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ABSTRACT:

*“Sexual harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative as it affects women’s right to life and livelihood. It is a violation of fundamental rights of a woman to equality as per Articles 14 and 15 & her right to live with dignity enshrined in Article 21 of the Constitution of India. India became the signatory to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on July 9, 1993. In India, for the first time in 1997, a petition was filed in the apex court to enforce fundamental rights of working women, after the brutal gang-rape of Bhanwari Devi a social worker from Rajasthan. Apart from the Vishaka guidelines in the case of **Vishaka & Ors. vs. State of Rajasthan**¹, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as POSH Act) has also been enacted. The paper critically analyses the present law in India on Sexual Harassment. Support and commitment of all stakeholders is vital for the law to effectively and successfully function”.*

Keywords: Sexual Harassment, Vishaka guidelines, POSH Act.

I. INTRODUCTION:

Sexual harassment of women is a global phenomenon prevalent both in developed as well as in developing countries. Cutting across religion, culture, race, caste, class and geographical boundaries it has spread like virus in the society. It, being offensive to human dignity, human rights and gender equality, has emerged as a fundamental crisis the world over. It is a complex issue involving women, their perceptions and behaviour, and the social norms of the society which emerges from gender discriminatory attitudes and is a complex interplay of gender, power and sexuality. In India, a woman is sexually harassed every 12 minutes.² As has rightly said by

¹ AIR 1997 SC 3011.

² D.K Srivastava (2010) “Progress of Sexual Harassment Law in India, China and Hong Kong: Prognosis for Further Reform”, 51 HILJ 172.

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our first Prime Minister “You can tell the condition of a nation by looking at the status of its women.” Gender equality in all dimensions is a basic human right and the Constitution of India guarantees all its citizens equality of³ status and opportunity. Sexual harassment is considered as a violation of a woman’s fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution and her right to life and to live with dignity as per Article 21 of the Constitution. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women’s participation in work and adversely affecting their social and economic growth.

The Constitution also provides every citizen the right to practice or carry out any occupation, trade or business under Article 19(1)(g) of the Constitution, which includes the right to a safe environment, free from all forms of harassment. India’s first legislation specifically addressing the issue of workplace sexual harassment was enacted in 2013. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was made effective from December 09, 2013 by the Ministry of Women and Child Development, India.

The Government has also notified rules under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. The Act contains 8 Chapters and 30 Sections. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been enacted with the objective of preventing and protecting women against sexual harassment at workplace and for the effective redressal of complaints of sexual harassment. The statute seeks to fill the legislative void on the subject and provide every woman, irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment.

³ Status of women in India, available at <https://learn.tearfund.org/en/resources/footsteps/footsteps-71-80/footsteps-72/status-of-women-in-india#:~:text=Jawaharlal%20Nehru%2C%20the%20first%20Prime,the%20status%20of%20its%20women'>

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II. INTERNATIONAL LAWS AND POLICIES FOR ADDRESSING SEXUAL HARASSMENT IN THE WORKPLACE:

The International community also took cognizance of increasing the violence against women and thereby made various resolutions were passed thereby;

United Nations General Assembly Resolution 48/104⁴, Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women (Art. 4(d-f)).

The Convention on the Elimination of all Forms of Discrimination against Women⁵(CEDAW), directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16).

Moreover, the Beijing Platform for Action, para. 178⁶, recognizes sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti- harassment policies and prevention strategies.

The ILO Committee of Experts on the Application of Conventions and Recommendations has confirmed that sexual harassment is a form of sex discrimination covered by the Discrimination (Employment and Occupation) Convention (No. 111) of

⁴ <http://www.un.org/documents/ga/res/48/a48r104.htm>

⁵ <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

⁶ <http://www.un.org/womenwatch/daw/beijing/platform/>.

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1958. The ILO’s Indigenous and Tribal Peoples Convention (No. 169) also specifically prohibits sexual harassment in the workplace⁷.

III. EVOLUTION OF LAW:

“While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman.”⁸ The problem of sexual harassment of women is not a new development; it has been a part in every woman’s life an older phenomenon of showing the dominance of men in the society. Sexual harassment is one of those problems which play a bad role by discouraging women in taking active part in economic and social development. It is a demanding and offensive experience one employee can suffer and it is gaining recognition whether it be at workplace or an institution or at home. Civil Society claims 70% of women have had sexual harassment experience. Since the early 80’s sexual harassment at workplace has remained a main issue in India.

In 1980’s the Forum Against Oppression of Women took action against the sexual harassment of nurses in public and private hospitals by doctors, patients and their male relatives, other staffs, teachers by colleagues principals, students by teachers, professors and other staff. But nothing stopped the women activists and social workers who tried to bring all cases to public and who also fought sexual harassment at the workplace. One such instance is Women’s voice (an NGO) in Goa mobilized which public opinion against the Chief Minister who allegedly harassed his secretary, through rallies demonstration till the CM was forced to resign⁹. After this incident again in 1990 the same women’s organization filed a PIL to bring amendments to the old rape

⁷ Committee of Experts on the Application of Conventions and Recommendations, available at <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm#:~:text=The%20Committee%20of%20Experts%20was,regions%2C%20legal%20systems%20and%20cultures.>

⁸ <http://www.slideshare.net/krishcyb/sexual-harassment-of-working-women-in-india>.

⁹ HIDDEN POCKETS, *What to Do If You Are Facing Harassment in Workspaces?*, available at <https://www.hidden-pockets.com/what-to-do-if-you-are-facing-harassment-in-workspaces/>.

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law which defined rape in narrow sense. For the first time in the history of the Indian Courts in 1997 the Supreme Court of India recognized sexual harassment at workplace as a violation of human rights but also as a personal injury to the affected woman¹⁰. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and a Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 have been enacted 16 years after the Supreme Court of India’s landmark judgement in Vishaka and others v. State of Rajasthan¹¹. The Supreme Court, in the Vishaka Judgment, laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women.

In 1992, Bhanwari Devi, a woman employed with the rural development program of the Government of Rajasthan was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day-to-day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women’s rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation.¹² In framing the Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject has

¹⁰ Nikunj Keyal, Sexual Harassment of Women at Workplace, available at Sexual Harassment of Women at Workplace.

¹¹ Vishaka and others v. State of Rajasthan, AIR 1997 SC 2011.

¹² Vishaka and others v. State of Rajasthan, AIR 1997 SC 2011.

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been drawn-up and enacted, would have the effect of law, mandatorily to be followed by organizations, both in the private and government sector.

III.I POST VISHAKA DEVELOPMENTS:

Pursuant to Vishaka judgement, the *Central Civil Services (Conduct) Rules 1964*¹³, were amended in 1998 to incorporate Rule 3C¹⁴ which prohibits sexual harassment of working woman. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council vs. A.K Chopra*.¹⁵ In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment.

Further the apex court in its judgement in *Medha Kotwal Lele & Ors. vs. Union of India & Ors*¹⁶, took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing State Governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. Not being satisfied, it directed States to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines. Finally, the Supreme Court asserted that in case of a non-compliance or non-adherence of the Guidelines, it would be open to the aggrieved persons to approach the respective High Courts. The apex court also directed that the complaints committee as envisaged in the Vishaka judgement will be deemed to be an inquiry authority for the purposes of Central Civil Rules,

¹³ https://www.iitk.ac.in/wc/data/CCS_CONDUCT_RULES.pdf

¹⁴ It states that:

- (1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.
- (2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place

¹⁵Apparel Export Promotion Council v. A.K Chopra. AIR 1999 SC 625.

¹⁶Medha Kotwal Lele & Ors. V. Union of India & Ors ,(2013) 1 SCC 297.

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1964 and the report of the complaints committee will be deemed to be an inquiry report under those rules.

IV. SALIENT FEATURES OF THE POSH ACT SCOPE:

Effective from April 23, 2013; the Act is applicable to the ‘whole of India’. As per the POSH Act, an ‘aggrieved woman’ in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. The POSH Act applies to both the organized and unorganized sectors in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

The definition of an ‘employee’ under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

While the Vishaka Guidelines were confined to the traditional office set- up, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an ‘extended workplace’. As per the POSH Act, ‘workplace’ includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.

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IV.I COMMITTEES FOR COMPLAINTS¹⁷:

An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum. The POSH Act requires an employer to set up an ‘internal complaints committee’ (ICC) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The ICC will be a 4-member committee under the Chairpersonship of a senior woman employee and will include 2 members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third-party member (NGO etc.) as well.

At the district level, the Government is required to set up a ‘local complaints committee’ (LCC) to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

A District Officer notified under the Act will constitute LCC. LCC will be a five member committee comprising of a chairperson to be nominated from amongst eminent women in the field of social work or committed to the cause of women, one member from amongst women working in block/taluka/tehsil/municipality in the district, two members of whom at least one shall be a woman to be nominated from NGOs committed to the cause of women or a person familiar with the issues related to sexual harassment provided that at least one of the nominees should preferably have a background in law or legal knowledge. The concerned officer dealing with the social welfare or women and child development shall be an ex officio member.

¹⁷ Chapter II, Section 4, THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.

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IV.II THE PROCESS FOR FILING OF COMPLAINTS¹⁸:

A complaint of sexual harassment can be filed within a time limit of 3 months. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same. The Act has a provision for conciliation. The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent, however this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. Further, if any of the conditions of the settlement is not complied with by the respondent, the complainant can go back to the Committee who will proceed to make an inquiry. The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days. In case the complaint has been found proved, then the Committee can recommend action in accordance with the provision of service rules applicable to the respondent or as per the rules which will be prescribed, where such service rules do not exist. In case the allegation against the respondent has not been proved then the Committee can write to the employer/district officer that no action needs to be taken in the matter.

IV.III PUNISHMENTS¹⁹:

The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- punishment prescribed under the service rules of the organization;
- if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise

¹⁸ Chapters III & IV, THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.

¹⁹ Chapter V, THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.

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or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and

- deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- the loss in career opportunity due to the incident of sexual harassment;
- medical expenses incurred by the victim for physical/psychiatric treatment;
- the income and status of the alleged perpetrator; and
- feasibility of such payment in lump sum or in instalments. In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

IV.IV EMPLOYER’S DUTIES AND OBLIGATIONS²⁰:

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter alia,

- provide a safe working environment.
- display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee.
- organize workshops and awareness programs at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation program for members of the Internal Complaints Committee.

²⁰ Chapters VI & VII, THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.

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- treat sexual harassment as a misconduct under the service rules and initiate action for misconduct. The employer is also required to monitor the timely submission of reports by the ICC.

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

IV.V NON- DISCLOSURE OF IDENTITY OF VICTIMS:

The Act prohibits disclosure of the identity and addresses of the aggrieved woman, respondent and witnesses. However, information regarding the justice secured to any victim of sexual harassment under this Act without disclosing the identity can be disseminated²¹.

V. MISCONCEPTIONS ABOUT THE LAW:

- *We need not comply as we do not have any women employees:*

In order to make a sexual harassment complaint, the women need not be an employee. The woman can be a visitor, a vendor, a customer, a bystander, an intern or even a job seeker and still be able to complain.

- *We need not comply as we have very few employees:*

Every organization has to comply with the law regardless of the number of employees.

- *Is the law mandatory:*

Yes. The law is mandatory for all organizations irrespective of its constitution that include Public Limited Companies, Private Limited Companies, Limited Liability Partnerships, Partnership firms, Trusts, Societies, Associations, Proprietorships and government departments and undertakings.

²¹ Section 16, THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.

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- ***The Organization is not responsible in case the incident happens outside the office:***
Workplace has been defined in the widest manner and it includes any place visited by the employee arising out of or during the course of employment including transportation provided by the employer.
- ***Most of my employees are on contractor payroll:***
This law includes anybody working either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not.
- ***We shall comply as and when we receive a sexual harassment complaint:***
The mandate of the law is more preventive than punitive. An organization needs to comply irrespective of it receiving such complaints. Hence all obligations like putting up posters, formation of policy, sensitizing employees and skill building of ICC members help to prevent instances of sexual harassment.
- ***Only a NGO member can be external member of the ICC:***
Apart from a NGO member, the external member could be from an association committed to the cause of women or any other person familiar with issues relating to sexual harassment.
- ***Sensitizing employees about the law would lead to more complaints:***
It is an unfounded misconception. It is imperative that an employee understands the various actions which may constitute sexual harassment and introspect and change any offending behavior. Further the stakeholders need to be aware about the respective consequences of genuine and false complaints.
- ***There is no redressal mechanism for organizations having less than 10 employees:***
In case organizations have less than 10 employees, complaint against their employees are heard and decided by the Local Complaints Committee constituted by the district Officer.
- ***No Harm would come to the organization even in case the law is not complied with:***
Any violation of the provisions of the Act and rules make the management liable for fine

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up to INR 50,000/- Repeated violations may result in double the penalty and cancellation of business license. Further in this age of social media, the reputation risk cannot be ignored.

VI. CONCLUSION:

One can prevent this issue at different levels, government, organizational and individual level by trying to prevent this issue by confronting and not blaming anyone.

- At the Organizational level the employer can provide safe and harassment free environment through provisions and regulations framed within the organization. The sense of security which can be derived from this organization policy can facilitate to work effectively and efficiently for a productive outcome. The entity can give training program, workshops, educational program related to sexual harassment to avoid situations.
- The organization must show commitment to this matter. Every matter must be taken seriously and investigated without any delay. This will send a message to all employees that the employer is interested in protecting the interests of women employees and also trying to bring a good working environment. Surveillance methods is a preventive measure, where CCTV are installed in the workplace.
- Employers must conduct monthly meeting with employees to know their problems. Accordingly, they can provide a safe working environment.

From the angle of Government, a tremendous job has been enacting a law to eliminate this social problem of Sexual Harassment. The significant consideration part is the implementation process. There is a need to bring empowerment of women through educational programs and knowledge which will help them to recognize and realize their basic rights. Government sees that there is gender equality.

The media can play an important role in curbing this curse from the society through films, news, advertisements, dramas these are approachable to the public and through

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other sources like debates, talk shows, and the media can change the mindset of the people.

- If the women group or workers come to know about any such harassment, they must bring it to the notice of the complaint committee. It is the duty of the committee to keep everything confidential. Every female worker should know that it is employer's legal duty to provide women employee with a safe working environment. All the male employees must understand these kinds of incidents affect the health, confidence and ability of a woman and will also lead her to leaving the job.
- Above all these there should be social acceptability. Women should not fear to come forward with their problems and complaints. They must be feeling courageous to speak out for themselves. There must be greater involvement of public in awareness programmes and they must play a greater participatory role in governance.
- Law Reform Required: One of the limitations of this act is that it excludes men from the scope. This is not a fair treatment. The act must be amended to include men also so that they can also approach the Internal Complaint Committee/ District Committee for their grievances or complaints which can definitely show and prove equal treatment of men and women in the workplace.