

JUDICIAL FRAMEWORK FOR PREVENTION, PROHIBITION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE IN INDIA: A REVIEW

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Abstract: *The global economic crisis, marked by growing de-regularization, privatization and job outsourcing through a network of intermediaries, has led to a change in employment relationships. In Indian workplaces as well, these improvements echo. It is in this sense that we have to look at the emerging issues faced by working women. More than ever, given these shifts, there is an urgent need for women's rights to be recognized, safeguarded and fulfilled, particularly in the workplace. The right to work requires the freedom to be protected from sexual abuse in order to work. Sexual harassment is a severe denial of the right of women to equality, dignity and respect. Sexual abuse in the workplace, like other types of violence, is not innocuous. Serious health, human, economic, and social costs are involved. The Sexual Harassment of Women at Work (Prevention, Prohibition and Redressal) Act, 2013 was implemented as a result of the Vishaka judgement to ensure safe working spaces for women and to create enabling work environments that respect the right of women to equal status and opportunity. In this context, this paper will seek to examine the trajectory of India's laws and regulations against sexual harassment at work. In doing so, this paper will primarily concentrate on reviewing and evaluating provisions of the 2013 Sexual Abuse of Women at Work (Prevention, Prohibition and Redressal) Act and bringing about flaws and suggestions for existing law amendments.*

Key Words: *Constitution, Sexual Harassment, Women, Workplaces, Discrimination, Women Rights.*

1. INTRODUCTION :

As enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution. A safe workplace is therefore a woman’s legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person’s right to equal protection under the law, to live a life free from discrimination (National Portal of India, n.d.).

This is further strengthened by the Convention of the United Nations on the Abolition of All Forms of Discrimination against Women (CEDAW), adopted in 1979 by the United Nations General Assembly and ratified by India. It calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres, and is also defined as an international bill of rights for women. It underlines that the concept of equal rights is violated by sexism and assaults on the dignity (United Nations Treaty Collection, n.d.)

Sexual harassment constitutes a gross violation of women's right to equality and dignity. One of these is sexual harassment in the workplace, resulting in the infringement of a woman's fundamental rights under Article 19(1)(g) of the Indian Constitution (National Portal of India, n.d.) 'to pursue any career or to participate in any occupation, trade or undertaking'; eroding equality and endangering the dignity and physical and psychological well-being of staff. Deep-rooted socio-cultural behavioural trends that establish a gender hierarchy appear to place blame on the victim in order to further compound the problem, thus raising disparity in the workplace and in society as a whole (Basu, 2012).

2. REGULATIONS PERTAINING TO WORKPLACE SEXUAL HARASSMENT:

2.1 Industrial Employment (Standing Orders) Act, 1946:

The Industrial Employment (Standing Orders) Act, 1946 ('Standing Orders Act') is a key enactment that requires an employer, among other things, to specify and publish uniform employment requirements in the form of standing orders. As per the law, the standing orders shall include conditions of employment, including working hours, pay scales, shift work, attendance and late arrival, leaves and holidays requirements, and employee termination or suspension / dismissal. In the first place, the Standing Orders Act refers to 'industrial enterprises employing at least 100 employees. The Standing Orders Model prescribed by the Central Laws of Industrial Employment (Standing

Orders), 1996 ('Standing Orders Rules') prescribes a list of actions that constitute 'misconduct' which explicitly contains sexual Harassment (The Industrial Employment (Standing Orders) Act, 1946, n.d.).

2.2 Indian Penal Code, 1860:

Sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the Indian Penal Code (IPC). Listed out below are the key offenses under the IPC that could be triggered in a case of sexual harassment.

Section 294: This section states that if any person performs any kind of obscene public act or sings or recites any obscene music, ballad or statements or words to the annoyance of others in a public place or near any public place. Such a person shall then be punishable by imprisonment for a period which may be extended by three months or by a fine, or both. This section offers protection for everyone, regardless of sex, and ensures that no individual is abused or made uncomfortable by any individual in a public place (India Code, n.d.).

- 2.2.1 Section 354:** This section protects women from any type of assault with the intention of outraging the female's modesty. This section states that if any person assaults or uses criminal force against any woman with the intention of outraging her modesty or knowing that such conduct will likely result in outraging women's modesty, such a person shall be punishable by a term of imprisonment that may last two years, or by a fine, or both (India Code, n.d.).
- 2.2.2 Section 354 A:** Initially, this portion was not present in the Code but was integrated by an amendment. This portion makes it a crime and also describes sexual assault. The section says that if a man commits any of the following acts including i) bodily contact and advances involving unwanted and explicit as well as sexual in nature ii) a sexual favour request or asking or iii) showing pornographic material against a woman's will iv) making sexually coloured statements, then such a person is deemed guilty of the sexual harassment offence. The sentence imposed for an offence under clause I ii, iii of subsection 1 of section 354 A shall be punishable by a strict period of imprisonment which may be extended to three years or by a fine or both. Although the penalty imposed for the crime under clause iv is punishable by imprisonment for a period of up to 1 year, or by a fine or both. This rule outline sexual assault an offence and provides women with protection. This section specifically states that a man must commit an offence if the above actions are to b (India Code, n.d.).
- 2.2.3 Section 354 C:** This section makes voyeurism an offence stating that watching or filming a woman's image while engaged in a private act where she does not expect to be watched either by a perpetrator or by any other individual at the behest of such a perpetrator or to disseminate such an image is punishable by a term of imprisonment on the first conviction for a term that is not less than If, in the event of a subsequent conviction, the term of imprisonment is not less than 3 years, but can be increased to 7 years (India Code, n.d.).
- 2.2.4 Section 354 D:** This section considers stalking an offence and notes that If a man continues to follow a woman and approaches her or attempts to contact a woman regularly in spite of a clear indication of disinterest by such a woman or tracks her on the internet in some way, a stalking offence is often considered to have been committed by email or other means of communication. The section provides that anybody who commits an offence of stalking women shall be punished by imprisonment for a period of up to three years and shall be liable to pay a fine at the time of the first conviction. However, a sentence of up to 5 years with a fine is prescribed by the section on subsequent conviction (India Code, n.d.).
- 2.2.5 Section 503:** This section considers criminal intimidation an offence and states if any person threatens a person with an injury to the person or reputation or property or to the person or reputation or property of anyone in whom such a person is interested. This section provides protection to a woman when any sort of sexual advances made by threats to harm her physically or her reputation or her property then the person is guilty with criminal intimidation punishable with an imprisonment for 2 years (India Code, n.d.).
- 2.2.6 Section 499:** This section deals with defamation and makes morphing of a picture of a woman with an intention to defame her punishable with an imprisonment for a period which may extend to 2 years or with fine or both This section provides protection to the females from being harassed in the name of publishing of her pictures with the intention to defame her (India Code, n.d.).
- 2.2.7 Section 509:** This section states that if any person with the intention of offending a woman's modesty says something or makes sounds or movements or shows any item with the intention of noticing and hearing the same or in any way violating a woman's privacy, that person shall be liable for a term of (India Code, n.d.).

2.3 Information and Technology Act:

Section 67: This section prescribes punishment for publishing obscene material in any sort of electronic form. Punishment on first acquittal with imprisonment of either description for a period of up to three years and with a fine of up to five lakh rupees and with imprisonment of either description for a duration of up to five years in the event of a second or subsequent convictions and also with a fine of up to ten lakh rupees. This section protects the basic decency and morality of women and ensures that no one exploits them (India Code, n.d.).

2.4 Development of the law on workplace sexual harassment

In its landmark decision of *Vishaka v. State of Rajasthan*, the Supreme Court of India ('Supreme Court') recognised sexual harassment in the workplace in India for the first time, in this Supreme Court set out certain guidelines and gave directives to the Union of India to enact an effective law to tackle sexual harassment in the workplace. Nothing short of irony, 16 years after the Vishaka Verdict, the POSH Act and the POSH Laws were enforced. The Supreme Court, in the Vishaka Judgment, laid down certain rules in the absence of a clear law in India, making it mandatory for each employer to have a procedure for redressing workplace sexual harassment complaints ('Vishaka Guidelines') that were followed by employers until the POSH Act was enacted.

The Vishaka Judgement

In 1992, Bhanwari Devi, a Dalit woman employed by the Government of Rajasthan's rural development programme, was brutally raped by a gang due to her efforts to curb the then prevalent practice of child marriage. This incident exposed the risks to the day-to-day exposure of working women and emphasized the importance of precautions to be enforced in this regard. Women's rights advocates and lawyers, championing the cause of working women in the world, filed a public interest lawsuit under the Vishaka banner in the Supreme Court. For the first time, the Supreme Court recognized the apparent statutory inadequacy and recognized sexual abuse in the workplace as a violation of human in framing the Vishaka Guidelines, the Supreme Court placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. According to the Vishaka Judgment, until such time as a statutory structure on the subject has been drawn up and adopted, the Vishaka Guidelines issued under Article 32 of the Constitution will have the effect of law and will have to be compulsorily followed by organizations both in the private and government sectors. (**Vishaka and others vs. State of Rajasthan and others - AIR 1997 SC 241**). 'Sexual harassment' involves, as per the Vishaka judgement, such unwanted sexually determined conduct (whether explicitly or by implication) as: physical contact and advances, a sexual favor request or request; sexually coloured remarks, displaying pornography; any other unwelcome sexual, verbal or nonverbal behavior of a sexual nature (**Vishaka and others vs. State of Rajasthan and others - AIR 1997 SC 241**). Where all of these actions are perpetrated in circumstances in which the complainant of such conduct has a fair apprehension that such behavior can be intrusive in relation to the job or work of the victim (whether receiving salary or honorarium or voluntary service, whether in government, public or private enterprise), and can constitute a health and safety issue, sexual harassment in the workplace. For example, where the woman has fair reasons to conclude that her objection will disadvantage her in relation to her position or job (including hiring and promotion), or where it creates a hostile working atmosphere, it is discriminatory. If the victim does not agree to the conduct in question or raises any challenge to it, adverse effects may result.

Post Vishaka – Some Other Judgments

A. Apparel Export Promotion Council v. A.K Chopra

A national debate on workplace sexual assault was sparked by the Vishaka judgement and a topic that was swept under the carpet for the longest time was thrown out wide open. The case of Apparel Export Promotion Council v. A.K Chopra was the first case before the Supreme Court following Vishaka in this respect. The Supreme Court reiterated the law set out in the Vishaka Judgment in this case and upheld the dismissal of a superior officer of the Apparel Export Promotion Council based in Delhi who was found guilty of sexually assaulting a subordinate female worker at the workplace. In that decision, the Supreme Court expanded the concept of sexual harassment by finding that it was not appropriate for physical contact to constitute an act of sexual harassment. The Supreme Court explained that "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favors and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her (**Apparel Export Promotion Council vs. A. K. Chopra AIR 1999 SC 625; 1991 SCC 759**)."

B. Medha Kotwal Lele & Ors. V. Union of India & Ors.

A letter written by Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court 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. The Supreme Court noted in its judgement that "the implementation of the Vishaka Guidelines must be not only in form but also in substance and spirit in order to provide women in the workplace with a healthy and secure atmosphere in every aspect and thus allow working women to work with dignity, decency and due respect." Finally, the Supreme Court claimed that, in the event of non-compliance or non-compliance with the Vishaka Guidelines, it would be open to the aggrieved individuals to approach the respective High Courts. (**Metha Kotwal Lele and others vs. Union of India-2012 INSC 643**).

2.5 The sexual harassment of women at workplace (prevention, prohibition and redressal) -2013

- 2.5.1 In 2013, Parliament passed this legislation to complement, rather than substitute, the current law relating to service matters, the rights of employees and other aspects of the law relating to sexual abuse at work, which is evident from the provision of the statute itself (Jaising, 2014). Section 28 states: 'The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force'
- 2.5.2 Applicability and scope: This law covers the whole of India and provides that a woman in her workplace is not subjected to sexual harassment. The law, inter alia, extends to government agencies, private and public sector organisations, nongovernmental organisations, organisations carrying out commercial, vocational, educational, entertainment, manufacturing, financial operations, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house. (India Code, n.d.).
- 2.5.3 Internal Complaints Committee (ICC): An employer is required by the Sexual Harassment Act to set up a 'Internal Complaints Committee' ('ICC') at each office or division of a company with at least 10 employees. In exchange, the government is mandated to set up a district level 'Local Complaints Committees' ('LCC') to investigate complaints about sexual assault from establishments where the ICC has not been formed because the establishment has less than 10 workers or where the complaint is against the employer. The constitution of committee is as follow : Presiding Officer: Woman employed at a senior level at the workplace from amongst the employees. Members Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge. External member From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment. Not less than half of the IC Members shall be women the term of the IC Members shall not exceed 3 years A minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry (India Code, n.d.). Powers of the Icc/Lcc: The Prevention of Workplace Sexual Harassment Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:
- i. summoning and enforcing the attendance of any person and examining him on oath;
 - ii. requiring the discovery and production of documents; and
 - iii. any other matter which may be prescribed (India Code, n.d.).
- 2.5.4 Complaint mechanism: An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. The ICC/LCC can extend the timeline for filing the complaint, for reasons to be recorded in writing, by a period of 3 months. The law also makes provisions for friends, relatives, co-workers, psychologist, psychiatrists, etc. to file the complaint in situations where the aggrieved employee is unable to make the complaint on account of physical incapacity, mental incapacity or death (India Code, n.d.).
- 2.5.5 Redressal process: Following is the redressal process defined. An aggrieved woman is allowed to request for conciliation in order to settle the matter although monetary settlement should not be made as a basis of conciliation (India Code, n.d.).
- i. On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.
 - ii. The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).
 - iii. The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
 - iv. The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

- v. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
- vi. Other relief to complainant during pendency of inquiry (India Code, n.d.) The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to- restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer; restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman (India Code, n.d.).
- vii. Manner of taking action for sexual harassment :-Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.
- viii. Action for false or malicious complaint or false evidence: Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of Rule 9 (India Code, n.d.).
- ix. Appeal: Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).
- x. Confidentiality: The statute specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005. The statute further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC/LCC and the action taken to the public, press and media in any manner. That said, the statute allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in the identification of the complainant or the witnesses. Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000 (India Code, n.d.).

3. KEY RECOMMENDATIONS:

3.1 Gender -Neutral Law and Protection: The 2010 Economic Times-Synovate survey, 19% of the 527 men surveyed in several metros of the country claimed they had faced sexual harassment. According to the survey, 51% of the 527 men surveyed in several metros of the country claimed that they had faced sexual harassment at work (**Even men aren't safe from sexual harassment at workplace: Survey, 2010**). The Indian Act is currently limited to allegations of sexual assault on an aggrieved woman. There is no clear statutory framework for sexual abuse faced by males and, more specifically, transgender people, who continue to endure harassment in modern workplaces. It should be noted that in India, the Justice Verma Committee, which was formed in 2013 to recommend amendments to sexual assault laws, introduced gender-neutral language for sexual offences. Gender-neutral legislation has been adopted in 77 nations, including Denmark, Australia, Switzerland, the United States, the United Kingdom, etc. Nowadays, with a growing slogan of equality of all genders, amending the POSH Act to make it gender neutral is crucial. To achieve gender inclusion, the term “aggrieved woman” in the POSH Act should be replaced with “aggrieved person”. (**Ray, 2017**).

3.2 Constitution of Internal Complaints Committee: The ICC, by statute, is mandated to consist of at least four members. Nonetheless, if the members of the ICC are limited to four, it will prove to be a possible impediment in cases where opinions of ICC members conflict, due to an equal number of members in the ICC, there is no voting decision. There will simply be a significant number of cases heading into a deadlock. This clause should be re-looked with an odd number of members to organize the Committee: The ICC is required to function as a quasi-judicial

committee, but no qualification for ICC members or legal background for selection is prescribed by current law. Therefore, current provisions contribute to the establishment of a committee that is supposed to act as a quasi-judicial committee, yet without a background in legal education / training, which may result into ineffective and inefficient working of ICC. Global survey by Grant Thornton – Women in business: New perspectives on risk and reward. Only 17 percent of senior roles are held by women in India. The survey of 5,500 businesses in 36 economies further adds that 41 percent of the Indian businesses surveyed have no women in leadership roles, 7 points higher than the last year (Thornton, 2016). There is, therefore, a notable absence of women in Indian workspaces holding senior positions. This has a direct effect on the way the act is applied. This very problem of choosing the presiding officer is the most apparent downside. In addition, the Act delineates that a woman employed at the senior level in an organization must necessarily be the presiding officer. Therefore, since there is no widely agreed metric dependent on which workers can be listed as senior employees, another issue arises. Apart from the Presiding Officer and the External member, each ICC also needs to have at least two members from within the organization who are experienced in social work or have legal knowledge. Although the criteria are not overly stringent and encourage Employers to make decisions reasonably freely, there is a potential for ambiguous instructions to do more harm than good. Thus, the committee qualifications and constitution guidelines should be more tangible for effective implementation.

- 3.3 State to Adopt better mechanism of awareness of Laws (Sangwan & Thakre, 2018) found that majority of respondents were not aware of the Supreme Court's judgment on Vishaka (70.8%). Among those who were aware of the Supreme Court's Judgment, majority of these came to know about it due to academic/professional course (18.8%). This shows that on general level other mediums like Radio/TV, Newspaper/Magazine and Internet were not utilized adequately to spread the word amongst masses on the Supreme Court's guidelines. Even the legal profession is not protected fully when it comes to Sexual Harassment at Work. By adopting Empirical and descriptive research methods to three hundred and forty-seven (347) legal professionals. The results revealed that 57.1% of the total respondents did not think that the SHWWPPRA is significantly enforced, and 71.6% of 204 male and 83.2% of 143 female respondents viewed sexual harassment as a hindrance to the growth of the Indian legal profession (Aina-Pelemo et al., 2020). It is nearly two decades now since the Supreme Court gave its judgment in Vishaka case but still common masses are unaware of it. Thus, State and Central government should adopt creative mechanism to increase awareness on POSH law.
- 3.4 Time limit for Case inquiry to be completed and its governance: The investigation should be completed within a period of 90 days in compliance with the Act (Section 11(4)). However, the Act does not prescribe conditions under which the committee can go beyond this time limit, as realistic scenarios can lead to a committee that takes more than 90 days to complete. Even if conformity is considered (Section 11(4)). The Act does not prescribe a governmental or non-governmental body, i.e. an employer, to monitor the ICC's work to ensure that all cases are completed within the defined time period. It is recommended that the Act be amended to incorporate an adequate governance structure in order to enforce Section 11(4) effectively.
- 3.5 Confidentiality of the case: The act refers to a clause in which 6 copies of the case have to be made, including the name of the complainant and the witnesses. The same thing jeopardises the prosecution in most cases, when the victim and the witnesses are harassed by the defendant, etc. It is therefore suggested that it is important to make adequate amendments to maintain the confidentiality of the case. Because of the lack of protection for witnesses, witnesses are not prepared to come forward to help the women concerned. Therefore, we propose a system of protection to be introduced into the act. In particular, the Act should specify that Section 16, relating to the confidentiality of the case and the prosecution proceedings, extends to all parties to the investigation, including the complainant, the respondent, the witnesses and the representatives of the IC. For the sake of clarification, however, the POSH Act should clearly state that Section 16 does not apply to the claimant or respondent to exercise their rights under Section 18 of the POSH Act, which grants an employee the right to appeal to a court or tribunal if the recommendations made by the ICC do not satisfy them.
- 3.6 Anonymous Complaints: There is no provision in the Act and Rules to answer confidential complaints and, from a strict reading of the Act and the Rules, it appears that the victim herself or any other person she authorises should make a complaint. Employers also find, however, that complaints are made anonymously or that they do not want to be named by the plaintiff. In such situations, the employer can take the view, going strictly by the letter of the law, that there is no obligation to proceed further with the complaint. It is important to bear in mind, however, that the purpose behind the legislation is to provide a sexually harassment-free workplace. On this basis, the concern that arises is whether an ICC should take suo moto action against information it is aware of about sexually harassing conduct. In such cases, it may be prudent to investigate and discourage such behaviour so as to ensure that nothing more untoward happens. In spite of being brought to the employers' notice, ignoring certain types of behaviour, although not strictly through the prescribed processes, may end up in workplaces that are still unsafe. Therefore, the

act must have conditions under which the ICC may take suo-moto cognizance of a sexually abused misconduct even in the absence of a victim as a complainant.

- 3.7 Address the aspect of victimization: In most sexual assault cases, it is a common feature that the employer or the person against whom a complaint is filed retaliates against the complainant by counter-claims, dismissing the complainant's services, creating a hostile work atmosphere, etc. In the Act or the Law, there is no clause that deals with this aspect, making it a tough call for women to approach the process under the Act.
- 3.8 The onus of implementation of the Act is on the Employers, whereas the state should also hold some responsibility for its enforcement.: The current Law places main responsibility on the employer for implementation and leaves the State largely out of the purview of responsibility. There is no set-time frame for the LCC's etc to be notified and no punishment for government officials for failing to do so. The role of the state especially the state government is negligible in terms of ensuring the enforceability of the Act. That said, **(Adetutu Deborah Aina-Pelomo, M. C. Mehanathan, & Pradeep Kulshrestha, 2020)** research found , majority of the respondents (57.1%) do not think the SHWWPPRA is significantly enforced and 42.9% affirm that it is significantly enforced; also many participants (48.1%) agreed that the significant cause is lack of enforcement mechanism.
- 3.9 Conciliation Process and its needs Section 10(1) of the Act regarding the conciliation is contrary to the nature and spirit of the Vishakha Guidelines.
- 3.10 Conflict of interest :The POSH Law should also specify categories, wherein if the relationship of any member of the IC with the complainant or the respondent falls under a list of specified categories, then that member would be ineligible to be part of the IC for that particular complaint of sexual harassment. A suitable list of categories can be drawn for the members of the IC from the Seventh Schedule of the Arbitration and Conciliation Act, 1996, which lists such ineligible relationships. **(Shetty, 2020)**
- 3.11 Tenure of IC members: The POSH Act prescribes a tenure of not more than three years for members of the IC and the presiding officer. However, the POSH Act is silent on the reappointment of the members after a three-year term. Instead, the POSH Act should specifically state that members of the IC and the presiding officer can be reappointed by the employer upon the end of their term **(Shetty, 2020)**.
- 3.12 Appeal: Currently, the POSH Act provides for an appeal to a court or a tribunal. However, considering that sexual harassment is a human rights violation, we suggest that an appeal should be permitted to the State Human Rights Commission in the first instance, then an appeal can be made to the National Human Rights Commission. This revision will also decongest other courts and tribunals. As such, suitable amendments should be made to the POSH Act and the Protection of Human Rights Act, 1993. **(Shetty, 2020)**.
- 3.13 Prevention of misuse of the Act: Instances of people filing false complaints have become common these days. Sometimes, a situation arises wherein people because of sharing a sour relationship with their colleagues files a sexual harassment case which might seem like a person's way of seeking revenge. Thus, it is suggested that there should be a mechanism laid down for identifying false complaints. The misuse of the act must be prevented and those making false complaints too should be penalized.

4. CONCLUSION:

Sexual harassment at work is something that is frequently encountered by most individuals, but not spoken about publicly by many. Typically, this is for fear of losing their work, facing ridicule at the hands of society, being caught up in the never-ending legal trials or for other unspecified reasons. After a thorough report on the Sexual Abuse of Women at Work (Prevention, Prohibition & Redressal) Act 2013, we conclude that lawmakers have undeniably built a very comprehensive system that helps our nation's women to fight for their rights and try to put an end to this threat. It must be remembered, however, that the existing laws are not entirely adequate and have a few gaps that still need to be discussed. The act was created specifically to deal with cases of violence against women, and thus refused to include men in its scope. Appropriate steps to overcome this void must also be institutionalised. In addition, large corporations have taken a variety of steps, but in order to live up to the spirit of the act, most will have to take action. A majority of business institutions are still also in the process of finding out what to do. Therefore, we suggest that the act can bring greater clarification. The Internal Complaints Committee is another significant part of the act. It does, however, have a few vulnerabilities that need to be fixed as quickly as possible to ensure better implementation. There is also an urgent need over time for a better working framework of the said provision to incorporate different relevant suggestions being proposed. Keeping in view, the illiteracy rates and unawareness, campaigns and education must be provided to the general population of India. We would also like to end by noting that with the institutionalisation of this act, sexual assault in the workplace is no longer a taboo and has given the women of the country their key to justice. We are confident that this act would further strengthen the conditions of our society with the implementation of the recommendations proposed over the course of time and ongoing efforts.

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