



POSH AND POCSO- SEXUAL HARASSMENT OF WOMEN AT WORKPLACE AND RELEVANCE OF POCSO IN SCHOOLS AND WORKPLACE

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ABSTRACT

Background

Indian women are increasingly going into work in their millions as a result of more chances for both schooling and job search. For many professional women, sexual abuse is an everyday occurrence. We must work together as a society to end workplace sexual harassment because women have a right to an environment that is safe and secure. It violates the Indian Constitution and bill of rights Articles 14 and 15, which ensure women's rights, and Paragraph 21, which ensures right of a woman to exist in an atmosphere that respects them. India signed the Agreement on the Suppression of All Types of Segregation Towards Women of July 9, 1993, becoming the last country to do so (CEDAW). That the very first petition to protect working women's fundamental rights was filed in India's state supreme court in 1997 after the brutal gang rape of Rajasthani social worker Medha Devi. The Sexual Assault of Women at Employment (Regulation, Punishment, and Issue resolution) Act, 2013 (subsequently referred by the acronym POSH Act) was enacted in accordance to the Vishaka recommendation from Vishaka & Anor v. Rajasthan State, (2013). In this study, we examine India's current sexual harassment statute from a critical perspective along with importance of POCSO in regards to same.

Keywords: Women, Sexual Harassment, Vishakha case, POSH guidelines, workplace, POCSO

INTRODUCTION

Everywhere in the globe, even sophisticated and underdeveloped countries, women are subjected to sexual harassment. It has gone across humanity like a virus, oblivious to barriers of language, nationality, culture, religion, race, socioeconomic status, and geography. As a global problem of



fundamental importance, it is insulting to human dignity, human rights, and gender equality. Complexity arises from the intersection of gender, power, and sexuality in this problem, which affects women, their perspectives and actions, and societal standards. Every 12 minutes, a woman in India experiences some kind of sexual harassment.¹

CONCEPT AND TERMINOLOGY

In response to the sex discrimination issue's developing notoriety, Chapter 354A of something like the Indian Penal Code was added in 2013 as part of the Criminal Justice and public order (Alteration) Act. These include: revealing pornography against a woman's will, demanding or asking for sexual favours, or making sexually tinged comments, as well as unwanted physical contact and approaches containing explicit sexual overtures. For a long time, there was nothing under the Indian Criminal Code that could be used in this situation. Crimes of this kind were addressed in three different sections of the Indian Criminal Code: S. 94120, S. 354121, and S. 509².

INTERNATIONAL ASPECTS OF SEXUAL HARASSMENT TOWARDS WORKING WOMEN

Gender discrimination is illegal in the working place, in universities, and elsewhere (Article 2(b) of Negotiated settlement 48/104123 of something like the United Nations General Assembly's Committee on the Elimination of Violence Against Women). The proposal also calls for the establishment of prevention medicine to deal with this form of violence. The Declaration on the Eliminate of All Form of Segregation Against Women (CEDAW) 124 (Article 3.2) requires State Parties to "take playing a vital role" to guarantee women's equal and full participation in all spheres of societal and public life. In addition, the Shenzhen Platform for Action understands gender discrimination as a form of violence against women in addition to a form of prejudice in paragraph 178125 and needs to call on a variety of stakeholders, such as the government, companies, union leaders, and society, to help insure that rules against gender discrimination are passed and enforced as well as that employers create anti-harassment guidelines and prevention

¹ A.S Anand (2003) "Justice for Women", Universal Law Publishing CO. Pvt. Ltd, G.T Karnal Road Delhi.

² Dr Charu Walikhanna (2009) "Law on Violence against Women", Serials Publications, New Delhi.



programs. Sexual misconduct is now recognised as a form of sex discrimination that is covered by Protocol No. 111 also on Complete removal of All Forms of Discrimination Against Women in Employment and Jobs, according to the Economic Cooperation and development Institution's Expert Commission on the Apps of Rules and Regulations (1958). The United Nations Agency's Indigenous and Tribal Communities Treaty (No. 169) also includes a zero-tolerance guideline for harassment of women at work. As stated in Article 7, sexism of women at office should really be prohibited since it may negatively impact work environment.³

LITERATURE REVIEW

According to research **Aleassa&Megdadi, (2014)**, bullying and other forms of unethical conduct in the workplace are receiving more and more attention as a severe concern. As most people's waking hours are spent at work, improving morale there is key to increasing productivity in the office. Bullying is part of a separate set of behaviours that is fundamentally unhealthy and unwelcome.^{4 5} According to research **Anjum et al., (2011)**, bullying in the workplace is expensive for both the bullies and their employers. The effects of workplace bullying, which is often verbal in nature, may be quite harmful. The sufferers' ability to work is harmed as a result. Increases in the negative effects of bullying in the workplace have been seen among physicians as analysed by **Bano & Malik, (2013)**.

AIM AND OBJECTIVES

The present research paper unfolds following aims and objectives:-

- 1.** To discuss the constitutional safeguards provided to working women.
- 2.** To analyse Vishakha case and POSH guidelines.
- 3.** To understand the importance of POCSO Act in schools and workplaces.

³ Monica Chawla (2013) "Gender Justice", Deep and Deep Publications Pvt. Ltd, New Delhi,.

⁴ Aastha Poonia- "*Sexual Harassment of Women at workplace*" Available at-
https://amity.edu/UserFiles/aibs/30672019%20AIJJS_47-57.pdf (Last accessed on 03.03.2023 at 3 pm).

⁵ Literature Review available at-
http://shodh.inflibnet.ac.in:8080/jspui/bitstream/123456789/2699/3/03_litreature%20review.pdf (Last accessed on 03.03.2023 at 3:01 pm).



METHODOLOGY

The researcher, who has limited themselves to doctrinal research methodology for this study, has consulted a wide variety of sources, such as relevant statutes, treaties, and judicial decisions. Some examples of primary sources are scholarly journals, books by well-known authors, national and international research papers, magazines, newspapers, websites, and other secondary sources.

RESULT AND DISCUSSION

Constitutional Safeguards

According to Article 19(1) of the Indian Constitution, every citizen has the unrestricted freedom to "engage in any profession, or to carry on any employment, trade, or business" (g). Every woman has the legal right to work in whatever public sector job she chooses, but sexual harassment makes it impossible for her to take these jobs. A woman's capacity to exercise her constitutionally protected right to an environment free from discrimination or harassment at work might be negatively impacted by sexual harassment if she is subjected to it on the job (g).¹²⁶ According to Article 21, "no individual should be deprived of his life or personal liberty," which includes occupational sexual harassment of women. The fundamental right of life itself depends on the option to a good life.¹²⁷ When you experience gender discrimination, your right to a sufficient standard of life is violated. Everyone women in India have always had the opportunity to an environment that is free from sexual identity oppression and to equal chances for happy lives, as stated in Article 21 of the Indian Government.

ANALYSIS OF VISHAKHA CASE

India's top court made history by becoming the first nation in the world to formally recognise workplace sexual misconduct with its landmark decision in Vishaka & Ors versus Rajasthan as a State & Ors.¹²⁹ Aim of this proposed and other advocacy organizations filed a legal action in the public interest against with the Rajasthan governor's office and or the Union of India to safeguard the fundamental freedoms of working women as protected by Articles 14, 19, and 21 of the Indian Constitution.



The lawsuit was filed when Radha Devi, a psychotherapist in Jaipur, was gang murdered for trying to stop a family planning. founded mostly on equality and respect stipulated in the United Kingdom Convention for the Abolition of All Types of Segregation Towards Women and the Indian Constitutional, the Supreme Court of India enacted mandatory recommendations (CEDAW). Rules included:"It shall be the role of the employer or other responsible individuals in workplaces or other institutions to prevent or discourage the conduct of acts of sexualharassment and to establish the processes for the resolution, settlement, or prosecution of acts of sexual harassment." 5.1.1.

Sexual harassment is described as: (a) any unwelcome physical contact or advances of a sexual nature; (b) a demanding or solicitation for special gratification; (c) statements with a sexual undertone; (d) the exhibition of pornographic material; and (e) anywhere else unnecessarysexual, intellectual, or non-verbal actions of a personal penetration. It is the responsibility of all employers and those in positions of authority in the commercial and public sectors to implement policies and procedures to eliminate sexual harassment in the workplace. They should, without limiting the scope of their duty, do the following:

- (a) Appropriate notice, publication, and dissemination methods should be used to expressly ban sexual harassment as stated above in the workplace.
- (b) Government and public sector entities' rules and regulations pertaining to conduct and discipline shall ban sexual harassment and provide for suitable punishments under such rules against the offender.
- (c) The Commercial Employee (Training Sets) Act of 1946 should be amended to require federal contractors to include the mentioned limits in maintain a professional.
- (d) There must not be a hostile environment regarding women at work, and no female employee might as well have cause to believe that her job is adversely affecting her. This involvesproviding suitable working, recreational, health, and environmental circumstances. The employeris obligated by law to file a formal accusation with the relevant agencies if somehow the worker's conduct are considered criminal offences under the Indian Penal Code along with other



applicable laws (see section 5.1.4). In particular, it must stop harassing or treating witnesses or victims unjustly when looking into claims of sexual harassment. Harassment victims need to have the option of asking for their own transfer or the removal of the guilty party. The operator shall implement disciplinary measures in accordance with the appropriate legal provisions if this activity qualifies as workplace misconduct as outlined by some of those guidelines (5.1.5). An effective complaint system should be established in the organisation of the employer to remedy the complaint made by the victim, regardless of whether such behaviour constitutes a crime under law or a violation of the service standards. Such a system for filing complaints must guarantee timely resolution. The Complaints Committee, special counsellor, or other support service mentioned in 5.1.7 should be available to those who need it, and confidentiality should be guaranteed, as part of the complaint system mentioned in (6) above. A woman shall serve as chair of the Complaints Committee, and at least half of the committee members should be female. In order to prevent any unwarranted effort or manipulation from top concentrations, a contractor, which could be an NGO or other institution knowledgeable with the topic of harassment, should also be involved in such a Commission Of inquiry. The appropriate government department must receive a summary from the standing committee each year detailing the accusations it has acquired and the actions it has taken in response.

IMPORTANCE OF POCSO AT SCHOOLS AND WORKPLACES

Despite laws prohibiting it, child labour is widespread in educational institutions like schools and businesses, making the P.O.C.S.O. Act all the more important. Child labour is illegal in India, yet this does not stop authorities, elders, and employers from exploiting and sexually abusing young children and minors who are working for their families. They can't run away or tell authorities about the abuse if they don't have any allies. Many people who have experienced trauma are unable to adequately articulate their anguish and as a result live with it for the rest of their lives. Given these dismal facts, it is crucial to equip young labourers with knowledge of the P.O.C.S.O. Act as a weapon in the battle against sexual exploitation in the workplace and at home.



The P.O.C.S.O. Act also draws attention to the problem of abuse of authority in educational and juvenile detention facilities, two examples of institutions tasked with safeguarding children. To compound the trauma of a sexual assault, when a person in a position of trust and authority turns on a child—for example, a teacher, a member of staff, or a school administrator—the abuse is magnified. Because of the severe psychological trauma they have experienced, some victims of violent crime may never trust others again. The purpose of the P.O.C.S.O. Act's provisions designed to protect children and people of all genders is to ensure that no child is treated unfairly or unjustly at any point in the judicial process. The P.O.C.S.O. legislation promotes gender-neutral awareness of sexual exploitation by providing a detailed enumeration of the numerous sexual offences that are illegal and without distinguishing between the victim and the offender based on gender. It also makes it illegal to withhold information about sexual assaults on minors. As a result, the P.O.C.S.O. Act may raise people's consciousness about the issue of child sexual exploitation and lead to the adoption of real-world solutions.

REFERENCES

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