

COMMITTEE FOR MANAGING GENDER ISSUES

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EVOLUTION OF THE SEXUAL HARASSMENT LAWS IN INDIA

[TW: SEXUAL ASSAULT, SEXUAL HARASSMENT, RAPE, GENDER-BASED VIOLENCE]

"Each time a woman stands for herself, without knowing it possibly, without claiming it, she stands for all women"

- Maya Angelou (2007)

"My victory belongs to everyone who spoke up during #metoo movement...I feel vindicated on behalf of all the women who have ever spoken out against sexual harassment"

- Priya Ramani (2021)

The nation heaved a huge sigh of relief on the acquittal of Priya Ramani in a case of defamation filed against her by the former Union Minister M J Akbar, allegedly a sexual predator according to at least sixteen women who have come out with posts of #MeToo on him, a couple of years ago when the movement was gaining prominence in the country. What is more cause for celebration is the landmark judgement, as regarded by many, delivered by J. Ravindra Kumar Pandey which not only comes as a ray of hope to all the women who can now muster courage to speak up against their abusers but also as a further evolution of the jurisprudential understanding of sexual harassment. When Priya Ramani and Chazala Wahab had to go through those horrifying experiences back in 1993-1994, there was no recourse to law, no act against sexual harassment, no guidelines protecting women in workplaces. What we have today as the Vishaka guidelines (1997) or the POSH act (2013) are a result of a long struggle, all highlighted through and because of such landmark cases and judgements.

It becomes pertinent here to trace the legal discourse of sexual harassment at workplace in India and how it has evolved over the years. Before the Vishaka guidelines were issued in 1997, there were hardly any statutory remedies that directly addressed sexual harassment at workplace except for the Indian Penal Code (IPC), 1860 and one could file a complaint against sexual harassment only under two sections of the IPC, 1860:

- section 354 (outraging the modesty of a woman)
- section 509 (insulting the modesty of a woman)

This left most women at the mercy of the police officers who were notoriously known to not register such complaints with no mechanism in place to hold them accountable.

EVOLUTION OF SEXUAL HARASSMENT LAWS



1979 - THE MATHURA CASE OR TUKA RAM AND ANOTHER V. STATE OF MAHARASHTRA

Amendment of the criminal law act (1983) which shifted the burden of proof from the victim to the offender, banned publication of the victim's identity and stated that the court will presume so what the victim says about consent.

1997 - VISHAKA V. STATE OF RAJASTHAN

Vishaka guidelines under Article 32 of the Constitution defining sexual harassment; recognised workplace sexual harassment as a violation of human rights and of a woman's fundamental rights of gender equality and right to life and liberty guaranteed under Articles 14, 15, 19 and 21 of the Indian constitution.



LEADING CASE LAW

Apparel Export
Promotion Council
vs
A.K. Chopra
(20 January, 1999)
Bench: V.N. Khare

1999 - APPAREL EXPORT PROMOTION COUNCIL V. A.K CHOPRA

Enlarged the definition of sexual harassment by ruling that "physical contact is not always essential for an act amounting to workplace sexual harassment."

2013 - POSH ACT

Discussed various instances of sexual harassment, who an aggrieved woman is, what constitutes a workplace, who an employee is, the constitution and composition of an Internal Complaints Committee (ICC), the complaint mechanisms, redressal process, punishments and compensation, confidentiality, consequences of non-compliance employer's duties and obligations, reporting, and so on in a very detailed manner.



WE WON!



2021 - PRIYA RAMANI V. M J AKBAR

Use of other media to speak up, speaking on public platforms as form of self-defence, and the right to speak even years after the incident.

The Supreme Court's judgement in the infamous **Tuka Ram and another vs State of Maharashtra (1979)**, also known as the Mathura case (1972) wherein the two policemen accused of rape and sexual harassment were acquitted on the grounds that the girl, Mathura, was habituated to sexual intercourse and that there were no signs of injury, hence proving only sexual intercourse and not rape. This judgement led to massive public resentment wherein four professors from University of Delhi had written open letters to the chief justice of India and women's rights organisations, forums and collectives had taken to the roads, all of which led to the amendment of the Criminal Law Act (1983). The amendment shifted the burden of proof from the victim to the offender, banned publication of the victim's identity and made a provision which stated that if the victim says she did not consent to the sexual intercourse, the court shall presume so. Though around the time, these amendments proved to be turning points in the discourses of consent and sexual harassment, the implementation was still a question.

In 1992, **Bhanwari Devi**, a Dalit woman employed in the Rural Development Programme of the Government of Rajasthan to curb the then prevalent practice of child marriage, was gang raped in front of her husband by the upper castes in her village after she attempted to prevent a child marriage in their family as per her duties. The trial court acquitted the accused on the pretext that there was not enough evidence to prove rape and that the upper caste men would not have even touched her, a woman belonging to a lower caste. The Rajasthan High Court held the same decision which led to various women's rights groups and organisations vehemently opposing the decision and requesting an appeal against the decision.

Under the banner of Vishaka, a women's rights group, a public interest litigation (PIL) was filed in the Supreme Court of India calling attention to the incidents of sexual harassment at workplaces in India. It struck a responsive chord with the nation and many other groups, collectives, organisations and unions joined the movement revealing the role of power structures in gender based violence and the hazards working women face in the workplace.

The gap in the law and the need for additional reforms was further strengthened by the case of **Rupan Deol Bajaj vs K.P.S. Gill (1995)**, where Rupan, a senior IAS officer in Chandigarh, was sexually harassed by Gill, Director General of Police, Punjab and the recourse to the limited provisions of the IPC under Section 354 and Section 509 were not found sufficient by the High Court then. The **Vishaka vs State of Rajasthan (1997)**, case finally addressed workplace sexual harassment, its prevention, and redressal mechanisms where the Supreme Court, for the first time, acknowledged the lack of an adequate legal definition of sexual harassment and recognised workplace sexual harassment as a human rights violation, a violation of a woman's fundamental rights of gender equality and right to life and liberty guaranteed under Articles 14, 15, 19 and 21 of the Indian constitution. This resulted in the framing of the **Vishaka guidelines** by the Supreme Court under Article 32 of the Constitution which were largely drawn from the Convention on Elimination of All Forms of Discrimination against Women (1979) adopted by the United Nations which India has both signed and ratified. The Supreme Court further issued directions to the Union of India for a legislative framework to combat sexual harassment at workplace until which the guidelines would have the effect of law and would have to be mandatorily followed by all organisations/institutions and are applicable to all employers to prohibit, prevent and redress sexual harassment of women at the workplace.

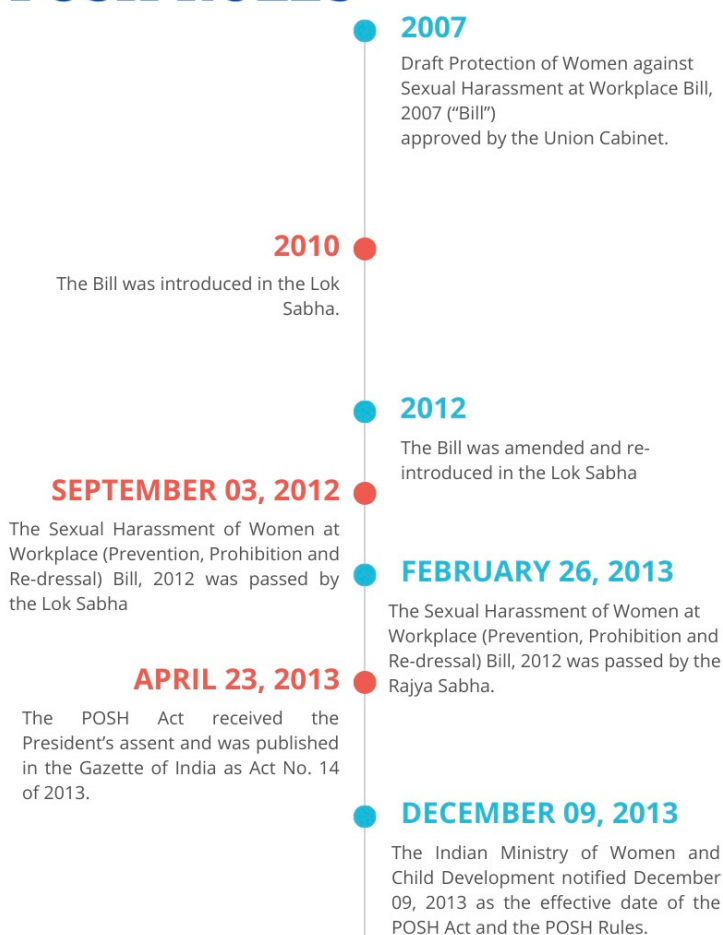
The basis of all legislation pertaining to sexual harassment in India and triggering a national consciousness on an issue that was until then swept under the rug, the Vishaka guidelines provided the first authoritative definition of sexual harassment in India which includes both unwelcome sexual advances and quid pro quo sexual harassment.

After the Vishaka judgement came two very significant cases, the judgements of which further consolidated the legal framework of workplace sexual harassment. In the case of **Apparel Export Promotion Council vs A.K Chopra (1999)**, the Supreme Court upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council on grounds of sexually harassing a subordinate female employee at workplace, ruling that "physical contact is not always essential for an act amounting to workplace sexual harassment", thus enlarging the definition of sexual harassment. Many years later, in the **Medha Kotwal Lele & Ors v. Union of India & Ors (2013)**, case, the Supreme Court not only took cognisance of the ineffective implementation of the guidelines and directed all state governments to follow and ensure the effective implementation of the Vishaka guidelines, but also further asserted that in a case of non-compliance of the guidelines, the concerned persons could approach the High Courts. The same year, the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH)** came into force superseding the Vishaka guidelines.

The act discusses various instances of sexual harassment, is applicable to only women and in both organised and unorganised sectors. The court acknowledges the subjective nature of

LEGISLATIVE TIMELINE OF

POST ACT & POSH RULES



sexual harassment and holds that a woman's perception of a threat of violence or assault, of unwelcome behaviour and remarks shall be considered. The act also details out on who an aggrieved woman is, what constitutes a workplace, who an employee is, the constitution and composition of an Internal Complaints Committee (ICC), the compliant mechanisms, redressal process, punishments and compensation, confidentiality, consequences of non-compliance employer's duties and obligations, reporting, and so on in a very detailed manner. Though this act came as a saviour to so many working women, especially in the formal sector, the effective implementation of it considering the power structures in place and the systematic gender-based discrimination that is institutionalised in our society, it may take many more years of struggle for the act to be truly utilised by all sections and communities of women and other marginalised genders and sexualities.

Another case that has further crystallised the jurisprudential understanding of sexual harassment and rape was the ***Mukesh and Anr. vs State for NCT of Delhi & Ors. (2012)***, also known as the Delhi gang rape case resulted in multiple legal amendments of which the following are under spotlight: to include acts of stalking and voyeurism as amounting to sexual harassment, reformulating the punishments of offences related to sexual harassment and rape, statements and information given by women against whom the offence is committed to be recorded only by a woman (police) officer and that the character of the victim or her previous sexual experience shall not be relevant in the context of consent.

Despite the institutional mechanisms accorded by law, the recourse to and implementation remains a question as made very evident by the rising #MeToo movement in the country. Millions of women took to social media to speak up against their abusers, especially at the workplace and how the institutional mechanisms in place, coloured with gender bias and power structures, have failed countless women. Priya Raman was one such woman and the recent judgement in favour of her displays cognisance by the court of the systemic gender abuse, the stigma and shame attached to abuse, the absence/failure of redressal mechanisms in place resulting in women resorting to various other mediums to speak up as a form of self-defence, the right to speak up against their abuser even decades after the incident, and so on.

Thanks to all of the above discussed landmark judgements which will hopefully serve to deter (powerful) men from exploiting women at workplaces, there has been considerable evolution of our understanding on gender-based violence leading to the crystallisation of the legal discourse on consent and sexual harassment. However, there seems to be a substantial gap in how accessible these laws and mechanisms are to all sections and communities of the society. The jurisprudence is yet to acknowledge other genders and sexual minorities to be safeguarded and protected against harassment, abuse and assault. The progressive judgements validated with regressive vocabulary and references to oppressive mythological texts are also met with a critical gaze from women's rights activists and scholars alike. While we have come quite far, we can only hope to move ahead in ensuring workplaces free of sexual harassment for every woman, every transperson.