



PREVENTION OF SEXUAL HARASSMENT AND FORMING OF INTERNAL COMPLIANCE COMMITTEE IN EDUCATIONAL INSTITUTIONS AND WORKPLACES

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ABSTRACT

Sexual harassment is a serious problem and it has been one of the central concerns of the women movement in India for the long time at Colleges, homes, public spaces and workplaces. A large number of women faces sexual harassment at workplace but do not report it to avoid social stigma. The landmark Judgment given by the Supreme Court of India, during the year 1997 for Vishaka and others Vs. State of Rajasthan laid down the guidelines making it mandatory for every employer to provide to form Internal Complaint Committee in educational institutions and workplace to prevent sexual harassment and enforce the right to gender equality. Indian Parliament enacted its law on prevention of sexual harassment against female employees at the workplace. The Act, The Sexual harassment of Women at Workplace and Colleges and Universities (Prevention, Prohibition and Redressal) Act, 2013 (Sexual Harassment Act) has been made effect on April 23, 2013 by way of publication in the Gazette of India. The purpose of this paper to bring out the procedure to deal with sexual harassment and to preventive steps for sexual harassment, what can be termed as sexual harassment and forming of Internal Complaint Committee, etc..

I. Introduction

At the workplace and educational institutions, women and children are victims of sexual harassment – a trend that is increasing every year⁽¹⁾. National Crime Records Bureau (NCRB) data states that between 2014 and 2015 the number of Sexual harassment incidents at workplaces more than doubled from 57 to 119⁽¹⁾. There was a 51 per cent rise in such cases at other work-related places from 469 in 2014 to 714 in 2015.

A recent survey conducted by the Indian National Bar Association, and reported that 68% of the victims of sexual harassment at workplace did not report to the management about the incident, due to fear of retaliation and discrimination⁽²⁾. The survey, carried out over a period of seven months from April to October, 2016 a period of 7 months and covered 6,047 people, of which 78 per cent were females, working in sectors such as BPOs, IT, education, legal and hospital. People from various fields were interviewed in Mumbai, Delhi, Bangalore, Pune, Assam, Jalandar, Kolkata, Ahmedabad, Hyderabad and Lucknow. The survey further revealed that the national Capital (New Delhi) has become the most unpleasant city for female workers, followed by Mumbai and Bangalore⁽²⁾.

The survey has revealed that most of the women victims dealt the sexual harassment case on their own instead of giving a formal complaint with the management. Fear, embarrassment, lack of faith in the redressal mechanism, unawareness were some of the reasons cited for not reporting to the management. The survey revealed that the nature of the sexual harassment involved in workplace is inappropriate comments, touching and physical harassment. What's shocking was around 65 percent of the respondents' answer was no when asked did the company follow the process prescribed under the Sexual Harassment of Women at



Workplace (Prevention, Prohibition and Redressal) Act, 2013.

In fact, 66.7 percent of the victims felt that the internal committees did not deal with the complaint fairly. The survey also stated that 50 percent of the victims left the organisation after the case was closed. Around 42.2 percent of the victims who reported sexual harassment said that during the period of inquiry they were not treated fairly by their peers and colleagues. The survey stated despite provisions under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, 56.7 percent of the respondents said that the members of the internal committee did not have proper knowledge of the process that needs to be followed ⁽²⁾.

II. The Inglorious Case

1. KPS Gill (1988): KPS Gill ^(3,4) was an Indian Police Officer and he served twice as Director General of Police (DGP) for the state of Punjab, India. During his period he brought the Punjab insurgency under control. He is the man who finished Khalistani terrorism in Punjab. Mr. Gill, who was the DGP, Punjab, had misbehaved with IAS officer Mrs. Rupan Deol Bajaj at a party. In 1988 an IAS officer Rupan Deol Bajaj complained against the former Punjab director general of police, KPS Gill, for sexual harassment by touching her inappropriately at a party. She was the first woman to take a case of sexual harassment to the court in India and won in that case. The miserable case is Ranjit Bajaj ⁽⁵⁾ son of high-profile bureaucrat parents, father B R Bajaj and mother Rupan Deol Bajaj, has seen as many as eight cases, including drug abuse for kidnapping, vehicle lifting and assaults, slapped on him since 1996. In the last 14 years, Ranjit's reputation has been marred by recurring incidents that have portrayed him as a spoilt brat of the IAS couple.

2. Phaneesh Murthy (2002): One of India's best known software executives and a rising IT star Phaneesh Murthy ^(1,3) was fired from his position at Infosys after a lawsuit was filed by his former executive secretary Reka Maximovitch, followed by another complaint of similar nature by Jennifer Griffith. A multi-million dollar out of court settlement was made, although Murthy continuously opposed all accusations. In 2013, Murthy was terminated from his position as President and CEO of iGate following an investigation into his unreported relationship with a subordinate as well as a complaint of sexual harassment.

3. Gopal Kanda (2012): Geetika Sharma was found dead on August 5th 2012 in her residence at Ashok Vihar in northwest Delhi. In her suicide note, she blamed the former Haryana Home Minister Gopal Kanda and Chaddah, a charge denied by them. The Delhi court framed charges of abetment of suicide and conspiracy against former Haryana Home Minister Gopal Kanda and paved the way for his trial in a 23 years – old airhostess Geetika Sharma suicide case.

4. David Davidar (2010): The Indian-born author was sacked as President of Penguin Canada David Davidar in 2010 following allegations by another firm employee, Lisa Rundle, that Davidar sexually harassed her for three years, assaulting her in 2009 during the Frankfurt Book Fair.

5. Shiamak Davar: The Bolly wood choreographer Shiamak Davar ⁽¹⁾ has been sued for sexually assaulting two dancers in Canada. Percy Shroff (40) and Jimmy Mistry (33), both residents of North Vancouver in Canada told the police that they suffered years of sexual abuse by Davar. The two men accused Davar of "controlling" them through a spiritual organisation and "grooming" them into "sexual submission".

6. Asok Kumar Ganguly (2013): A K Ganguly ^(3,4) a former Supreme Court judge stepped down as head of the West Bengal human rights commission in 2014 after a law intern accused him of sexual harassment and inappropriate advances towards Additional Solicitor General Indira Jaising at a hotel room. A committee of three Supreme Court judges to look into the matter for the facts amidst the media hype. The panel found true the allegations of "unwelcome behaviour" and "conduct of sexual nature", leading to his resignation and stepping down as the head of the West Bengal Human Rights commission in 2014.

7. Tarun Tejpal (2013): The former Tehelka chief was accused of sexual assaulted and raped the former colleague in the elevator of a five-star resort in November 2013 at north Goa, while Tehelka magazine was



hosting its annual international event. The case grabbed international headlines after allegations that staffers at Tehelka had tried to bury the complaint. This was perhaps one of the most discussed and, well, popular cases that caused waves across the country purely due to the status of the person accused. Tarun Tejpal^(1,3), Editor-in-Chief of Tehelka magazine stepped down from his position when he was accused by a young female colleague of sexual assault.

8. RK Pachauri (2015): Former Director General of The Energy and Resources Institute (TERI), RK Pachauri^(1,3) was accused by multiple female employees of sexual harassment, ending a three-decade long career leading the climate think-tank. On February, 2015, a 29-year-old research analyst filed an FIR against Pachauri for sexual harassment and criminal intimidation, that began in 2013 and the 33-page-long complaint held examples in the form of physical advances made by Pachauri, inappropriate and lewd Whatsapp messages and emails. A week after the first complaint was filed, another woman spoke up with similar allegations. While Pachauri alleged that his computer and phone were hacked, TERI's ICC found him guilty of harassment.

9. Sexual Harassment by SRFTI Professor: A freelance writer Kunjila Mascillamani⁽⁶⁾ filed a complaint against sexual harassment while she was a student during 2015 at the Satyajit Ray Film and Television Institute (SRFTI) in Kolkata. The freelance writer Mascillamani had filed two cases—one for harassment and another for rape. During the hearings on her case, Mascillamani said she was blamed for the incident. "All the faculty members and the administration had turned against her and she was slut-shamed on social media. At this juncture, she approached an NGO to appoint an external member to oversee the procedure and ensure a fair trial. The verdict on harassment was passed in July 2016 and the professors who harassed her were asked to take retirement. The rape case is still pending in court.

III. Vishaka Guidelines: Judge-made Law

Bhanwari Devi^(7,9) was a social worker from a small Rajasthan village located 55 km from the state capital, Jaipur. Bhanwari Devi was brutally gang raped in September 1992 in response to her social activity to try to stop the child marriage. Prompted by the injustice of the incident several women's group filed the Vishaka and others case as a Public Interest Litigation. The Supreme Court of India passed a landmark judgment in 1997 for the same Vishaka case laying down guidelines to be followed by educational institutions and workplaces in dealing with complaints about sexual harassment. **Vishaka Guidelines**⁽¹¹⁻¹³⁾ were stipulated by Justice J.S. Verma which led the legislatures to enact a new law known as Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 in order to guarantee protection to all women from sexual harassment at educational institutions and workplaces..

The **Vishaka Guidelines** were a set of procedural guidelines for use in India in cases of sexual harassment. The Supreme Court had held that sexual harassment of women at work-place is against the dignity of women and violates Articles 14, 15(1), 19(l)(g) and 21 of the Constitution of India⁽¹⁴⁾. Sexual harassment is a violation of "Fundamental Rights" under Articles 14, 15, and 21 of the Constitution of India⁽¹⁴⁾, and amounts to a violation of the "Right to Freedom" under Article 19 (1)(g). The Supreme Court further reiterated that sexual harassment "is a violation of the fundamental right to gender equality and the right to life and liberty".

IV. What is Sexual Harassment in Colleges / Universities and Workplaces?

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as^(7,10):

- 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 sexual nature

**V. Complaints Mechanism:**

All workplaces/colleges should have an appropriate complaints mechanism with a complaints committee with a special counsellor or other support services. A woman must head the complaints committee and more than 50 percentage of the members should be women. The committee should include an NGO who is familiar with the issue of sexual harassment. The complaints procedure must be time-bound. Confidentiality must be maintained.

VI. Preventive Steps in Educational Institution

Sexual harassment should be affirmatively discussed at workers' meetings, employer-employee meetings, etc. Guidelines should be prominently displayed to create awareness about the rights of female employees. The employer should assist persons affected in cases of sexual harassment by outsiders. Central and state governments must take necessary steps and adopt measures to ensure that private employers also observe the Vishaka guidelines. Names and contact numbers of members of the complaints committee must be prominently displayed in their notice board.

VII. Employers' Responsibility

Recognise sexual harassment as a serious offence. Recognise the responsibility of the college / university /workplace to prevent and deal with sexual harassment at the workplace. Recognise the liability of the college or university. etc, for sexual harassment by the employees or management. Employers are not necessarily insulated from that liability because they were not aware of sexual harassment by staff.

VIII. College Internal Complaint Committee (ICC) Against Sexual Harassment:

According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013^(6,7-13) each and every private or public organization which has more than 10 employees, the forming of an internal complaints committee (ICC) is mandatory. The University / College should frame the I.C.C. to deal with sexual harassment case against the students and female staff members. Most of the Colleges and Universities have framed the Internal Complaint Committee to deal with the complaint of Sexual Harassment in accordance with the guidelines laid down by the Supreme Court of India to prevent the sexual harassment against the students and female staff members are as follows:

Internal Compliance Committee in Colleges / Universities (I.C.C.):

S.No	Name	Department	Designation	Contact Number
1	Presiding Officer (Female)	HOD / Dean/ Senior Prof.	Chairperson	
2	Senior Faculty	Professor	Member Secretary	
3	Senior Faculty	Associate Prof./ Dept.	Member	
4	Faculty	Asst. Prof	Member	
5	Faculty	Lab. Asst.	Member	
6	Non-Teaching Faculty	Office Clerk	Member	
7	Advocate	NA	Advocate	
8	N.G.O.	NA	Social Worker	
9	Student Representative	U.G	Student Representative	
10	Student Representative	P.G.	Student Representative	

Most of the Colleges and Universities has framed the Internal Complaints Committee as per the guidelines of Supreme Court **and it is headed by a women as Chairperson** and not less than half of its member are women. Two faculty from non teaching side. Two student representatives to be elected from students. A third party,



either NGO or other body who is familiar with the issue of sexual harassment has been nominated to prevent the possibility of any undue pressure or influence from senior level in the Complaints Committee. The Member Secretary to be elected from amongst the members in the Cadre of Professor. The main aim of this I.C.C to prevent discrimination and sexual harassment against women, by promoting gender amity among students and employees.

IX. Safety Measures in Educational Institutions:

An internal security committee should be constituted in all the educational institutions. The internal security committee should be headed by the Principal or by the head of the institution and student representatives who must be invited for meetings to review the security arrangements. If the need arises, other government departments like the Police, PWD, etc, may be invited to review the security arrangements. The internal security committee should conduct a meeting once in two months or three months and must maintain the minutes of the meeting.

Educational institutions must perform their administrative role for the security of the students. Students must be given proper training for self-defense. The telephone numbers of women's help lines must be provided. Entry into educational institutions must be restricted. Entry should be through identity cards. Construction workers should not be allowed to stay on the premises of the institute overnight. Safety gadgets should be provided in hostels. Educational institutions could engage retired police officers on their security committees/boards. Awareness programmes on the safety and security of students must be conducted on a regular basis.

X. Conclusion and Recommendations:

The Sexual Harassment of Women at Workplace / Educational Institution (Prevention, Prohibition and Redressal) Act, 2013 is a very positive step for the protection of women from such type of crimes in India. The Vishaka guidelines which aims to prevent sexual harassment in workplace are also exclusive for women. College canteens and maidans need to be patrolled by student groups and guards and made safe for women and students. University has to insist its affiliated colleges to form the Internal Complaint Committee against sexual harassment.

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