

Sexual Harassment of Women at Workplace

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ABSTRACT

Sexual harassment of women is becoming one of the most common crimes in India. In India women are not safe. Heinous crimes are being perpetrated over them every minute. Be it a girl at school, a sister at home or a strong corporate lady in the magnetic world of money; they all are vulnerable. A society cannot progress by crushing one gender of the society or by making her feel weaker section of the society. CEDAW (The convention on the elimination of all forms of discrimination against women) defines sexual harassment as- "An act which incorporate such displeasing sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. We can say that this convention is a step towards protecting the dignity of the women. Prior to the landmark case of Vishaka vs. State of Rajasthan, there was no direct provision for handling sexual harassment cases. There were indirect constitutional and legal protection to women workers, but there was no direct legislation to help them. It is in the judgment of the given case where the Indian Supreme Court count upon great significance. The Sexual Harassment at Workplace Act, 2013 is a recommendation of the Justice Verma Committee. The Act aims at providing protection to women at workplace which includes any organization, institution, hospitals or any private sector organization or any place visited by employee during the course of employment.

SEXUAL HARASSMENT

Sexual harassment is a disrespectful, uncontrolled, unethical, immoral and a legal wrong which prevail universally. CEDAW defines sexual harassment as- "An act which incorporate such displeasing sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands whether by words or actions. Such conduct can be dishonor and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disservice her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment"²⁴. There is increase in the awareness of this complication because of Women's Rights Movements, increase of women population at work places, enhancement in women's education and adoption of convention on Elimination of All Forms of Discrimination against Women by UNO etc. The survey report given by the Centre for Transforming India of 2010 found that 80 percent of the working women in the metropolitan cities have been subjected to workplace sexual harassment. Sexual harassment can be both a crime and a tort."Tort" is a word derived from the Latin expression tortum. The term is found in Common Law frameworks for a commonly significant mischief or wrong. The common idea that is demonstrated by definitions is that tort is a common wrong which is redressible by an activity for not settled harms and which is other than an important break of agreement. The term came to be recognized from 'breach of contract' simply after seventeenth century and this branch of law picked up prevalence taking after different innovative advances of the Industrial Revolution in England in the nineteenth century in light of the fact that with new developments mischance's likewise widen . Thus, a requirement for building up the Law of Torts was figured out. Tort of Sexual Harassment is another idea in the meantime a wide idea. Consequently, we concentrate just on one specific across the broad field of this idea, i.e., Sexual Harassment at Workplace. Since there is no specific lawful hypothesis under which a rape claim can be documented, henceforth the culprits must be made obligated under different arrangements of Law of Tort, for example, Trespass to Person: Assault and Battery, False Imprisonment and Intentional Inflict Also, documenting a common suit, rather than a criminal case, for the tort of lewd behavior brings its own particular inclined circumstances and weaknesses. recommendations in regards to need to be raised for effective execution of different acts and statutes that have been run so as to control the peril of Sexual Harassment at Workplace.

Sexual Harassment as a Tort:

Tort of sexual harassment is a new concept and with being new it is also wide concept therefore has only taken up a part of it that is sexual harassment at workplace to be specific. There is increment in the

²⁴ B. D. Singh, Issue of Sexual Harassment: A Legal Perspective, July, 2010, Shri Ram Centre for industrial relations and human resources.

consciousness of this issue in light of Women's Rights Movements, increment of women populace at work places, upgrade in women direction and reception of tradition on Elimination of All Forms of Discrimination against Women by UNO etc. Sexual provocation can be both a wrongdoing and a tort. A demonstration of inappropriate behavior satisfies the three fundamentals of a tort, which are-

- **An act or omission** - Sexual Harassment is unmistakably an execution of a demonstration that is not recommended by law.
- **Legal damage** - For this situation, the guideline of *injuria sine damnum* must be demonstrated, which states that the act of sexual harassment did not inflict physical injury on the victim but in such case it infringes the legal right of an individual.
- **Legal Remedy**- Compensating the casualty is a definitive point of Tort Law. Henceforth, this basic is likewise satisfied in light of the fact that not only protestation of inappropriate behavior in the official courtroom goes unaddressed.

To reinforce the hold of the exploration theme as a Tort, the accompanying focuses might be thought about.

- **Mental Elements of Tort**

An intentional demonstration is not adequate to demonstrate the risk of a man for inappropriate behavior in tort²⁵. It must be joined by the mental components that would make the demonstration noteworthy under the Law of Torts. Three essential mental components are as per the following -

- **Malice**

In the lawful sense, "malice" does not indicate a demonstration over with a dishonorable or fiendishness thought process yet basically implies a wrongful demonstration done deliberately without admirable motivation or excuse.²⁶

- **Intention**

Intention is an internal fact, something which goes in the mind and direct proof of which is not accessible. A demonstration is deliberate as to its outcomes if the individual concerned has the learning that they would come about and furthermore the yearning that they ought to result.²⁷

- **Motive**

Motive is the ulterior behind doing a demonstration. In spite of the fact that it is typically immaterial in Torts, motive is pertinent in instances of malicious prosecution, defamation, conspiracy.

For a demonstration to be documented under Sexual provocation, it is vital that all the above three components valid for the respondent

The Existing Legal Situation,

Different lawful methodologies are received by countries to protect the threat of Sexual Harassment. Through various establishments, for example, Protection from Harassment Act, 1997 (UK), Sexual Offenses Act, 1956 (UK), Equal Employment Opportunity Commission (US), and so forth., assemblies are perceiving privileges of activity and methods of risk that were prior not perceived by torts and by the courts. For example, privileges of buyers, of working ladies against inappropriate behavior, appropriate to look for reparation from attackers and so forth have been recognized, either by the Parliament or the courts. In India, taking after the judgment of *Vishakha versus State of Rajasthan* case, inappropriate behavior was perceived as a Constitutional Tort in light of the fact that a demonstration of lewd behavior has a tendency to abuse the key privileges of the casualty under Article 14, 15, 19 and 21. In addition, on the recommendations of the Justice Verma Committee Report on Sexual Harassment, 2013, the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, has likewise been sanctioned to ensure the privileges of working ladies. In any case, these new laws and rules must be executed all the more entirely to manage the issue of lewd behavior adequately.

CASE STUDY: SEXUAL HARASSMENT AT WORPLACE

Tort of Sexual Harassment is a wide point, henceforth to basically ponder it the examination concentrates on one specific and boundless part of it-Sexual badgering at work environment. This has been an intermittent issue for ladies nowadays. Lewd behavior takes many structures: it might comprise of sexually suggestive dialect, remarks about a women worker body, sexual slurs, again and again requesting of sex; it

²⁵ Ibid

²⁶ Dr. R. K. Bangia, Law of Tort, 22nd Edition, Allahbad Law Agency, Faridabad, 2010

²⁷ Salmond, Jurisprudence, 12th edition, 1966

might incorporate spontaneous touch of a lady's body or physical sexual assault²⁸. Quid pro quo - a Latin expression signifying "this for that" - happens when a supervisor offers benefits or debilitates your working conditions in light of how you react to his lewd gestures. Unfriendly environment provocation, similar to the case of the collaborator with salacious photographs, happens when nature turns out to be sexually sufficiently forceful to meddle with work. Remarks about your body, rehashed sexual comments, explicit pictures as pornography, and touching or grabbing may make an antagonistic work environment²⁹. In India, another common cure was perceived by the Supreme Court after the leading case of Vishaka versus State of Rajasthan instance of 1997. In addition, there have been late advancements in the Sexual Harassment acts by the uprightness of the Justice Verma Committee Report, 2013 and Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2014

- **Background:** Prior to the milestone instance of Vishaka versus state of Rajasthan, there was no immediate arrangement for taking care of lewd behavior. They were either excessively broad or excessively ambiguous. There were indirect constitutional and legal protection to women workers, however there was no immediate enactment regarding the matter to help them. It is in this foundation that the judgment for the given instance of the Indian Supreme Court accepted extraordinary hugeness.
- **Vishaka and Others Vs State of Rajasthan AIR 1997 SC 3011**
- **Facts:** The Vishaka Judgment was an aftereffect of the severe pack assault of a social laborer Bhanwari Devi in Rajasthan on the grounds that she attempted to stop a child marriage. As a piece of her work, Bhanwari Devi attempted to stop the marriage of Ramkaran Gujjar's little girl. Despite the fact that the marriage occurred, yet Bhanwari Devi was not excused. In 1992, she was fiercely pack assaulted by a gathering of Thakurs in front of her better half, who was likewise thumped. The trial court gave a judgment against her, however she didn't lose trust. This inspired her associates who filled a PIL in the Supreme Court of India requesting that the court give certain bearings with respect to the inappropriate behavior that ladies endure at work place. Along these lines, the outcome was the Vishaka judgment.
- **Judgment and its outcomes:** The Vishaka judgment is the first judgment on sexual harassment in India therefore it is regarded as a landmark judgment by the Indian judiciary system. The writ appeal, under Article 32, was petitioned for the best possible requirement of Fundamental Right of working ladies under
 - Article 15-Right to Equality
 - Article 21-Right to life: to live with poise
 - Article 19(1)(g) - Right to practice any profession, i.e., a privilege to a protected domain free from provocation.

Henceforth, it was considered as a Constitutional Tort. In this judgment, it was held that notwithstanding working ladies have rights to sex uniformity, to work with nobility and to a workplace, sheltered and shielded from lewd behavior or abuse³⁰. Before 1997, ladies needed to stop a protestation under Section 354 of the Indian Penal Code that deals with the 'criminal assault of women to outrage women modesty, and Section 509 that punishes an individual/people for utilizing a 'word, gesture or act expected to affront the humility of a lady'. These areas left the interpretation clause of outraging the women modesty part to the police officer discretion. In 1997, when the Supreme Court passed the historic point judgment in the Vishakha case, it set down rules to be trailed by foundations in managing grievances about inappropriate behavior. The court expressed that these rules were to be executed until enactment is passed to manage the issue.

- **Vishaka Case Guidelines:**³¹

The rules which were to be executed according to the Vishaka case Judgment are as per the following

□ Duty of the Employer or other mindful people in work places and different organizations:

It might be the obligation of the business or other capable people in work places or different establishments to counteract or discourage the commission of demonstrations of inappropriate behavior

²⁸ Alice Montgomery, Sexual Harassment in the Workplace: A Practitioner's Guide to Tort Actions, August, 2010, Golden Gate University Law Review, Vol. 10, No. 3 (879-928)

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³⁰ Vishaka and others vs. State of Rajasthan AIR 1997 SC 3011

³¹ Vishaka and others vs. State of Rajasthan AIR 1997 SC 3011

and to give the methodology to the determination, settlement or indictment of demonstrations of lewd behavior by making all strides required. □ All businesses or people involved for work are responsible to decide whether out in the open or private decisions to find a way to stop inappropriate behavior

Action: The employer is held responsible for initiating discipline in his business whenever there is any misconduct or misbehavior by making the employees follow the general and specific administrating rules.

- **Complaint Mechanism:** Whether or not such act constitutes an offense under law or a break of the administration governs, a proper objection system ought to be made in the business' association for review of the protest made by the casualty.
- A Complaints Committee at all working environments, headed by a lady representative, with at the very least 50% of its individuals being ladies.
- **Worker's Initiative:** Employees ought to be permitted to raise issues of inappropriate behavior at a laborers' meeting and in other suitable gathering and it ought to be positively examined in Employer-Employee Meetings.
- **Third Party Harassment:** Where inappropriate behavior happens therefore of a demonstration or exclusion by any outsider, the business and individual in control will take fundamental and sensible steps to help the influenced individual as far as support and preventive activity is concerned.

Justice Verma Committee Report,

A three- member commission assigned to review laws for sexual crimes submitted its report to the government on Wednesday. The commission, headed by former Chief Justice of India, Justice JS Verma, has identified "failure of governance" as the root cause for sexual crime. It has criticized the government, the police and even the public for its apathy, and has recommended dramatic changes. This Committee was set up after the fierce group assault in Delhi of a para medical student. The essential point of this board was to prescribe revisions to the Criminal Law to accommodate speedier trial and improved discipline for offenders blamed for carrying out rape against ladies. It prescribed alterations in numerous areas including assault, rape, trafficking, Child sexual mishandle and some more, however the exploration concentrates just on the Sexual badgering at Workplace. The proposals for this zone can be summed up as takes after "The Committee suggested that Domestic Workers ought to be secured under the domain of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 that was then due before the Parliament. It additionally suggested that the arrangement in the Bill that expresses that work spots to be secure and safe from provocation. Another point of consideration was endeavors of compromise must be made between the casualty and the harasser, ought to be rejected since it was not in similarity with the rules set around the Hon'ble Supreme Court in the Vishaka Case since the SC. The key proposal made by the Committee was that rather than the Internal Complaints Committee, an Employment Tribunal must be set up. This, the Committee prescribed on the grounds that it was of the sentiment that having an inner board of members will not make the victim get the right decision as the inner board members will be at some or the other point guided by the employer himself. The Sexual Harassment Act, 2013 did not join a few proposals made by the Justice Verma Committee, for example under the Act, the Redressal component is still the Internal Complaints Committee to be constituted by the business. The 2013 Act then again, embedded Section 354A making Sexual Harassment a culpable offense, in any case, the extent of Sexual Harassment under the 2013 Act varies from its degree in the Sexual provocation of Women at Workplace Act, 2013³²."

Present scenario:

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 The Sexual Harassment at Workplace Bill that was passed in the Lok Sabah taking after the proposals of Justice Verma Committee Report turned into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act looks to give assurance against lewd behavior at working environment and for the counteractive action and redressal of grumblings of inappropriate behavior and for matters associated therewith or accidental thereto³³. This Act was passed on 23rd April, 2013 and became effective on 9th December, 2013. It characterizes lewd behavior as set around by the Supreme Court in Vishakha and others v State of Rajasthan (1997) case. The demonstration characterizes Sexual Harassment as at least one of the

³² Centre for Law and Policy Research, Highlights of the Justice Verma Committee Report.

³³ Law Commission, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (NO. 14 of 2013)

accompanying unwelcome acts or conduct (regardless of whether specifically or by suggestion) with the representative in particular:

- Physical contact and advances;
- A request or demand for sexual favors
- Making sexually shaded comments;
- Indicating erotic entertainment; or
- Some other unwelcome physical, verbal or non-verbal act of sexual nature.

The Sexual Harassment at Workplace Act, 2013 is an aggregation of the suggestions of the Justice Verma Committee. The Act goes for giving wellbeing to all ladies at working environment which incorporates any association, establishment, affiliation, healing facilities or nursing homes, any private division association or wherever went by representative over the span of business. It diagrams certain condition which if happens would add up to Sexual Harassment, for example, suggested or unequivocal guarantee of special treatment in her work, adverse risk in her business, danger about her present or future work status, making a scary or threatening environment or embarrassing treatment that would influence her wellbeing. The Sexual Harassment Act enables the Internal Complaint Committee and the Local Complaint Committee to prescribe to the employer, at the demand of the abused representative, interim measures, for example, (i) transfer of the distressed lady or the respondent to whatever other work environment; or (ii) giving leave to the wronged lady up to a time of 3 months notwithstanding her customary statutory/legally binding leave qualification.

CONCLUSION

Sexual Harassment has been a standard phenomenon experienced by women, especially at Workplace. Most of the Sexual Harassment cases are proclaimed as criminal cases. In spite of the fact that Torts have all the earmarks of being a powerful means for helping this wrong, as pointed out in 'Favorable circumstances of Filing a Civil Suit', yet these are not widely utilized most likely on the grounds that harms in torts are given as a back pay and not for the pangs and enduring of the person. Moreover, it is difficult to hold on to one particular definition of sexual harassment because different acts may be uncomfortable for different people. In any civilized society, it is the fundamental right of people to be able to lead their lives with dignity, free from mental or physical torture. Hence, it is important to bring out laws that would allow women to report the violation of their fundamental rights. Therefore the judgment of Vishakha vs. State of Rajasthan, Justice Verma Committee Report and the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are important in India's attempt to address the problem of Sexual Harassment at Workplace. It is an evident from the rising number of reported complaints of sexual harassment that the new law has at least served to improve awareness about the obligations of employers and rights of employees in case of workplace sexual harassment. Thus, to achieve actual success of the Act, it has to be properly implemented and there should be strict actions against employers who fail to carry out the required guidelines in their respective workplaces. There have been acts providing criminal actions for an act of sexual harassment, but there is a need to develop stringent Tort Laws for providing monetary compensation to the victim for the economic loss suffered either due to unemployment, having been fired or resigning from the earlier workplace or due to inefficiency of work at the same workplace.