

**LAW RELATING TO SEXUAL HARASSMENT AT
WORK (2015) by Alok Bhasin, Eastern Book Company,
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Women for a very long time were forced to keep themselves away from the mainstream workforce by putting forward several reasons and excuses by the society. They had limited access to the opportunities to prove their skills and capabilities which men have been accessing and harnessing for long. For a very long time, the role of women was constrained to that of a homemaker and they were always considered ineligible to be a part of the employment sector because of their gender. However, after globalization we find a drastic change in the status of women throughout the world where both men as well as women being employed are contributing to the economy of the world. With mass scale involvement of women in the mainstream workforce, sexual harassment of women at workplace has assumed greater dimensions. Sexual harassment of women at workplace is a form of gender discrimination violating a woman's fundamental rights which creates a sense of insecurity. An unhealthy working environment for women also creates a barrier to showcase their ability to deliver in today's competing world. Such harassment directly affects their skill and performance of work and in turn adversely affects the victim by putting them into physical and emotional suffering. Such type of degrading activities at workplace by the male counterpart is not only harmful to the victim but also affects the economic and social growth of the nation. In India women were also subject to sexual harassment at their workplace for a long span. It was only after the case of *Vishaka v. State of Rajasthan*² where a dalit woman named Bhanwari Devi was gang raped by a group of influential people in Rajasthan when she was employed in a development programme of the Government of Rajasthan and was making efforts to curb the then prevalent practice of child marriage. This case acted as a siren with the urgency and need of formal guidelines and

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² AIR 1997 SC 3011

legislation was felt after this case was reported. In this the Supreme Court laid down certain guidelines to be followed by the employees when any woman employee is faced with or subjected to sexual harassment at workplace which was later turned into legislation in the year 2013.

The book under review is *Law Relating to Sexual to Sexual Harassment at Work* authored by Advocate Alok Bhasin where this edition was published in the year 2015 by Eastern Book Company, Lucknow. This book is primarily divided into four parts describing in details each and every section covered by a heading followed by subheading, parts and subparts. The chapters include PART I which describes descriptively about activities that constitute sexual harassment under the heading “What is Sexual Harassment?” and PART II contains the details of the need to stop sexual harassment and the effects of workplace abuse under the heading “Why Sexual Harassment Needs to be Combated”. PART III puts forwards various means to minimize, prevent and stop such degrading activities that constitute sexual harassment at workplace under the heading “Combating Sexual Harassment at Work”. PART IV contains in details the redressal mechanism available to the victim under the national forum which is mentioned under the heading of “Liability and Remedies”. This book has two annexure at the end whereby the first one, ANNEXURE I contains the act on existing legislation on workplace harassment in India namely Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 and ANNEXURE II containing the rules available in India to deal with the subjected issue namely Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Rules, 2013.

PART I under the main heading “What is Sexual Harassment?” is divided into five chapters. In first chapter named “Quid Pro Quo” and “Hostile Environment” the manner in which a woman is sexually harassed at workplace is divided into two distinct forms. Quid Pro Quo is described as a condition at workplace where is woman is forced or threatened to return some sexual favour to someone at workplace who shall provide her some appraisal, benefit or promotion. On the other hand, Hostile Environment is described as some unwanted or unacceptable sexual behaviour faced by a woman at workplace which adversely affects her performance resulting is her degradation. This distinction is well described by the author. However, the means to determine what exact types of sexually harassing behaviour falls under which form is not

specified properly by the author is this chapter. The second chapter titled “Defining Sexual Harassment” covers in details the different types of definition put forward by the United Nations and its agencies mainly ILO (International Labour Organisation). This chapter focuses in details the prevalent debate about the origination of recognition of workplace sexual harassment. Here the author puts forward that malicious practice of sexual harassment existing since long but different terms are used in different countries to describe the act. The definition put forward by United States, United Kingdom, Canada, Australia and other countries are discussed in details. Also the definition and concept put forward by the Supreme Court of India after the *Vishaka Case* (1997) is also explained descriptively in this chapter. This chapter is sufficient to create a detailed idea about when and how the concept of sexual harassment of women at workplace emerged. Chapter three titled “Legal Test for Sexual Harassment” describes what types of behaviour at workplace constitutes sexual harassment at workplace. To understand the intensity of such activities, the author has made use of the term “welcome” and “unwelcome”. He has mentioned that whenever certain sect of activities at workplace makes a woman uncomfortable and such activity under normal circumstance is unwelcomed then such activities are considered to be sexually harassing to the woman. It is extremely tough to determine how and when to draw a line between welcome and unwelcome behaviour faced by woman at workplace especially if the woman doesn’t report the case or decides to remain silent on it. The author here has described and differentiated between welcome and unwelcome behaviour under several situations with relevant instance, illustrations and cases of many other countries. The author through different types of cases tried to put up and explain some procedure and process by which the intensity and nature of sexually harassing behaviour faced by a woman at her workplace is determined. The following chapter is “Sexual Harassment: A Species of Sex Determination”. This chapter begins with the fact that workplace sexual harassment is violation of the human rights and infringement of right to life and liberty. The different types of international instruments, conventions and declarations which are trying to prevent and minimize these forms of violence on woman are discussed in details. The provisions provided in Indian Constitution to protect women against such discriminatory treatment meted out against women is placed and

also discussed. Here the author has mentioned about *Janzen Case*³ of the Manitoba Court whereby it was held that sexual harassment is a form of sex discrimination. The author here puts forward several points and grounds explaining that sexual identification is not the sole reason of sexual harassment. The case of *Brooks v. Canada Safeway Ltd.*⁴ is also mentioned by the author whereby it was held that women should not be discriminated by the employer on grounds of sex. The author in this chapter also brought to the notice of the readers the same sex discrimination and mentions the case of *Oncale*⁵ which was decided in favour of the victim by the US Supreme Court and this case acted as a precedent for similar types of cases. Different aspects of homophobic harassment and legislations available in different countries to curb such acts are a relevant portion of this chapter. Chapter five is “Reasonable Perception: Reasonable “Person” or Reasonable “Victim”?” whereby the objective and subjective parameter of this issue is put forward by the author referring to the observation of Justice J S Verma Committee on Sexual Harassment Act. Here the procedure for dealing with hypersensitive complaint is discussed by taking into account the intensity of the complaint and act. In this chapter jurisdictions and legislations of other countries is placed to clarify the facts to the readers.

Part two is comparatively a shorter portion comprising of four chapters under the main heading “Why Sexual Harassment Needs to be Combated?”. This part begins with an introduction followed with four chapters where chapter one is “A Serious and Real Problem”, chapter two is “Most Vulnerable”, chapter three is “Violation of Dignity and Human Rights” and chapter four is “Fall Out”. In brief the chapters mainly describe that workplace abuse and harassment faced by a woman needs to be combated as its impact is intense and under certain condition it can even ruin the personal and professional life of a woman. It is the violation of basic human rights which degrades the dignity of a woman leaving a permanent scar in her life.

Part three “Combating Sexual Harassment at Work” is divided into two subparts namely “A” and “B”. Subpart A is “Preventive and Procedural Action” comprising of an introduction along with three chapters and subpart B is

³ (1989), 10 C.H.R.R. D/6205 (S.C.C.)

⁴ [1989] 1 S.C.R. 1219

⁵ 523 U.S. 75 (1998)

“Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” comprising of an introduction followed by eight chapters.

Under Part A, the first chapter after the introduction is “Preventive and Procedural Action by Employers”. In this chapter the author refers to the guidelines provided by the Supreme Court after the *Vishaka Case*. As per the guidelines the employer is allotted with the main duty of constituting the Internal Complaints Committee with the requisite number of members for dealing with the cases of sexual harassment of women in her workplace. In addition to this the author puts forward few international instruments and legislations in support of his point. He referred to the European Commission Recommendation and Code of Practice whereby sexual harassment had been considered as a grave problem faced by several working women. Under this report sexual harassment was accepted as a form of sex discrimination and was included under Equal Treatment Directive. Here a new directive was set out towards the employer to establish such working environment where women can work freely without the risk of sexual harassment. Then the author refers to a very popular US Labour law case of US Supreme Court namely *Meritor Savings Bank v. Vinson*⁶ popularly known as Vinson case whereby sexual harassment for the first time was considered as an illegal form of workplace discrimination. The court recognized sexual harassment at workplace as “actionable”. The Court also held that hostile working environment creates a form of sex discrimination under Title VII of the Civil Rights Act of 1964 and the employer cannot be excused from all liabilities only with the mere existence of the procedural framework and policies as prescribed but no effort on the part of the employer to initiate a complaint or thoroughly look into a complaint filed by the victim. The author in this chapter refers to several national case laws like the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India & Anr* (2008), the Delhi High Court widely interpreted the term “workplace” in its general context and held that it includes any place where employees work, and where active work (whether temporary or permanent) is being conducted in connection with the employment. Again in the case of *G V Vishwanth*, 2005 the Karnataka High Court held that a fresh enquiry is not mandatory when enquiry officer is changed. This part includes many other relevant cases which help to

⁶ 477 U.S. 57 (1986)

understand the duty of the employer in dealing with such cases. The case of *Medha Kotawal Lele*⁷ (2013) is also referred to here after which for the first time it was brought to the notice of court that the employers have a casual attitude towards dealing with cases of sexual harassment at workplace. The employers do not comply with guidelines specified in the Vishaka Case and so even with the existence of formal guidelines women are still suffering and victims of workplace harassment. It was placed before the court that though an enquiry was conducted by the complaints committee as required but after enquiry the matters started being dealt with as a disciplinary misconduct according to the existing service rules or labour laws. The Supreme Court after this directed the State Governments to file affidavits to emphasize on the steps taken by them to implement the Vishaka Guidelines. The second chapter “Sexual Harassment of Students” is a very important chapter whereby the author wants to sensitize the readers about the sexual harassment faced by student in different tiers of education and what are the legal protections available to them under the present legislation. Several types of harassments faced by students like that of ragging, torture and bullying are also discussed in this chapter. Several case laws have been referred to by the author that shows certain judgments and rulings can be treated as precedent to deal with the issue. The third chapter under this subpart is “Role of Employees, Trade Unions and Collective Bargaining”. In this chapter the functional role that is to be played by other employees and trade Unions are described in details and several international instruments are also referred.

Part B of the third part has eight chapters apart from the introduction. This part mainly describes each and every procedure and component of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” commonly known as the POSH Act. The first chapter under part B is “Preliminary” which consists of different kinds of definitions explained supported by several relevant case laws like that of *Mohd. Azizur Rahman* (2013) whereby the Delhi High Court held that any textual messages received from anyone at workplace with degrading gestures and words also amount to sexual harassment. The author recommends that the sexual harassment can be tested on the basis of the committee’s report on change or amendments in

⁷ [2012] INSC 643

criminal laws. This part analyses aggrieved woman, nature of sexual harassment, what activities can amount to sexual harassment, definition of workplace under a broader ambit and other relevant areas connected. Chapter two is “Constitution of Internal Complaints Committee” and chapter three is “Constitution of Local Complaints Committee”. These two chapters contain elaborate description of the constitution of the Complaints Committee as prescribed by the Section 4 to Section 8 of the POSH Act, 2013. Chapter four named “Complaint” deals with complaint that is to be made by the aggrieved woman in written form within three months from the date of happening of the act. This section is criticized by the author because a written complaint that too within three months is a major loophole in the legislation as it can restrain several victims from coming forward and getting remedy after the expiry of three months. To support his statement he has referred to the case of *VK Matta* (2011) whereby the Delhi High Court held that any complaint of workplace sexual abuse by any person with no name or designation supported with facts and evidences can be admitted by the Court. Here the author also mentions about hearsay evidence which needs primary evidence to be prove the act. Chapter five “Inquiry into Complaint” speaks of the procedure to be followed and the relief to be provided during pendency of inquiry. This part is a vast portion dealing in details about the functions of the Complaint Committee, details about the manner in which inquiry to be conducted and about the actions to be taken whether disciplinary action or compensation post enquiry is placed by the author with relevant case laws. The publishing of the facts of any case or its inquiry is also punishable and this is discussed in the last portion of this chapter. Chapter six and chapter seven namely “Duties of Employer” and “Duties and Power of District Officer” are two small chapters mainly dealing with sections 19 and 20 of the POSH Act, 2013. This huge portion ends with chapter eight that is “Miscellaneous” where the duty of the employer for submission of the annual report under Rule 14 and penalty for non compliance of the provisions of the Act is laid out.

Part four namely “Liability and Remedies” is the last part of this book. It consists of five chapters apart from the introduction. These portions consist of various kinds of procedural and substantive laws available in India. The first chapter is the “Constitution of India” dealing with the different types of fundamental rights available to a woman who is sexually harassed at her

workplace supported by different case laws. The second chapter is “Criminal Law” which includes all the penal provisions available in India. The third chapter is “National Commission for Women, 1990 and Protection of Human Rights Act, 1993” which deals with these legislations specifically. The fourth and fifth chapters are “Torts” and “Vicarious Liability of Employer for Sexual Torts of Employees”. This part consists of several types of liabilities of the employer towards such incidents of workplace sexual harassment. This section is supported by several types of foreign legislations, judgments and Indian case laws. With this the book comes to end.

The book is followed by two annexures namely ANNEXURE I namely Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 and ANNEXURE II containing the rules to deal with the subjected issue namely Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Rules, 2013.

The book as a whole is informative and covers almost all the aspects of law relating to sexual harassment of women in India supported by different types of national as well as international case laws. But the book is extremely lengthy in comparison to the information provided in it with several flaws in the footnoting style and also high priced as compared to the other similar books available in the market. The title of the book is “Law Relating to Sexual Harassment at Work” so if the word “work” is to be taken into consideration so it should have covered all sectors of employment. But this book does not cover or mention cases or the redressal mechanisms available to Indian women who work in unorganised sectors or as freelancers though majority of women are employed in such kinds of employment.