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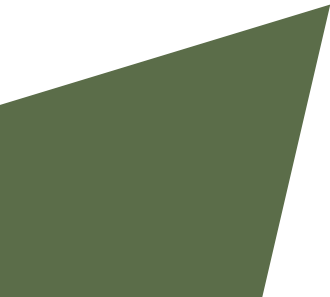
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**INDIA'S LAWS ON SEXUAL HARASSMENT OF WOMEN AT  
WORKPLACE: THE POSH ACT, 2013.**

**JOSHITA MOHANTY**

## ABSTRACT

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*With improved access to education and employment, millions of Indian women are contributing actively to our country's workforce today. Although the Constitution of India guarantees equal rights to both men and women, gender biases are still persistent in many realms including the workplace. One such type of gender discrimination is "sexual harassment against women" which tends to occur at workplaces. Such sexual harassment against women at workplaces violates the constitutional validity of Article 14, 15, and 21 of the Indian Constitution.*

*The Hon'ble Supreme Court of India had first observed the prevalence of "sexual harassment" at workplaces in the case of **Vishakha Vs. State of Rajasthan**, thus the legislature saw the need of formulating and enacting the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. India being the Signatory to the Convention on the elimination of all forms of Discrimination (CEDAW) against women made sure to imply Article 11 of CEDAW in its legislation. By the way of this study, I will be emphasizing present laws in India on sexual Harassment, an analysis of the POSH Act passed, and a detailed study on Vishakha guidelines.*

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**Keywords:** Women, Sexual Harassment, Workplace, POSH Act, Vishakha Guidelines.

## SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

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Sexual Harassment of women is a global phenomenon that is evident in almost all cultures. Sexual Harassment at the workplace can be defined as any sexual comment, remark, or physical touch or assault by a male colleague against female colleagues at a workplace. Sexual harassment is gender-based violence and discrimination as it is directly targeted against women. Long gone are those days where a man used to be the only breadwinners for the family, due to the high-level globalization, industrialization and development in various fields, the role of women has undergone a rapid change. In today's world, even the women are actively participating in the country's workforce be it education, economic, political, technology, science, etc. thus, the role of women has shifted from the household sector to the commercial sector. As a result, the offenses against women in the workplace has undergone an increase. Women have always been a victim of sexual assault and sexual harassment as workplaces, making the work environment hostile, threatening, and insecure.

Apart from the intimidating environment, sexual harassment at workplaces affects the mental and physical ability of women, economic and social growth as well as their capability of working. The women fear to work in an environment where they are prone to constant and frequent sexual remarks, comments, assault, harassment, etc. thus, it acts as a barrier in their work development in today's competitive world. In 1997, the Supreme Court of India for the first time recognized SHW in the Vishakha judgment as a violation of human rights. As per the Vishakha guidelines, in the absence of any law, it made it compulsory for every employer and organization (private and public) to provide for a sympathetic and safe working environment with an adequate mechanism of redressing grievances concerning SHW. India's first legislation on sexual harassment against women at workplaces was enacted in the year 2013 by the Ministry of women and child development in India and is known as the POSH Act; Sexual harassment of women at workplace (Prevention, prohibition, and redressal) Act. The act has been implemented with an aim of providing a safe, secure, and dignified environment of work for the women, protecting and preventing women from all forms of SHW, and ensuring effective and adequate mechanisms of complaints of sexual harassment. Section 354A<sup>1</sup> was added to the IPC through the way of the Criminal Amendment Act, 2013 which defines the actions that constitute the offense of "sexual harassment against women". They are as follows:

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<sup>1</sup> Section 354A of The Indian Penal Code, 1890 (India)



- i. Physical touch and advances involving unwelcome and explicit sexual overtures or;*
- ii. Demand or request for sexual favors or;*
- iii. Showing pornography against the will or consent of a woman or;*
- iv. Making sexually colored remarks or comments*

The above actions shall be guilty of sexual harassment.

Section 2(n)<sup>2</sup> of the POSH Act, 2013 defines sexual harassment at workplace as any or more of the following unwelcome acts or behavior (which are either directly or indirectly or by implication) which are namely:

- i. Physical contact and any advances or;*
- ii. Demand or request for sexual favors or;*
- iii. Making sexually colored remarks or;*
- iv. Showing pornography against the consent or will of a woman or;*
- v. Any acts of unwelcome physical, verbal, or non-verbal conduct are of sexual nature.*

## **THE VISHAKHA JUDGEMENT**

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Sexual Harassment at the workplace was first observed by the Indian Judiciary in the landmark case of Vishakha Vs State of Rajasthan<sup>3</sup>. In 1992, Bhanwari Devi, a Dalit woman, employed within the Rural development program of the Government of Rajasthan was brutally gang-raped due to her constant efforts on eradicating and curbing the prevalent practice of child marriage back then. This case highlighted the risks, danger, and threat the working women are exposed to at their workplace in their day to day lives. The women rights activists and the lawyers filed a PIL under Article 32 of the Indian Constitution.

For the very first time, the Supreme Court of India acknowledged the inadequacy and lack of sexual harassment laws against women at workplace as an infringement of fundamental rights such as Article 14, 15, 19(1)(g) and 21 of the Indian Constitution as well as a violation of human rights.

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<sup>2</sup> Section 2(n) of the SHW at The Workplace Act, 2013 (India)

<sup>3</sup> Vishakha Vs. State of Rajasthan 1997 (7) SCC 323 (India)

The Supreme court of India while framing the Vishakha guidelines adhered to the United Nations Convention on Elimination of all forms of discrimination against women which was adopted by the General Assembly of the UN in the year 1979.

The following were the guidelines framed by the Hon'ble Supreme Court known as the Vishakha guidelines which were made mandatory to be followed both by the government and the private institutions:

- i. It shall be the responsibility and duty of every employer and other head of the workplaces to ensure the prevention of any acts of "sexual harassment" and to provide the redressal mechanisms, procedures for settlement, resolutions, or prosecution of such acts.
- ii. The term "sexual harassment" includes any kind of unwelcome behavior which can be either direct, indirect, or implied such as:
  - a) *Physical contact and advances*
  - b) *Demand or request for sexual favors*
  - c) *Sexually colored comments or remarks*
  - d) *Showing of pornography without the consent*
  - e) *Any unwelcome act of physical, verbal or non-verbal conduct of sexual abuse*
- iii. All employers or heads of institutions and organizations be it the public or private sector, should take necessary steps and initiatives to prevent sexual harassment.
- iv. Where such conduct of a person amounts to a specific offense under the IPC or any other law, the employer or the head of the institution shall take the required and the necessary action and make a complaint to the appropriate authority. The victims and the witnesses shall not face any kind of discrimination or unfairness.
- v. Where such conduct amounts to misconduct in the employment under the work guidelines, the employer shall initiate the appropriate disciplinary actions.
- vi. There should be an establishment of appropriate redressal mechanisms in the employer's organization to address the complaints of the victims in a fair and justified method.
- vii. The complaint mechanism shall arrange for a complaint committee where the Special counselor of the committee shall maintain the level of confidentiality and secrecy. The complaint committee should be headed by a woman and at least the committee should comprise of women. There shall be involvement of third parties such as NGOs who have proper knowledge of "sexual harassment" to avoid any kind of interference from

senior authorities. The complaints which are registered shall be cited in the annual report and submitted to the concerned government authority.

- viii. Employees shall be allowed to raise queries and problems regarding sexual harassment, followed by a discussion in the employer-employee meetings.
- ix. Female employees shall be made aware of their legal rights concerning sexual harassment by notification in the guidelines.
- x. When “sexual harassment” occurs as a result of any act or omission done by a third party, the employer or the person in charge shall be responsible for taking the necessary steps and shall assist the victim.
- xi. The Central Government shall make sure that the guidelines laid down are being strictly followed by employers in the private sector.

## **OVERVIEW ON THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION, AND REDRESSAL) ACT, 2013**

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As more and more women were contributing and participating in the country’s workforce and the labor market, both private and public sectors, there was an urgent need of enacting specific legislation that dealt only with the issues of sexual harassment of women at workplace and provides for an appropriate redressal mechanism for addressing to their grievances and complaints. The bill for the same was proposed by the Parliament received the presidential assent on 22<sup>nd</sup> April 2013 and was came into force from 9<sup>th</sup> December 2013.

Sexual harassment leads to the infringement of one’s fundamental right such as Article 14 and 15 which guarantees the right of equality before the law, Article 19(1)(g) which guarantees the freedom to practice any profession or the right to carry on any trade, occupation or business and Article 21 which guarantees the right to life, personal liberty and to live with dignity in an environment free from sexual harassment.

Section 2(a) lays down the definition of an “aggrieved woman”. The aggrieved woman is a woman of any age, whether employed or not, claims to have been subjected to any act of sexual harassment by the respondent.<sup>4</sup>

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<sup>4</sup> Section 2(a) of the SHW at The Workplace Act, 2013 (India)

Section 2(f) lays down the definition of “employee”. Under this act, an employee means a person who is employed at a workplace for a regular, temporary, ad hoc basis or daily wage basis, either employed directly or through the agent with or without the knowledge of the principal employer either working for remuneration purposes or voluntary basis or otherwise. It also includes co-workers, contractors, trainees, apprentices.<sup>5</sup>

Section 2(o) of the act lays down the concept of “workplace”. Workplace comprises of any place which is visited by the employee during employment including the transportation provided by the employer to travel to and from the place of employment.<sup>6</sup>

Section 3(2) of the act lays down the circumstances and the acts or behavior which would amount to “sexual harassment”<sup>7</sup>. They are as follows:

- i. Implicit or explicit assurance of preferential treatment during the employment term or*
- ii. Implicit or explicit threat of adverse or unwelcoming treatment in her employment or*
- iii. Implicit or explicit threat regarding the position or status of employment in the present or future or*
- iv. Creation of an unsecure, hostile or intimidating work environment or interference and hindrance in her work during the course of employment or*
- v. Humiliating treatment which is likely to affect the mental health or safety of a woman*

**Section 4** of the act lays down the constitution of the Internal Complaints Committee (ICC). The act allows the employer to set up an ICC at each office or branch of an organization having 10 or more employees to hear and address the complaints concerning sexual harassment. The ICC comprises of a 4-member committee under the chairpersonship of a senior woman employee, inclusive of two members from the employees who have knowledge on social/legal work and a member from an NGO who is committed towards the cause of women and issues relating to sexual harassment.<sup>8</sup>

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<sup>5</sup> Section 2(f) of the SHW at The Workplace Act, 2013 (India)

<sup>6</sup> Section 2(o) of the SHW at The Workplace Act, 2013 (India)

<sup>7</sup> Section 3(2) of SHW at The Workplace Act, 2013 (India)

<sup>8</sup> Section 4 of SHW at The Workplace Act, 2013 (India)

**Section 7** of the act lays down the constitution of the Local Complaints Committee at the District Level. Complaints of organizations having less than 10 employees are directed to the LCC. The LCC comprises of a 5-member committee under the chairpersonship who shall be nominated from amongst the eminent women in the field of social work or committed towards the cause of women, one member who shall be nominated from the women working in the block/taluka/tehsil/municipality of the district, two members amongst whom at least one should be a woman from an NGO who is committed towards the cause of women/sexual harassment and provided that one member knows the legal background. The concerned officer who deals with social and child development and welfare shall be a member of *ex-officio*.<sup>9</sup>

**Section 9** of the act lays down the process of filing complaints of sexual harassment. Any aggrieved woman can file a complaint of SHW to the ICC or the LCC as the case may be, within 3 months from the date of the incident. If the aggrieved woman is unable to file a complaint due to her mental/physical inability, then her legal heir has the right to do the same on her behalf.<sup>10</sup>

**Section 10** defines the process of conciliation. The ICC/LCC before initiating an inquiry can take steps to resolve the matter between the woman and the respondent through conciliation, at the request of the aggrieved. It is made clear that money shall not be a basis for conciliation. After both the parties have arrived at the settlement, then it shall be recorded by the ICC/LCC and the same shall be forwarded to the employer or district officer. No further inquiry into complaints shall be initiated against the respondent.<sup>11</sup>

**Section 13** lays down the provisions of an inquiry report. If the conditions provided under section 10 of the act are not complied with by the respondent, then the aggrieved has the right to go back to the ICC/LCC who will further initiate an inquiry. When the ICC/LCC is satisfied that the allegation against the respondent has been proved, then it may direct the employer or the district officer to take appropriate actions for sexual harassment as prescribed in the service rules. The employer or the district officer is required to take the appropriate actions within a term of sixty days from the day of receipt. In case, the allegation is not proved against the respondent, then the ICC/LCC may direct the employer or the district officer to not take any further actions.<sup>12</sup>

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<sup>9</sup> Section 7 of SHW at The Workplace Act, 2013 (India)

<sup>10</sup> Section 9 of the SHW at The Workplace Act, 2013 (India)

<sup>11</sup> Section 10 of the SHW at The Workplace Act, 2013 (India)

<sup>12</sup> Section 13 of the SHW at The Workplace Act, 2013 (India)

Under **section 14**, if the ICC/LCC is satisfied that the allegation made against the respondent is either malicious, false, forged or misleading, then the ICC/LCC may direct the employer or the district officer to take the appropriate actions as prescribed under the service rules against the aggrieved woman or the person making the complaint on the behalf of the woman.<sup>13</sup>

**Section 15** of the act lays down the compensation provisions<sup>14</sup>. While determining the amount of compensation to be paid to the aggrieved, the following is taken into consideration:

- i. The mental trauma, pain, distress caused to the aggrieved*
- ii. Loss in career opportunities due to the incident*
- iii. Medical expenses incurred by the aggrieved on the physical or the mental treatment*
- iv. Income and the financial stability of the respondent*
- v. Feasibility of such payment in either lump sum or installments*

Punishments imposed for committing the offense of sexual harassment at the workplace:

- i. The punishment which is prescribed under the service rules of the organization*
- ii. If the organization does not have any such service rules, then disciplinary actions shall be taken which includes either written apology, warning, reprimand, withholding of increments/promotions, termination of the service of the respondent, to undergo a counseling session or carrying out a community service program.*
- iii. Compensation payable to the aggrieved shall be deducted from the wages of the respondent<sup>15</sup>*

## **DUTIES AND RESPONSIBILITY OF THE EMPLOYER**

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- i. To provide for a safe, secure work environment with no threat or insecurity
- ii. To display the consequences of sexual harassment at any conspicuous area in the workplace along with the composition of the ICC.

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<sup>13</sup> Section 14 of the SHW at The Workplace Act, 2013 (India)

<sup>14</sup> Section 15 of the SHW at The Workplace Act, 2013 (India)

<sup>15</sup> Section 13 of the SHW at The Workplace Act, 2013 (India)

- iii. Conduct workshops, seminars, and awareness programs on sexual harassment at frequent intervals and orientation programs for the members of ICC/LCC.
- iv. To provide necessary facilities to the ICC/LCC and help them deal with the filing of complaints and conduct of inquiry about the cases of SHW.
- v. To ensure the presence of the respondent and the witnesses in front of the ICC/LCC.
- vi. To treat sexual harassment as an offense or misconduct under the IPC and instate the appropriate actions under the service rule as the case may be. To help and assist the woman with the process of filing a complaint.