



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE: FROM VISHAKA TILL DATE

INTRODUCTION

Sexual harassment at workplace is the most glaring example of violation of human rights, gender inequality and injustice. It further leads to violation of fundamental rights provided under the Constitution of India, i.e. the right to gender equality and the right to life and property. Moreover, there exist no arguments that sexual harassment of female at workplace is incompatible with the dignity and honour of women.

To overcome this scenario and provide protection to women against sexual harassment at workplace, *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* was enacted. Sexual harassment against women is violation of fundamental right of a woman to equality as guaranteed under Articles 14 and 15 of the Indian Constitution and also her right to live with dignity under Article 21. Moreover, it is in violation to Article 19(1) (g) i.e. right to practice or to carry out any occupation, trade or business.

VISHAKA'S CASE: SETTING THE PRECEDENT

The “Code of Conduct for Workplace” was laid down in the famous *Vishaka* case of 1997 to enforce the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India. The Supreme Court had to look into the deep-rooted gender inequality in our society in the form of violence against women. The court came forward with the guidelines to stop sexual harassment at workplaces in the case of *Vishaka v. State of Rajasthan*¹, popularly known as *Vishaka guidelines*. They are as follows:-

¹ *Vishaka v. State of Rajasthan* (1997) 6 SCC (Cri) 932

- It was ruled that sexual harassment leads to depravity among victims which was whole violation of fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India.
- The court emphasized on the urge for a set guidelines and defined sexual harassment. It said that any physical touch or conduct, any unpleasant taunt or misbehaviour, making anyone watch pornography and asking for any kind of sexual favours, amounts to sexual harassment of a women.
- Court further said that if any women suffers sexual harassment at workplace then it must be informed, produced and circulated and such act must be dealt in an appropriate manner including criminal proceedings and disciplinary action.
- There must be a robust mechanism in workplaces in order to provide time-bound and effective redressal of such complaints.
- There is need of a complaint committee having a woman as its head and more than half of its members should be women.
- There must be a NGO as a third party in order to prevent any pressure from higher officials at the workplace.

Even after the issuance of these guidelines, women continued to be victim of sexual harassment at workplace. So, this grievance was raised by way of public interest litigation in case of *Medha Kotwal Lele v. Union of India*². In this case, the women workers faced harassment by the way of legal and extralegal methods and they are made to suffer insult and dignity. The Supreme Court took cognizance, as some States were not complying with *Vishaka* directions, and held further guidelines so that the guidelines of *Vishaka* do not remain symbolic. The directions issued in this case are as follows:-

- The court directed those States and Union Territories to carry out adequate and appropriate amendments in their respective Civil Services Conduct Rules as they were not complying with this rule earlier.
- The court also directed to make amendments in the Industrial Employment (Standing Order) Rules within 2 months period.
- There must be adequate number of complaint committees headed by a woman to ensure their functioning at various levels.

² *Medha Kotwal Lele v. Union of India* (2013) 1 SCC 297

- The Vishaka guidelines must be fully implemented and State functionaries as well as private and public organizations or institutions must ensure the same by providing sufficient mechanism.

Hence, the guidelines of *Vishaka's case* and *Medha Kotwal Lele's case* formed the basis and seventeen years after the former case, *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, was enacted by the Parliament of India.

CHALLENGES IN IMPLEMENTATION OF THE GUIDELINES

Despite several proactive initiatives taken by the judiciary, there was little compliance with the guidelines observed in the society. In the case of *Seema Lepcha v. State of Sikkim*³, the Supreme Court reiterated the directions issued in *Medha Kotwal Lele's case*.

It was further held that the State Government must give comprehensive publicity to the notifications and orders every two months which were issued by them in compliance with the Supreme Court's guidelines by way of publications of the same in newspapers which have maximum circulation. On local doordarshan, wide publicity must be given every month. Further, Social Welfare Department and the State Legal Services Authority must give wide publicity to notifications and orders issued by the State Government both for government as well as private departments.

In *Aureliano Fernandes v. State of Goa and Others*⁴, it was observed by the Supreme Court that even after the decades of the enactment of the Act, there is still inadequate implementation and enforcement of the same. The court directed to set up an internal committee having 10 or more workers to look into the complaints of sexual harassment.

In present circumstance, globalization has ignited a transformative change in the global status of women as they are more active in mainstream workplace. Due to this, huge rise in cases of sexual harassment at workplace is observed.

On November 6, 2023, the Supreme Court in *Union of India and Others v. Dilip Paul*⁵, held emphasized on the court not being swayed by the minor discrepancies or excessive technical procedural matters. The three Judges bench led by Chief Justice D. Y. Chandrachud, Justice JB Pardiwala and Justice Manoj Misra gives importance on assessing the effect of any

³ *Seema Lepcha v. State of Sikkim* (2013) 11 SCC 641

⁴ Civil Appeal No. 2482 of 2014

⁵ Civil Appeal No. 6190 of 2023

procedural irregularities within broader context of irregularity which provide overall fairness in the procedure of case.

CONCLUSION

When the current scenario is observed, it is quite evident that despite several efforts, only little compliance is observed. The authorities need to make sure that the established guidelines must be strictly obeyed and at the grassroot level, it is only possible by focusing on awareness program. The authorities must make sure to provide stable environment at the workplaces so that more women come forward to mainstream.

Further, it also needs to be ensured that there lies a proper mechanism to deal with the complaints of sexual harassment at workplaces and women are not under any kind of fear when they come forward with any such complaints. Hence, the Central and State authorities must efficiently and effectively work for the implementation of the established guidelines.