumbai/sexual-harassment-at-work-the-limits-of-the-law/article17763605.ece> , last seen on 31/05/2020.

The Supreme Court credenced upon the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both ratified and signed.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill got the President's acquiescence on April 22, 2013. The Supreme Court epitomized that such contingencies of harassment at the workplace violates the Fundamental Rights of women. There are many reasons of Sexual Harassment, yet most essential one is the culture and value system and the relative status and power of the men and women in our society.¹⁷ The manner in which men and women are raised in India unequivocally influences their conduct in an organisation. Women are often deprived of self-confidence on account of the way they have been mingled, socialized and are customized to endure in silence.¹⁸ Men are raised with macho beliefs, who contemplate females a mere toy to play with and effortlessly carry these values into the workplace. Such patriarchal perspectives create an atmosphere that permits men the opportunity of sexual harassment at the workplace, while women remain vulnerable.

As per Oxfam, 17% of the women in both formal as well as informal sector faced sexual harassment at work in India.¹⁹ Women are resistless to sexual harassment, since they often work in an insecure position and more often lack power. Because of the fear factor, women quit to their destiny rather than elevate their voice against sexual harassment. Owing to their unawareness about complaining regarding the same, and how will their complaints be treated, they quit and suffer in ignominy. Many times, sexual harassment is also regarded as a power game, where man urges for sexual favours in return of benefits, he relinquish with owing to his prevailed position.

As recent monetary and social changes have changed power relations amongst men and women in the Indian society, men are feeling a sense of frailty. With women now being accredited, some men feel undermined by their career advancement. To vanquish such timorous sentiments, some men resort to harassing women in the workplace. Men are pressurised, sometimes, in the working places, because after even giving their best, they do not get bona fide acknowledgement, whereas, women with little adroitness are preferred over men.

It's not just men who are to be blamed constantly. Sometimes, women consider sexuality as their power base to play along. Such interpretation of women welcomes sexual advances by men at the work place and after that, turns into a case of sexual harassment. One of the significant reason

¹⁷*Sexual Harassment in Workplace Causes and Remedies*, available at <https://www.civilserviceindia.com/subject/Essay/sexual-harassment-in-workplace-causes-and-remedies2.html>, last seen on 01/06/2020 .

¹⁸ Supra 8.

¹⁹P.Hande, *Sexual Harassment of Women at Workplace*, The Times of India, (28/11/2012), available <http://www.thetimesofindia.indiatimes.com> , last accessed on 01/06/2020.

that sexual harassment goes on unabated in light of the fact that the organization so as to safeguard its image, does not entertain disciplinary procedures and complaints to deal with sexual harassment. The relationship between the genders in many nations around the world involves a considerable amount of violence against women.²⁰ Reasons behind sexual harassment of women at workplace are numerous; some of them are universally prevailing in the society as a whole, while some are particular to workplace. Few of them among them are mentioned underneath:²¹

PATRIARCHAL STRUCTURE

Patriarchal value and attitudes are the biggest agitations in the implementation of any legislation concerning women in our society.²² The rudimentary reason behind approximately all kinds of violence or harassment against women lies in society's patriarchal structure, whereby a male dependably thinks himself unrivalled and superior than the women in every facet of life. This predominantly complex manifests itself in different sorts of oppressive or discriminatory practices against women in general and furthermore, against working women. Consequently, a male colleague would dislike his female co-employee to work with him equally or he would not like her to gain a higher position in the workplace; and to make her feel uncomfortable or inferior or with the motive to harass her, different types of techniques are practised by male colleagues. Eminent among these are sexually collared techniques which include unwelcomed conduct, indecent remarks, showing of vulgar videos or images or any other alike behaviour.²³

SEXUAL PERVERSION

Sexual depravity of mind among certain people is additionally one of the important reasons of sexual harassment of women at workplace. While an ever increasing number of female workers are being recruited by both private and public sectors, such men have an easy access to indulge in sexually debased behaviours.

JEALOUSY AT WORKPLACE

Jealousy at workplace is likewise a reason behind such offence against women representatives; a male worker might not want to see his female colleague to get success, promotion, advancement or incentives by the employer. And in envy, he can harass her by sexually perverted behaviour. It

²⁰ *Stop Violence Against Women: Sexual Harassment*, available at <http://hrlibrary.umn.edu/svaw/harassment/explore/3causes.htm> , last seen on 02/06/2020.

²¹ *Sexual Harassment of Women at Workplace*, available at <http://www.indiacelebrating.com/social-issues/sexual-harassment-of-women-at-workplace/> , last seen on 02/06/2020.

²² Dr. Kalpana Sharma, *Sexual Harassment of Women in India: An Ubiquitous Hazard*, 22 Journal of Humanities and social science 36, 40 (2017) available at <http://www.iosrjournals.org/iosr-jhss/papers/Vol.%2022%20Issue9/Version-9/D2209093646.pdf> , last seen on 03/06/2020.

²³ Supra 22.

is also connected to apprehend superiority feeling among men that women could in no way become preferable over them.

FEELING OF CONTEMPT AND DISRESPECT:

Apart from these causes, a general sentiment of disrespect and contempt for women among male species is likewise a noticeable reason, whereby women are viewed as an object to fulfil sexual wants of men.²⁴ We may respect women in our homes, however other women in the society are not regarded as such. Women at the workplace are no different, males contemplate them as their object of play, obscene gestures, vulgar jokes and comments, gossips of sexual nature etc. is the behaviour at any workplace. Though, in our society we allege to respect and worship women, but in materiality, various kinds of offences committed against women prove that our claim is nothing but mendacity.²⁵

MALE SUPERIORITY:

Therefore, there can be varied and several reasons for sexual harassment of women at workplace, yet the basic component of every such single reason is the profound established sentiment of Male Superiority among men in general. The social conditioning of men in a patriarchal system strengthens such feeling generation after generation which routes the base for crimes like sexual harassment of women at workplace.

LEGAL PROVISIONS AND RECENT AMENDMENTS

- **Compulsory disclosure of certain compliances wrt “prevention of sexual harassment at workplace”** – In the year 2018, on 31st July “The Ministry of Corporate Affairs” has actually notified the “Companies (Accounts) Amendment Rules, 2018 (Rules)” “U/S 134 of the Companies Act, 2013”²⁶, in which amendment wrt the “Companies (Accounts) Rules, 2014,” has been undertaken. Such Rules have certainly amended Rule VIII in order to include Clause (x), according to which each and every Company is actually required to report due compliance with respect to the provisions which are related to the constitution of ICC (Internal Complaints Committee) under the Act of 2013²⁷, relating to Sexual Harassment.

The suggestion was definitely made to the MCA so as to make the application of the SH Act possible in actuality.

²⁴ Supra 22.

²⁵ Supra 21.

²⁶ S.134, The Companies Act, 2013.

²⁷ The Sexual Harassment Act, 2013.

- Not only this, an e-complaint management system in order to register complaints regarding the act of Sexual Harassment, mainly at the workplace of each and every women employees in the nation, including within its ambit the government as well as private employees.

Furthermore, the Ministry has also identified a number of 223 Resource Institutions in order to provide with the capacity building initiatives and programmes i.e. training as well as workshops, etc., on the problem of sexual harassment at workplace so as to lead to the creation of widespread programmes of awareness wrt to the Act across the nation, both in organized as well as unorganized sectors.

- **One of the recent amendment to the POSH Act came in the year 2019**, regarding Women as well as Child Welfare Department issuing a general/common notice stating that any particular business in the city of Telangana which had a number of ten or even more employees was actually now required to get their IC registered with none other than the State Shebox portal by max July 15, 2019. This shows that it is a practice as well as an effort to actually allow officials in order to better track the due compliance position of certain businesses around the particular area.

The non-fulfilment to follow such rules could definitely lead to fine to the businesses at \$50,000 in local currency. The main takeaway being is that it is a trend which shows definitely no signs of slowing this, anytime soon. Many individuals agreed about the fact that the actual version of the POSH Act particularly lacked the way so as to achieve any required meaningful change. Also, such kinds of rules are furthermore seen as a path in order to correct this loophole soon.

- **The Act for Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) , 2013:**

This act holds the pith of the Vishaka Guidelines,²⁸ and develops its provisions.

It augments the meaning of “Aggrieved Woman” to incorporate all women, regardless of age and employment or business status, and it covers domestic workers, customers, clients and labourers.

²⁸Supra 6.

It broadens “Workplace”²⁹ beyond traditional workplaces to incorporate a wide range of organization beyond sectors, even non-traditional work environments (for instance those which include working from home) and places went by employee for work.

It commands the constitution of the Internal Complaint Committee (ICC) - and states the move to be made if an ICC is not formed - and the filing of a review report of the number of grievances and action taken towards the finish of the year. It directs the duties of the employer, such as arranging workshops and awareness projects to instruct employees about the Act, and directing orientation programs for the members from the ICC.

If the employer neglects to constitute an ICC, or does not obey any other provision, they should pay a fine of upto 50,000 rupees. If the employer is a repeated offender then the fine gets multiplied. If the employer has been convicted previously for an offence under the Act, he should be indicted for double the punishment, and the second offence can likewise prompt cancelation or non-reestablishment of his permit.

A Judicial Magistrate or a Metropolitan Magistrate of the first class tries the offence culpable under the Act.

- **The Indian Constitution:**

The sexual harassment of women at working environment is against the rule of gender equality. It is a violation of fundamental rights, particularly Article 14 i.e., equality before law and Article 15 i.e., prohibition of discrimination on grounds of religion, race, caste, sex and place of birth which is an enshrined principle in the constitution. It also violates Article 21 which deals with the protection of life and personal liberty given in the part III of the Indian Constitution.

In *Vishaka v. State of Rajasthan*³⁰, the Supreme Court perceived that in the absence of domestic law engaging the field to formulate effective measures to check the evil of sexual harassment of women at workplace, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work within human dignity in Articles 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment certain in that.

The Supreme Court in the *Deputy Inspector General of Police v. S. Samuthiram*,³¹ observed that there are many instances where the girls of young age are being harassed,

²⁹ S.2(o), The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

³⁰ (1997) 6 SCC 323.

³¹ AIR 2013 SC 14.

which sometimes may lead to serious psychological problems and even committing of suicide. Every citizen in this country has the right to live with dignity and honour which is a fundamental right³² and guaranteed by the Constitution of India. Here sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Article 14 and 15 as well.

Any International Convention not conflicting within the fundamental rights and in harmony with its spirit must be perused into these provisions to expand the significance and content thereof to promote the object of the constitutional guarantee.³³

Article 253³⁴ empowering the parliament to enact laws for implementing the International Conventions and norms also, Article 73 provides that the executive power of the Union shall reach to the issues with respect to which parliament has the power to make laws. The executive power of the Union is, therefore, available till the parliament authorizes enactment to expressly provide measures, needed to curb the evil.

Part IV of the Indian Constitution mentions the Directive Principles of State Policy, which provides the principles to be followed by the State, for equal rights for men and women. The constitution also provides the principle of Equal justice to free legal aid.³⁵ Article 42 provides provisions for just and humane condition of work and maternity reliefs.

Article 51- provides for Fundamental duties for citizens. The significance and content of the fundamental rights ensured in the Constitution of India are of adequate amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse.³⁶

The Apex Court in *Apparel Export Promotion Council v. A.K. Chopra*³⁷ referred to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and also the gender equality under the Constitution of India. This is the first case in which the Supreme Court applied the law laid down in *Vishaka's* case and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council, who was found culpable of sexual harassment of a female employee at the place of work on the ground that, it violated her fundamental right guaranteed by Article 21 the Constitution.³⁸

³² Art. 21, The Constitution of India.

³³ Art. 51(c), The Constitution of India.

³⁴ Schedule 7, The Constitution of India.

³⁵ Art. 39- A, The Constitution of India.

³⁶ *Supra* 6.

³⁷ 1999 (1) SC 110.

³⁸ Art. 21, The Constitution of India.

In the two cases, the Supreme Court observed, that “In the cases including Human Rights, the Courts must be alive to the International Conventions and Instruments beyond what many would consider conceivable to offer impact to the standards contained in that, for instance, the Convention on the Eradication of All types of Discrimination Against Women, 1979 (CEDAW) and the Beijing Declaration guiding all state gatherings to take proper measures to deflect such discrimination.”

The guidelines and judgments have recognized sexual harassment as an issue of power applied by the perpetrator on the victim. In this manner, sexual harassment notwithstanding being a violation of the right to safe working conditions is additionally, an infringement of the right to bodily integrity of the woman.

- **The Indian Penal Code, 1860:**

In India there are surely some sections in the Indian Penal Code (IPC) which shields the women from inappropriate behaviour at working place and they are as follows :

IPC also deals with an assault with criminal intention to outrage the modesty of woman and makes it punishable under the same section.³⁹

In situations where the accused sexually harasses or outrages the modesty of a woman by methods of obscene acts, songs or by methods of words, gestures or signals, or acts intended to the unobtrusiveness of a woman, he shall be punished under Sections 294 and 509 respectively.

The obscene act or song causes annoyance to women. In spite of the fact that annoyance is an essential element of this offence, it being related with the psychological condition, has frequently to be surmised from proved facts. In any case, another imperative element of this offence is that the indecent demonstrations or songs must be conferred or sung in or close to any public place.⁴⁰

If a person with an object to insult the modesty of women shows genitals organs of her body, or insults the modesty of a woman by words or gestures or uses obscene words, that person commits an offence under the Act. The person who commits this offence will be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.⁴¹

³⁹ S.354, The Indian Penal Code 1860 .

⁴⁰ S.294, The Indian Penal Code, 1960.

⁴¹ S. 509, the Indian Penal Code, 1960.

CONCLUSION AND SUGGESTIONS

Sexual harassment is an act which violates equality among men and women and it not only affects women but also leaves a great scar on women psychology about gender discrimination and their status in the world. It affects every base of the women, their physical and mental state. It also causes personality and development issues of the women. Taking undue advantage of women or harassment of women at workplace by any co-worker, heads of the office, department, association or organisation, or any person is wrong and is considered as an offence against women.

Sexual harassment at the work place is not just a duty of the employer to ensure that the female employees are furnished with adequate working conditions, rules and regulations etc., it is also an obligation of the female workers to ensure that any place where they are working is safe and secure, there is no sort of fear as to transfer, promotion, salary pay etc. If she declines to take the offer given to her, it is additionally their obligation to ensure that they educate the management of the head of the association or organization if any sort of unwelcomed conduct is being seen by them, with the goal that the association can take the right action at the congruous time. The women working in corporate areas are exceptionally very much aware about their rights or as or in the matter of what steps ought to be taken, if sexual harassment is done to them however, then there are very few female representatives working in little ventures, towns, villages where the rate of sexual harassment is high about every one of the laws, rights and reliefs that are accessible for them. There have been many cases of sexual harassment and to curb the situation, the act⁴² has been passed by the parliament to provide strict laws and assurance against sexual harassment at the work place. But it is not as easy as it seems to provide justice to all the women who have been subjected to sexual harassment; it takes time due to extensive procedure of the Judiciary. Many women are also hesitant to file the report against such behaviour due to prestige issues and societal image. Those women who take step against it have to suffer many problems like humiliation, loosening of faith due to remarks or comments made by people, financial problems, lack of evidence etc. Since there prevailed no domestic law to scrutinize and proffer remedial measures against Harassment of women at workplace ,therefore Judiciary laid down certain principles and guidelines, known as Vishaka Guidelines, which were in congruence with the Treaties and International conventions regarding gender equality.⁴³ In order to obviate such activities, certain amendments and curtailments need to be made in the Indian Penal laws and later provisions, contemplating the past as well as the future and the endless desire or lust of sexual pleasure of the offenders. The Indian Judiciary should set a paradigm to dissuade the criminals from committing

⁴²Sexual Harassment of Women At Workplace(Prevention, Prohibition and Redressal) Act, 2013.

⁴³ Supra 48

offences. Women should not panic to come forward with their grievances and complaints. There must be Social Acceptability and prodigious entanglement of public in awareness programmes and women should play a substantial participatory role in governance.

It is need of the hour that women must take a bold step against this kind of behaviour and stop sustaining it. A woman assumes a crucial part in the society, yet she has not got that level of respect, love, adoration, friendship, regard, which she provides for others. So as to assure the gender equality and proper treatment, women must stand for themselves and should take action against all these behavior without the fear of society and to gain the status and respect which they had once in history. It all can be done if she gets educated and enlightened about their rights and privileges.

The growing burden of employers has also boosted questions, for example, whether employers have a pragmatic accountability to report minor acts of sexual harassment to the police, since it is now an offence punishable under the Indian Penal Code.⁴⁴ It has been truly pointed out in *Apparel Export Promotion Council v. A.K. Chopra*,⁴⁵ that each and every incident of sexual harassment at the workplace results in the violation of not only the Fundamental Right to Gender Equality⁴⁶ but also the right to life and liberty⁴⁷ – the two basic and precious fundamental rights, guaranteed by the Indian Constitution.

In 2013, India passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁴⁸ to aid in the prevention of sexual harassment against women, at the workplace.

Goals of the Act- The Act has been enacted by the Indian Parliament to impart protection against sexual harassment of women at workplace and redressal and prevention of complaints of sexual harassment and for events connected therewith or incidental thereto. Sexual harassment has been termed to be a violation of fundamental rights of woman to equality under Articles 14 and Article 15, Right to live and to live with dignity under Article 21 of the Indian Constitution.

Complaints Committee and Complaint Procedure

Internal Complaints Committee:

The Act makes it compulsory for every employer to comprise an internal complaints committee which considers the grievances and complaints made by any aggrieved woman. The members of ICC are to be suggested by the employer and ICC should consist of the following members:

-A Presiding Officer

⁴⁴ S.354A, The Indian Penal Code, 1960.

⁴⁵ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁴⁶ Art. 14, The Constitution of India.

⁴⁷ Art. 21, The Constitution of India.

⁴⁸ *Supra* 2.

-minimum of two members from amongst employees, ideally bound or committed to the cause of women or who has experience and knowledge in social work and law respectively.

- A member from amongst non- governmental associations or organizations pledged to the cause of women or a person known with the issues corresponding to the issues relating to sexual harassment.

In order to safeguard or shield the participation of women employees in the ICC proceedings, the Act necessitates that at least one half of the members of ICC recommended by the employer are women.⁴⁹

Local Complaints Committee:

Local Complaints Committee (LCC) should be composed for every district which will aid in considering complaints of sexual harassment from establishments, in the case where the ICC has not been formed due to having less than 10 employees or even if, the accusation is against the employer himself.⁵⁰

Complaint procedure:

The Act stipulates that an aggrieved woman can form a written complaint of sexual harassment at workplace to the LCC or ICC, If the complaint is in opposition to the employer, within a period of three months from the date of mishappening, and in the case of several incidents, within a period of three months from the date of the last incident. In case, the aggrieved woman is not able to make complaint in writing, rational succour shall be rendered by any member of the LCC or by the Chairperson, for composing the complaint in writing.⁵¹

According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, if the aggrieved woman is not able to make any complaint due to her physical incapacity, a complaint can be filed inter alia by her co-worker, friend or relative or an officer of the National or State Commission for Woman, or any person who has apprehension of the incident, with the written consent of the woman aggrieved.

Although, this Act is a brilliant step forward in the protection of women, it nevertheless leaves an extensive scope for false proclamations. Individuals not involved in legislation or law making but who would rather be dominated by this law feel, that its consequence must be observed not only just on the individual in question but also in entirety including his family. This in turn not only becomes a provenance of nuisance to the individual so falsely charged and his family, but also tarnishes their reputation.⁵²

⁴⁹ Supra 1.

⁵⁰ Supra 1.

⁵¹ Supra 1.

⁵² *Are Sexual Harassment Laws Enough?*, available at <http://www.mid-day.com/articles/are-sexualharassment-laws-enough/15077056>, last seen on 04/06/2020.