



# THE VARIOUS FACETS OF SEXUAL HARASSMENT AT WORKPLACE

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The matter of Vishaka came to be known as an authority on issues relating to sexual harassment of women at the workplace and equality concerning gender. Sexual harassment is defined as any attention which is not welcomed or wanted and has the effect of making the other person uncomfortable. It can be done by the means of touching, speaking, or even through gestures (Thakur, R.M, 2019, p.275). In a country like India, where the society is dominated by males, the recognition of this offense under the Constitution took a long time. The Supreme Court heard the plight of a woman who came forward to stop child marriage in her village on account of her working as a "sathin" in that village but ended up being raped and sexually harassed by the males of some upper-class family's village. It was in this case, that the Supreme Court realized that every woman has the right to live with dignity which is violated by acts of sexual harassment, which makes it in violation of Article 21, along with the violation of the right of equality and right to practice any trade or occupation as guaranteed by the constitution of India. It was very evident that the Indian lawmakers did not have any concern with the sexual harassment, due to which the Supreme Court had to frame certain guidelines to protect the women from sexual harassment at the workplace to be implemented temporarily till the legislature makes the laws on it, which took nearly 17 years to be enacted in 2013 when the "Sexual Harassment of women at workplace act" was passed. This essay highlights the issue of implementation of the guidelines issued under the case of Vishaka and along with the importance of converting these guidelines into laws for giving them due consideration and the importance of a statute that is missing in any executive guidelines for their implementation.

Women form one part of the society, yet they were being mistreated and exploited at their workplaces, to which the legislature did not pay any heed. The Indian laws recognized rape as an offense but did not include sexual harassment, let alone the protection against it. It was the Indian Judiciary that came forward to play the role of the executive by empowering the women with the guidelines issued (Soneja R.N., 2018, p.188). It was the first time

that sexual harassment was expressed definitively by the judiciary because, despite its implicit recognition under the constitution of India, it was not being recognized by society as a gross violation of the rights concerning females. Even though India was a part of the CEDAW, but the law-making bodies did not make any progress in the laws relating to the rights of females (Soneja R.N., 2018, p.187).

The guidelines imposed certain duties on the employers to ensure that the women work in a safe environment at their workplace and are not victimized and a proper procedure is followed to reconcile any such matter. It was also made necessary that rules, regulations, and code of conduct of all the workplaces, whether private or public, must include provisions to protect the women from sexual harassment along with the punishment that follows any such acts (Thakur R.M., 2019, p.276). The need for the prevention of sexual harassment was emphasized and directions were given to the employers to formulate and circulate certain directions to be followed by the employees and the workers in pursuit of prevention of sexual harassment at workplaces. It was made necessary for the employers to extend support and aid to the victim of sexual harassment by protecting them and initiating an action against the person who is being charged (Thakur R.N., 2019, p.276). This called for the initiation of disciplinary action against the person involved in sexually harassing the women along with the filing of a criminal case, whose responsibility lies on the employer. To make all this operative, the establishment of a complaints commission at the workplace was made a necessity. The most important aspect of these guidelines was the prospect of sensitizing the people with the issue of sexual harassment to curb this evil long before the legislative organ of the government recognized its need. All the provisions were advised to be followed with utmost importance to curb this menace (Thakur R.N., 2019, p. 277).

The guidelines issued in this case were used to decide the matters in the case of *Apparel Export Promotion Council and Medha Kotwal Lele & Ors.*, wherein it stated that the role of the judiciary as the interpreter and protector of the fundamental rights was fulfilled when the Supreme Court issued the rules despite the legislature failed to do that, but it was the role of the state to implement and enforce those guidelines which were not being taken up by the executive and administration branch of the government, marking a failure of these organs (Poonia A., 2019, p. 55). In the absence of any legislation or statute on this matter, the enforcement of these guidelines was merely being done. The women continued to be sexually harassed, exploited, and denied equality in treatment at their workplace which always remained hostile even the Vishaka Guidelines were issued. The workplaces were not acting as per the guidelines and the committees were mostly absent in them which denied the basic complaint

redress by the women working there. This implies that even in the presence of guidelines, the infrastructure for dealing with the sexual harassment cases was not developed, which could be considered as a loophole in the working of the administration and executive branch of the government who was responsible for enforcing these guidelines in all extremities. The approach of the employers towards the direction of the court was very casual as they behaved in a self-protected manner, keeping away from accepting to introduce any procedure or committee which could harm their interests and the working of the organization. This resulted in almost zero degrees of support extended to the victims of sexual harassment at the workplace (Poonia A., 2019, p. 52). The stigma connected with the harassment was not wiped out because of the failed attempts of the administration. Moreover, the non-inclusion of punishments under the guidelines made under this case, even if had legal implications for future cases, but did not mention any punishments and sanctions concerning the sexual offenders. There was no contemporary formulation of laws incorporating sanctions in the cases of sexual harassment, which could have given the weightage to the guidelines and an incentive to the employers to follow and adapt the directions for their good.

The guidelines on sexual harassment were just meant to fill in the gap in the legal system, which was to be eventually filled in due time. The parliament has been very slow to respond to the growing events of sexual harassment especially at workplaces at the hands of people in power and authority in India. The legislature took a long time to realize its duty, after one more gross crime against a girl in 2012 which came to be known as the Nirbhaya rape case. It was not until 2013 that the Indian penal Code was amended by the Parliament to include sexual harassment under section 354A along with inserting other sexual crimes in the Indian Penal Code such as compelling women to undress, voyeurism, and stalking. Further, the act for the prevention of sexual harassment was enacted in the same year following immense social and public pressure on the legislative wing of the parliament. This act attempted to define sexual harassment and widen the scope of the application of provisions against sexual harassment to the extended workplaces also (Sahu, A., 2018, p.2240). Moreover, the term sexual harassment was not limited to the acts which are sexual but also to the acts which implied the existence of an environment of hostile nature which can affect a woman working there. The act imposed a duty on the government, employers, and district officers concerning the maintaining the information related to the events of sexual harassment, maintenance of protected and safe environment for the women to work and spread the information and awareness about protection from sexual harassment respectively (Thakur R.M., 2019, 271). Just like the

guidelines under the (*Vishaka*) case, this statute declared the enforcement of complaints mechanism through the establishment of complaint commission. Not only this, but the act also provided compensation to the aggrieved parties in case they are sexually harassed at their workplace (Sahu A., 2018, p. 2241).

The depth of the problem can be realized from the fact that the Indian legal system was not able to provide justice to women in the matters of sexual harassment even when the preamble to the constitution of India provides social justice to every citizen irrespective of their gender. The role of the State in providing a safe country for women has been undermined by the representatives of the people of India as they failed to enact laws to secure the women against incidences of sexual harassment at the right time when a need for doing so was recognized under the case (*Vishakha*). The legislature ignored its right as provided under Article 15 of the constitution of India to enact laws for special provisions concerning the weaker gender which happens to be women in India (Thakur R.M., 2019, p. 267). Moreover, the directive principles of state policy favoured the upliftment of women but were not done at the right time by the parliament. According to Article 39, the State must make policies for the working conditions of the workers of both genders so that they are not exploited. But the policies made by the government were not inclusive of the sexual harassment of workers and it took them a long time to enforce the act. Moreover, the state must ensure the health of the workers is maintained which would impliedly include the effect of sexual harassment of women on their physical and mental health. The constitution under Article 42 also directs the state to make laws for ensuring "just and humane conditions" at the workplace (Thakur R.M., 2019, p.267). This means that the environment of the workplace must not be hostile and free from sexual harassment. Moreover, the dignity of women is given due importance under the constitution of India under Article 51A. All this was legally recognized by the legislative bodies in 2013 while it was already interpreted in the case of *Vishakha*, which happened in 1997 and the Court ended up giving guidelines that were to be implemented at the mercy of the administration, which went in vain.

The role of the judiciary in upholding and protecting the fundamental right of the people under Article 32 and 226 of the constitution of India was performed by the Judiciary which took notice of the crime committed with Bhanwari Devi which led to the filing of a PIL by a group of NGOs to serve justice to the victim and make it easier for other women working out of their homes for earning their livelihood, in which the judiciary went on to address the issue of sexual harassment and appealing the state to enact laws on the issue which was not heard on the proper time. It is a known phenomenon that until there is a penal sanction attached to a provision, it won't be complied



with, which was the situation after the guidelines were issued by the Supreme Court of India. The Judiciary has not disregarded the trust of the public in the Indian judiciary in terms of the protector and preserver of their rights when they are denied the basic fundamental rights by other institutions of the government.

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