Scope of Indian Law on Sexual Harassment against Women

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***Abstract*—The Vishaka Guidelines (1997) marked a historic milestone in India's pursuit of gender justice, establishing the first framework to address sexual harassment of women at workplaces. These guidelines paved the way for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (commonly known as the POSH Act). The Act institutionalized mechanisms for prevention, prohibition, and redressal of workplace sexual harassment through mandatory Internal Committees (ICs), awareness programs, and accountability measures. This paper examines the evolution of workplace sexual harassment law in India, its legal foundation, employer obligations, and the role of compliance experts in ensuring effective implementation. It further explores the continuing influence of judicial precedents like *Vishaka v. State of Rajasthan* and *Rupan Deol Bajaj v. K.P.S. Gill* in shaping gender-sensitive workplace policies under the current regime.**

I. INTRODUCTION

Sexual harassment at the workplace is a violation of the fundamental rights of women to equality, dignity, and safe working conditions as enshrined under Articles 14, 15, 19, and 21 of the Constitution of India. Prior to the enactment of the POSH Act, 2013, the legal landscape was guided primarily by judicial interventions, the most prominent being the Vishaka Guidelines formulated by the Supreme Court of India in Vishaka v. State of Rajasthan (1997).

The Vishaka case emerged after the brutal gang rape of Bhanwari Devi, a social worker from Rajasthan, which exposed the absence of effective legal remedies against workplace sexual harassment. The Supreme Court, invoking international conventions such as *CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women)*, laid down guidelines for employers and institutions to prevent and redress such misconduct. These guidelines were binding until the legislature enacted a formal law — which culminated in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

1.1 Vishakha Directives and its Rulings

The Vishakha Guidelines were a set of procedural guidelines for preventing and addressing sexual harassment in the workplace in India, established by the Supreme Court in 1997 in response to the landmark Vishaka & Ors. v. State of Rajasthan case, which stemmed from the Bhanwari Devi incident. These guidelines, though now largely superseded by the Sexual Harassment of Women at the Workplace Act, 2013, are still considered foundational and are referenced for their principles in interpreting and enforcing the law. The judgment was given by a 3-judge bench which held that the fundamental rights provided under article 14, article 15, article 19 (1) (g) and article 21 of the constitution of the India are violated by the act of sexual harassment. The court brought out the Vishakha guidelines for the protection of women at their workplaces and providing a safer working environment to the women.

Historical Background

The Bhanwari Devi case -The Bhanwari devi case is one of the most significant cases among the cases of women safety as it paved the way to the Vishakha guidelines. The development of the case is elucidated as under Bhanwari Devi (Vishaka & Ors. V/S State of Rajasthan, AIR 1997 Sc 3011) Case Bhanwari Devi is an Indian social worker from Bhateri, Rajasthan who was gangraped while working under the Rajasthan government's Women's Development Programme. As a part of the program, she had to spread awareness about hygiene, family planning and the necessity of educating girls, along with campaigning against female foeticide, infanticide, dowry and child marriages. As a part of her duty, she was stopping the

wedding of a nine-month-old daughter of Ramkaran Gujjar. To her dismay, she was put forward to social punishment for stopping the marriage. She was gang-raped by Ramkaran Gujjar and his five friends in front of her husband. Subsequently, Bhanwari Devi filed a criminal complaint against the offenders. Unfortunately, the accused were acquitted by a trial court, because everyone, including the village authorities, doctors and the police, dismissed her situation. This injustice inspired several women's groups and NGOs to file public interest litigation (PIL) in the Supreme Court under the collective platform of Vishaka. They demanded justice for Bhanwari Devi and urged action against sexual harassment in the workplace. Vishaka Guidelines The court, for the first time, relied on an international human rights law instrument, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to establish guidelines known as the Vishaka Guidelines. These guidelines addressed the workplace hazards faced by women. The court emphasised that the employer must ensure the safety of their employees and others affected by their business. The court stated that such incidents violate the fundamental rights of gender equality and the right to life and liberty, as guaranteed under Articles 14, 15, and 21 of the Constitution. Consequently, the court issued a writ of mandamus and provided specific directions for prevention.

Such as:

1. It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent sexual harassment and to provide for the resolution and settlement mechanism.
2. The court defined what constitutes sexual harassment. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

a) physical contact and advances;
b) a demand or request for sexual favours;
c) sexually coloured remarks;
d) showing pornography;
e) any other unwelcome physical verbal or non-verbal conduct of a sexual nature.

3. Preventive Steps: All employers should take appropriate steps to prevent sexual harassment which shall include:

(a) Express prohibition of sexual harassment (as defined above) at the workplace should be notified, published and circulated in appropriate ways.
(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include prohibition of sexual harassment and provide for appropriate penalties against the offender.
(c) In regards to the private sector, employers should take steps to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, of 1946.
(d) Appropriate work conditions should be provided with respect to work, leisure, health, and hygiene to further ensure that there is no hostile environment towards women at workplaces.

4. Criminal Proceedings: The employer shall take appropriate action if any such behaviour by the perpetrator falls under the Indian Penal Code. The employer should file or assist the aggrieved in filing the complaint with the appropriate authority. Moreover, the employer shall ensure that the aggrieved or the witnesses are not victimised or discriminated against.
5. Disciplinary Action: Where any such behaviour amounts to misconduct under the code of conduct or service rules, appropriate disciplinary action should be initiated by the employer by those rules.
6. Complaint Mechanism: Whether or not any such behaviour constitutes an offence under the law or the service rules, an appropriate complaint mechanism should be created in the employer's organisation for effective redressal of such complaints. Such a complaint redressal mechanism should ensure the timely resolution of complaints.
7. Complaints Committee**:** The complaint mechanism, referred to in point (6) above, should be adequate to provide a Complaints Committee, a special counsellor or other support services, including the maintenance of confidentiality of such complaints.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Also, to prevent the possibility of any bias or influence from senior levels, such a Complaints Committee should involve a third party, either an NGO or other bodies who are familiar with the issue of sexual harassment. The Complaints Committee must prepare an annual report including the number of complaints received and the action taken by them. Such a report shall be submitted to the government

department concerned with the complaints. The employers and person in charge shall also report on the compliance to the Government department.

8. Workers' Initiative: Employees should be allowed to raise issues of sexual harassment at workers' meetings and in other appropriate forums and it should be affirmatively discussed in Employer Employee Meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines.

10. Where the perpetrator of sexual harassment is a third party or an outsider, the employer and person in charge shall take all steps necessary and reasonable to assist the aggrieved in terms of support and preventive action.

11. The Central/State governments are requested to consider adopting measures including legislation to ensure that the guidelines laid down by the court are also observed by the employers in the Private Sector.

The Vishaka Guidelines have laid the foundation for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. As per the current regime, employers with 10 or more employees are required to constitute an internal complaints committee, conduct training, and awareness sessions, etc. POSH compliance expert has the expertise and resources to help you comply with the Act, conduct training sessions, constitute Internal Committees (IC) for all your offices and find an external member for your IC.

1.2 Various Legal Instrument and Laws Related to Sexual Harassment

These Supreme Court guidelines are applicable to the employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints; Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity-in the government, private or organized sector come under the purview of these guidelines.

The rape laws in India are wider in comparison to the existing laws on sexual harassment and is to be found under section 375 and section 376 of the IPC. The laws on sexual harassment as mentioned earlier are enlisted under sections 294, 354 and 509 of the IPC. These laws are made for the benefit of the public and hence it is a duty on the part of the state that they should be properly implemented for the benefit of the needy people. Because most victims of sexual harassment don't speak out, we don't understand the seriousness and pervasive nature of it. Hence it becomes difficult to document the extent of sexual harassment.

Sexual harassment is nothing less than the showcasing of male dominance. Given an opportunity, such men (those committing sexual harassment) would try fulfilling their desire. However, it also not true that all cases of sexual harassment are such-where the accused is guilty of conceiving the intention of a sexual intercourse. But it also depends on each individual case and circumstances, because it may well be the case that the woman may also be at fault.

In Vishaka Vs. State of Rajasthan and others, the Supreme Court of India laid down the norms and guidelines to be followed by the employers for tackling the incidents of sexual harassment of women at workplace and other institutions. The guidelines issued by the Supreme Court also suggested regarding setting up of a complaints redress forum in all work places and amendment of the disciplinary / conduct rules governing employees by incorporating the norms and guidelines. We have observed that in some of the cases where women have reported such illegal and unwelcome behaviour, there have been significant victories in the past decade and in some of the cases acquittal order of the offender is passed by the Apex court due to lack of evidence. In Sexual harassment cases secrecy is maintained by the Women Cell but few aggrieved women takes initiative to file a complaint. In the Courts, victims are suffered because of a lengthy judicial procedure followed with a hearing, cross examinations, appeal etc. So very few woman have shown the courage to fight for justice. Some of the landmark decisions of the prominent cases are discussed as below:

In *Rupan Deol Bajaj Vs. K. P. S. Gill (1998 S.C.), a* senior IAS officer, Rupan Bajaj was slapped on the posterior by the then Chief of Police, Punjab-Mr. K P S.Gill at a dinner party in July 1988. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter. The Supreme Court in January, 1998 fined Mr.K P S.Gill Rs.2.5 lacs in lieu of three months Rigorous Imprisonment under Sections. 294 and 509 of the Indian Penal Code. Rights Guaranteed under the Constitution of India: Part III of our

Constitution of India guarantees certain rights for the protection of rights of women, are as follows:
Art. 14 –Right to equality
Art. 15 –Discrimination on ground of race, caste, sex etc.
Art.16 –Equality of Opportunity
Art .19 –Right to Freedom
Art .21 –Right to life & Liberty
Art .23 –Prohibition of traffic in human beings & forced labour.
Art. 25 –Freedom of conscience & free profession, practise & propagation of religion.
Art. 39 –Certain principles to be followed by State:-
(a) Men and Women equally have the right to an adequate means of livelihood.
(b) Equal pay for equal work for both for men & women
(c) Health & strength of workers men and women & tender age of children are not abused & citizens are not forced by eco. Necessity.
Art. 39-A –Equal justice to free legal aid
Art. 42 –Provisions for just & humane condition of work & maternity reliefs.
Art. 51 (A) Fundamental duties –
(e) to promote harmony … to practices derogatory to the dignity of women.

OTHER LEGAL PROVISIONS

Definition of 'Rape' is given under Section 375 of the Indian Penal Code, 1860, as "a man is said to commit the offence of rape with a woman under the following six circumstances:
1. Sexual intercourse against the victims will,
2. without the victim's consent,
3. with her consent, when her consent has been obtained by putting her or any person that she may be interested in fear of death or hurt,
4. with her consent, when the man knows that he is not her husband,
5. with her consent, when at the time of giving such consent she was intoxicated, or is suffering from unsoundness of mind and does not understand the nature and consequences of that to which she gives consent, woman.
2. The insult be caused by
i) Uttering any word or gesture, or
ii) Exhibiting any object with the intention that such word, gesture, or object be hear or seen by such a woman, or
iii) By intruding upon the privacy of such woman.
We also have Indecent Representation of Women Act, 1986 to protect harassment of Women. important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place. Section 509 of the Indian Penal Code, is effective when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman. Thus, this Section requires:
6. with or without her consent when she is under sixteen years of age. Further explanation provided to the section states that penetration is sufficient to constitute the sexual intercourse necessary to constitute the offence of rape, whereas the exception leaves out marital rape altogether if the wife is not under fifteen years of age.
Criminal Law Amendment Act, 1983:
The Criminal Law Amendment Act has substantially changed Sections.375 and 376 of the IPC. Several new sections have been introduced therein-viz. Sections. 376(A), 376(B), 376(C), 376(D) of the IPC.
Section. 376(A) punishes sexual intercourse with wife without her consent by a judicially separated husband.
Section. 376(B) punishes for sexual intercourse by a public servant with a woman in custody.
Section. 376(C) punishes sexual intercourse by superintendent of jail, remand house, etc. whereas,
Section. 376(D) punishes sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital.
These new sections have been introduced with a view to stop sexual abuse of women in custody, care and control by various persons-which though not amounting to rape were nevertheless considered highly reprehensible. Attempt to Rape: In cases where an indecent assault is made upon the person of a woman, but where rape is not committed-the culprit is charged with Section.354 of IPC, because unless the Court is satisfied that there was determination in the accused to gratify his passion at any cost, and in spite of all resistance, such person is not charged with rape. Section.354 of the IPC prescribes punishment for anyone who assaults or uses criminal force to any woman with intent to outrage her modesty. An indecent assault upon a woman is punishable under

this section. Rape is punished under Section 376 of Indian Penal Code; but the offence under this Section is of less gravity than rape.

An indecent assault, i.e., an assault which right minded persons would consider as indecent-accordingly any evidence explaining the defendants conduct, or whether any admission by him or otherwise is admissible to establish whether he intended to commit an indecent assault, as is stated under Section.21 sub clause (2) of the

Evidence Act, which reads as under:

Section.21 (2): An admission may be proved by or on behalf of the person making it, when it consists of statements of the existence of any state of mind or body, relevant or in issue, made at or about the time when such state of mind or body existed, and is accompanied by conduct rendering its falsehood improbable.

In the present circumstances when offences against women are on the rise-when young girls are raped, molested in broad daylight in educational institutions, the definition of 'rape' to be of any deterrence-falls extremely inadequate. It does not address forced penetration of objects and parts of the body into the vagina and anus; and forced oral or anal intercourse. It also does not recognize other forms of sexual assaults-like protracted sexual assault by relatives, marital rape etc. as aggravated forms of rape. This causes grave injustice to many victims. In many cases of child rape, the child has been penetrated through fingers or by objects or been force to perform oral or anal sex; yet this is not considered rape by the Courts.

Adding to this is Section. 155(4) of the Evidence Act, which allows the victim to be questioned of her past sexual history. During the trial of the case, the defense utilizes these provisions to humiliate & harasses the victim in the Courtroom.

In cases where the accused sexually harasses or insults the modesty of a woman by way of either-obscene acts or songs or-by means of words, gesture, or acts intended to insult the modesty of a woman, is liable for punishment under Sections.294 and 509 of the Indian Penal Code respectively. However, another important ingredient of this offence is that the obscene acts or songs must be committed or sung in or near any public place.

Section 509 of the Indian Penal Code, is effective when there is an intention to insult the modesty of any woman by the offender by uttering any word, making any sound or gesture or by exhibiting any object, with the intention that such word or such sound be heard, or that such gesture or object be seen by such a woman, or by intruding upon the privacy of such a woman.

Thus, this Section requires:

1. Intention to insult the modesty of a woman.
2. The insult be caused by

i) Uttering any word or gesture, or

ii) Exhibiting any object with the intention that such word, gesture, or object be hear or seen by such a woman, or

iii) By intruding upon the privacy of such woman.

We also have Indecent Representation of Women Act, 1986 to protect harassment of Women.

1.3 New laws relating to sexual harassment under BHARTIYA NYAY SANHITA, 2023

The Bharatiya Nyaya Sanhita (BNS) addresses sexual harassment primarily through Section 75, which defines and penalizes various acts of sexual harassment, including physical advances, demands for sexual favours, showing pornography, and making sexually coloured remarks. While the definition and penalties largely mirror the previous Indian Penal Code (IPC) Section 354A, the BNS aims to strengthen protections for women against such misconduct.

According to section 75 of the Bhartiya Nyay Sanhita 2023

A man commits sexual harassment if he engages in any of the following acts: Physical contact and advances involving unwelcome and explicit sexual overtures. A demand or request for sexual favours. Showing pornography against the will of a woman. Making sexually coloured remarks.

Punishments:

For physical advances, demands for sexual favours, or showing pornography, the punishment can be rigorous imprisonment for up to three years, a fine, or both. For making sexually coloured remarks, the punishment can be imprisonment of either description for up to one year, a fine, or both. Scope

of Application: Section 75 encompasses verbal, non-verbal, and physical acts of sexual harassment, ensuring legal action against a range of misconduct.

Focus on Protection and Remedies: The BNS, through Section 75, aims to provide strict legal measures and protections for women from sexual harassment, including ensuring complainants are informed about case progress and have access to legal support.

Section 77 Voyeurism -Whoever watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Section 78 Stalking-

Any man who:

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

(ii) monitors the use by a woman of the internet, e-mail or any other form of electronic communication, commits the offence of stalking.

Section 79 of the Bharatiya Nyaya Sanhita (BNS), 2023-addresses the offense of intending to insult the modesty of a woman. It outlines that any word, gesture, sound, or object exhibited with the intention to be heard or seen by a woman, or any intrusion upon her privacy, is punishable. The punishment can include simple imprisonment for up to three years and a fine. These are the important provisions relating to the women from harassment mentioned in Bhartiya Nyay Sanhita 2023.

1.4 Provisions under POSH ACT, 2013

The POSH Act is a legislation enacted by the Government of India in 2013 to address the issue of sexual harassment faced by women in the workplace. The Act aims to create a safe and conducivework environment for women and provide protection against sexual harassment. The PoSH Act defines sexual harassment to include unwelcome acts such as physical contact and sexual advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature. The Supreme Court in a landmark judgment in the Vishakha and others v State of Rajasthan 1997 case gave 'Vishakha guidelines'.

These guidelines formed the basis for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The SC also drew its strength from several provisions of the Constitution including Article 15 (against discrimination on grounds only of religion, race, caste, sex, and place of birth), also drawing from

relevant International Conventions and norms such as the General Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993. Duties of Employer according to POSH Act

The POSH Act holds the employer responsible for ensuring the safety of all employees. To ensure safety of women within workplaces, the POSH Act makes it mandatory for the employer of an organization or a company to do the following:

Provide a safe working environment for all women employees Draft and disseminate an organizational policy against sexual harassment of women at workplace Formulate an Internal Committee if the organization has ten or more employees Display the consequences of sexual harassment and the details of Internal Committee in any conspicuous place in the workplace Organize awareness programs for employees about the provisions of POSH Act. You can take a look at our POSH Employee Awareness eLearning here. Internal Committee members must be trained on their roles and responsibilities. You can take a look at our POSH for IC Members eLearning here provide necessary facilities and produce any necessary information to the Internal Committee or local Committee for inquiry of sexual harassment complaints Ensure that the complainant and respondent are present during inquiries Assist the complainant if she wishes to file a complaint with the police forward an employee's sexual harassment complaint to the police either because the complainant wishes to, or if the respondent is third-party. Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct. Ensure that the IC submits the Annual Report to the management and the District Officer. This applies to only organizations that have ten or more employees. If the organization is registered as a company, declare the organization's POSH Compliance in the Director's Report.

What constitutes non-compliance to POSH Act?

The employer will be considered non-compliant to the POSH Act if they fail to

Formulate a POSH Policy for the organization Constitute an Internal Committee create awareness about POSH among the employees Take action against the respondent of a sexual harassment case as per the recommendations of the Internal Committee take action against a person for submitting a false complaint of sexual harassment or producing misleading or forged documents File an annual report to the District Officer Penalty for Non-Compliance of POSH Act.

In case the employer of an organization violates or attempts to violate any provision under the POSH Act and Rules, a fine of maximum of ₹50,000 will be imposed. If the employer is convicted for a repeated offence of non-compliance to POSH Act, the penalty will be:

Twice the punishment that was awarded the first time and/or Cancellation or non-renewal of the business license

The penalty can be very severe if the case reaches the court. Let's look at a couple of examples:

In *Global Health Pvt. Ltd. Vs District Panchayat on 16 September, 2019*, Madhya Pradesh High Court levied a fine of Rs. 50,000 from a hospital for not having an Internal Complaints Committee in 2019. The court also directed the hospital to pay an amount of Rupees 25 lakhs to the complainant for failing to redress her complaint. In another judgement, *Ms.G vs Isg Novasoft Technologies Ltd, 2014* the Madras High Court directed a company in Chennai to pay an amount of Rupees 1.68 crore as damages to an aggrieved woman.

II. CONCLUSION

The journey from the Vishaka Guidelines to the POSH Act, 2013 represents India's progressive commitment to gender justice and workplace safety. However, the effectiveness of the Act depends not only on legal compliance but also on creating a culture of respect, empathy, and gender sensitivity in professional spaces. Employers, compliance professionals, and policymakers must collaborate to ensure that Internal Committees function transparently and that women feel empowered to report misconduct without fear.

The law must evolve continuously through awareness, training, and proactive enforcement so that every workplace becomes a space of dignity, equality, and empowerment for women. The POSH Act thus remains not merely a legal mandate but a moral and social responsibility of every organization.

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