

Judicial Approach Towards The Sexual Harassment Of Women At Work Place: A Bird Eye View

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Abstract

Violence against women show that women are subdued in the social structure. From ancient time till now, dependence of women on male counterpart have put women into vulnerable position. Sexual Harassment of women at working place is a recent form of oppression against the dignity of women it is one of the heinous offence against women because it ruptures the soul of women. The Sexual Harassment of women at working place is totally against the fabric of fundamental rights of women especially right to equality under Article 14 and 15 of the Indian Constitution. It is also against of protection life and personal liberty. The present study highlights the various background of sexual harassment of women at working place in India. The origin of the sexual harassment has been taken from Bhanwari Devi case better known as Vishaka and others vs Union of India AIR 1997 S.C. 3011. Sexual harassment of women at working place creates an insecure and hostile working environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth .

Key words : *Sexual Harassment, working place, adverse, hostile.*

Introduction

Violence against women is regarded as a necessary concomitant of the generally oppressed position to which women are subdued in the social structure¹. Patriarchal bias, powerlessness and dependence have put into a vulnerable position and made unjustifiable superior, owing to which crime against women galore. Violence is always opposed to reason and tolerance and undermines human right and welfare .Law, representing the latter, should employ all means to curb the violence and protect the victim. Sincerity of legal system's concern for women's protection should be exhibited in the efficacy of criminal law in sternly dealing with the crimes against women. Protection of the life and personal liberty through legal procedure will be meaningful to women only when an atmosphere free from violence is created through the rule of law.

Crimes against women occur within the home as well as in a society and outside of domestic walls. They range from assault to deprivation of life, and from indecency to ravishing the women's honor for rape. The crime are dealt under the general law like the Indian penal code and specific status enacted to deal with specific crime like dowry and domestic violence.

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¹ MDA Freeman, "violence against women: does the legal system provide solution or itself constitutes the problem?"(1981) Journal of legal studies 215 at pp 216-217.

Sexual offences constitute another category of heinous wrongs committed against women, concerning which legal system's approach has undergone substantial changes in recent times owing to public pressure. These offences range from rape to molestation, from kidnapping to trafficking, and from pornography to prostitution. One common feature amid these offences is that aggressive male sexuality attempts to terrorize women into submissive behavior, treats women as subordinates, victimless them by physical attack and mental agony, and unwarrantedly assumes that women are objects of sexual pleasure to serve men. Whether the trend of legal trend in this sphere has assisted the cause of gender justice is to be examined by analyzing the relevant provision in IPC and relevant statutes on subject such as prevention of immoral traffic in women. Increasing rate of crime, societal concern against them, organized public opinion due to feminist movement, and responses by legislature and judiciary to protect the interest of women constitute the sequence of factor occurring in this sphere. The constitutional and human right jurisprudence has also distinct impact on this sphere ²

Sexual harassment is a crime that constitutes a widespread umbrella of heinous acts that are directed towards women living even in the highly developed, civilized and progressive societies. It includes vulgar comments remarks, touching, whistles directed specifically towards women working in a male dominance workplace thereby creating an atmosphere which is discriminatory, exploitative, a threat for any human being to grow and work.

The problem of sexual harassment of women at their workplace has been a much talked about phenomenon for discussion across the world for several years. However major changes and discussion on this topic only began around 1979 in United States of America when the need for legal regimes on this issue was a major concern. However in India the need of law for the protection of women against sexual harassment at workplace was recognized only in 1997, in the landmark Supreme Court pronouncement of *Vishakha v. State of Rajasthan* "**Vishakha Judgment**", ³ where the court held that as there existed a void as far as the legal provisions related to workplace harassment of women is concerned, the guidelines issued by the court in the case shall be applicable till the time the parliament does not come up with a legislation on the topic. It was made very clear by the court in various judgments that sexual harassment of women is violation of one the very basic human right. It was only 16 years after the *Vishakha* judgment that the parliament of India succeeded in passing the legislation concerning the issue through the sexual harassment of women at workplace (prevention, prohibition and Redressal) Act, 2013.⁴

Gender equality in all dimension is a basic human right and the constitution of India guarantees all its citizen equality of status and opportunity.⁵ Sexual harassment is considered as a violation of women's fundamental right to equality, which right is guaranteed by articles 14 and 15 of the Constitution. Workplace sexual harassment create an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth.⁶ The constitution also provides every citizen the 'right to practice

² P. Ishwara Bhat, *Law and Social transformation* 1st Edn. 2009, at pp- 553-582.

³ A.I.R. 1997 S.C 3011.

⁴ Sexual harassment of Women at Workplace (prevention, prohibition and Redressal) Act, 2013, No. 14 Acts of Parliament, 2013 (Ind.).

⁵ The Constitution of India, 1950, Art. 14,15 and 19.

⁶ Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013., No. 14, Acts of Parliament, 2013 (Ind.).

or carry out an occupation, trade or business,⁷ which includes the right to a safe environment, free from all forms of harassment.

Harassment can include 'sexual harassment' or unwelcome sexual advances, request for sexual favors and other verbal or physical harassment of a sexual nature. Any harassment which may be direct or indirect in forms of gestures, remarks behavior physical contacts etc. and is caused to any employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey for any official assignment shall be deemed as Sexual Harassment at Workplace.

Violence against women is a technical term to use collectively refers to violent acts that are primarily or exclusively committed against women. This type of violence is gender-based meaning that the acts of violence are committed against women expressly because they are women, or a result of patriarchal gender constructs.

No doubt that each incident of sexual harassment at the place of work result in violation of the fundamental right to gender equality and the right to life and liberty – the two most precious fundamental, right guaranteed by the constitution of India. I.P.C. 1860, C.P.C. 1908, Cr.P.C. 1973, Indian Evidence Act, 1872 along with many other special Acts and welfare legislation deal with this issue in one way or the other and provide for specific protection of women from such aberration.⁸ Also various international convention on the subject to which India has been a signatory and ratified, become a source of law. In addition to these, landmark. Judicial pronouncement (dealing with sexual harassment at workplace) filled up the vacuum spread on the horizon till the enactment of 2013 legislation. Since, sexual harassment in violation of the fundamental right of women equality as per Articles 14 and 15 and her right to live with dignity as mentioned under Article 21 of the Constitution, the government of India by enacting the Sexual Harassment of Women at Workplace (prevention, prohibition and redressed) Act, 2013 extended the Vishakha guidelines issued by the supreme court of India in 1997 and further for the first time, acknowledges Sexual harassment at a workplace as a human right violation. With this landmark judgment the apex court of India laid down the foundation and paved the way for legislation for women at workplace in India which took the shape of legislation in the year 2013.

This legislation supplants the Vishakha Guidelines for prevention of sexual Harassment introduced by the Supreme Court of India. Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. Sexual harassment at workplace creates an insecure and hostile work environment, there by discouraging women's participation in work and adversely affecting their social and economic growth too. In spite of Constitutional provisions which provides every citizen the 'right to practice or carry out any occupation, trade or businesses, which includes the right to a safe environment, free from all forms of harassment, 13 significant numbers of women are routinely subject to various kinds of sexual harassment at their workplace. It is because of traditional gender roles of our society, where women disproportionately occupy inferior position in the workplace and face intimate violations by men often.

Judicial Approach towards the sexual Harassment of women at Work Place

⁷ The Constitution of India, 1950, Art. 19 (1) (g).

⁸ Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (Ind.).

Democracy cannot exist without justice and justice cannot exist without an independent judiciary. The judiciary is identified as the last bulwark against arbitrariness and all that can be broadly labelled as not only unjust but also immoral. The nation reveres judiciary on various vital issues affecting the country. In fact, the impression of the judiciary as final bastion against what is unjust is not of recent origin; it is discernible throughout the recorded history of mankind.⁹

The goal of the Indian constitution is a “welfare idealism” covering a wide range of socioeconomic aspiration of its people. The founding father believed that, the utility of state would be just judged from its effect on the common man’s welfare. They pledged the country to the task of securing “to all its citizens, justice-social, economic and political; liberty, equality and dignity. The judge without judicial activism can perhaps be described as flower without a color and fragrance; and a vehicle without fuel and wheels. In protecting the principles of ‘welfare state’ judiciary, should play an active role as a watching tower and judgment should be society oriented. The Indian judiciary has adopted an activist goal oriented approach in the matter of interpretation of fundamental rights. The supreme court judiciary in India has undergone a radical change in the last few years.

Pre Vishakha scenario

In interpreting the existing law, that is to say, what the law is, the courts are required to keep the particular situation in view and interpret the law so as to provide a solution to the particular problem to the extent possible. This is a legitimate exercise by the judiciary and its constitutional obligation by virtue of the role assigned to it in the constitutional scheme. The gaps in the existing law, which are filled by updating the law, result in the evolution of juristic principles. Many women who have taken up the legal route to fight sexual harassment have failed to discover even a semblance of justice at the end of a dark tunnel. Take the case of **Shehnaz mudbhatkal**, who took up the challenge and paid the price, first hand. **Shehnaz Mudbhatkal v. Saudi Arabian Air Lines**¹⁰ (Shehnaz was enjoying job as ground staff with a foreign Gulf-based airline, but things turned nightmarish with the arrival of a new station manager. He made passes, obscene remarks and proposition. She was detained late, on flimsy pretexts, and made to stay on, after 10 pm. Each time she refused his advances, she was given memos for mistakes she hadn’t made, denied promotions and assigned to the low level tasks. Complain to other superior officers didn’t really help. Matter reached a head when, at an office party, the station manager hid her handbag so he couldn’t leave, then grabbed her and thrust a cigarette into her mouth. Colleagues rescued Shehnaz that day. She flew Saudi Arabia to inform about the sexual harassment she was facing.

When she returned to Bombay, she found a pre-dated dismissal letter with a bunch of fabricated memos. Shehnaz challenged her dismissal in the labor court, charging her employers with sexual harassment but proceeding dragged on for several years. She had documents to prove many charges and her colleagues both male and female deposed in court in her favour. But the company began pressuring these people much that they came back to court and said they had signed the affidavits without reading them and they were able to disprove this too. Finding that, they were on a weak legal wicket and were faced with an impartial and honest judge, the company kept petitioning the high court and Supreme Court on technical points to delay the case. Thus it dragged on for 11 long years.

⁹ AIR 1998. Kar 385 at 386

¹⁰ 1999 (1) Bom CR 643, (1999).

Meanwhile, Shehnaz's husband who held a semi-government job in the gulf region was threatened with dire consequences. He rushed back to India and began pressurizing Shehnaz to withdraw the case, but she refused. Luckily, on 16 April 1996, the labor court awarded Shehnaz a favorable reinstatement 189 judgment: The company to reinstate the workman with full back wages and continuity of service with affect from 25-7-1985 (the date of her dismissal with all attendant benefits. Saudi Airlines filed a petition in the High court challenging the labor Courts order.

The single judge of the High court upheld the labor courts finding that, she had been victimized by the management only because she refused to accede to the demands of her boss and directed the management to reinstate Shehnaz and pay full back wages. The management preferred an appeal to the Division Bench of the High Court but even this appeal was dismissed. After thirteen years of litigation Shehnaz may be able to return to return to work. Of course she had saving and own house afford to fight against unjust dismissal and to prove sexual harassment through witnesses turned to hostile. What about the position of women who work to live?

Mrs. Rupan Deol Bajaj v. Kanavar pal Singh Gill¹¹ this case, famously known as “the butt-slapping case” was one of the most criticized high profile cases. Mrs. Rupan Deol Bajaj, an officer of the Indian Administrative Services belonging to the Punjab cadre was then working as the Special Secretary Finance lodged a complaint with the Inspector General of police, Chandigarh Union Territory alleging commission of offences under Sections 341, 342, 352, 354 and 509 of the Indian penal code by Mr. K.P.S.Gill, the Director General of Police, Punjab on July 18, 1998 at a dinner party. The last decision came in 2005, after an SLP was filled in the Supreme Court, which ultimately reduces the punishment to probation. An opinion can be formed from this case about the lenient judicial producer towards the elite member of the society.

The issue involved in this case was that whether the allegations constitute any of the offences mentioned.

While considering whether the allegation constitute any or all of the offences for which the case was registered the court first looked into S. 354 and S. 509, IPC both of which relate to the modesty of women. Since the word modesty had not been defined in the code, the considered various dictionaries such as the shorter Oxford English Dictionary (third edition), Webster's Third new international Dictionary of the English language and Oxford English dictionary (1933 edition).

The division bench also considered the judgment given in **State of Punjab v. Major Singh**,¹² where it held that when any act done to or in the presence of women is clearly suggestive of sex according to the common notion of mankind that must fall within the mischief of Section 354 The other learned judge citing his view with regard to the case referred above stated that the essence of a women's modesty is her sex and from her very birth she possesses the modesty which is the attribute of her sex.

When the Hon'ble Court applied the test in the present case, keeping in view the total fact situation, it cannot but be held that the alleged act of Mr. Gill in slapping Mrs. Bajaj on her posterior amounted to outraging of her modesty' for it was not only an affront to the normal

¹¹ 1996 SC 309; 1996 Cri.I.J.381.

¹² AIR; 1967, SC 63 : 1967 Cri, I.J.I

sense of feminine decency but also an affront to the dignity of the lady – “sexual overtones” not, notwithstanding.

It was however strenuously urged by Mr. Tulsi, that even if it was assumed that Mr. Gill had outraged the modesty of Mrs. Bajaj still no offence under section 354 IPC could be said to have been committed by him for the other ingredient of the offence, namely, that he intended to do so was totally lacking. He urged that the culpable intention of the offender in committing the act is the crux of her matter and not the consequences thereof.

This court took the view that it is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting the person. But it is also equally true that those ingredients being state of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case.

The court that considered the applicability of S. 341, 342 and 352, IPC.¹³ It was held by the court that nothing in the FIR or the facts of the case, pointed towards the situation of wrongful restraint or wrongful confinement. The mere act of Mr. Gill of standing in front of Mrs. Bajaj cannot be said to wrongful restraint.

The court next considered the applicability of S. 95, IPC which talks about the act of causing slight harm. After considering the principles laid down by the court in **Veeda Menezes v. Yusuf Khan**¹⁴, the court observed that S. 95 of the IPC has no application in the present case.

Supreme Court in Bajaj judgment has clarified certain issues as to what constitutes ‘modesty’ and how it is to be judged. It has relied on ‘common notions of mankind’ as to judge what is affront to women’s dignity. Also this has been considered bearing in mind contemporary social standards. It is important that the issue gets the attention, it deserves, if a society fails to respect its women-folk then sanity is the first casualty. In the dynamics of today’s society the uncharitable approach towards women cannot be acceptable. Courts have effectively expanded the scope so as to safeguard women’s rights. This case set a precedent for ground-breaking verdict in the case of Vishaka and reinforced the principle that nobody is above the rule of law and justice would be done. But it is a long awaiting judgment took almost 8 years for the disposal.

The Indian judicial experience with sexual harassment started with the case of **Vishakha v. State of Rajasthan**¹⁵. The case dealt with the brutal gang rape of Bhanwari Devi, a social worker who was working to spread awareness to end child marriage. In this case Court decided to create a protective framework for the female workforce of this country, an area where there had been huge lacunae in Indian law. Thus comprehensive guidelines were issued by the Supreme Court to ensure that the female workforce of this country is protected from sexual violence and sexually charged gender-discrimination in the workplace. There were sexual judgments after the Vishakha judgment that emphasized on the need for a comprehensive law on sexual harassment.

Post Vishaka

¹³ Smith and Hogan, “Criminal Law”, 8th Ed (London ; Butterworth, 1996).

¹⁴ AIR 1966, SC 1773; 1996 Cri. I. J 1489.

¹⁵ AIR 1997 Supreme Court 3011.

The case of **Appared Export Promotion Council v. Chopra**¹⁶ is one of them, which emphasized that sexual harassment is gender based discrimination and quoted the International Labour Organization for the same. The Sexual Harassment at Workplace Bill was tabled in the Parliament in 2007. This in turn prompted case such as **D.S. Grewal v. Vimmi Joshi**¹⁷ that emphasized on the stipulation of the bill while delivering judgments related to sexual harassment. However none of them vigorously asked for a bill to be passed, there by turning a blind eye to the issue related to sexual harassment.¹⁸ In **Ropen Deol Bajaj v. K.P.S. Gill** case after being dragged on for more than 18 years, finally, the Supreme Court upheld the conviction of Gill for his offence. He was found guilty under Section 354 and 509 of IPC and the Court directed him to pay Bajaj Rupees two lakhs as compensation. This was the first instance where judiciary actually took a stand upholding women's right.¹⁹ In **Saudi Arabian Airlines, Mumbai v. Shehnaz Mudbhalkal**²⁰ first time ever an employee won a legal battle in a labour court against her employers on the ground of sexual harassment. This judgment aptly illustrate that how a typical case of sexual harassment may include both 'quid pro quo' and 'hostile work environment' elements.²¹ **Medha Kotwal Lele's** case²² reveals the sexual harassment of female students in educational institution. The apex court held that Vishakha Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation.²³ There have been other important cases that have helped in interpreting sexual harassment cases even more clearly. These include- **Swapna Barman vs Subir Das**,²⁴ **Miss Radha Bai vs The Union Territory of Pondicherry**,²⁵ **A.V Ramana vs State of Gujrat**.²⁶ In all these cases Recently, **Tehlka editor- in chief Tarun Tejpal** has been booked under Section 354 -A (Sexual Harassment, Physical contact, advances involving unwelcome and explicit sexual overtures, or any other unwelcome physical, verbal or non- verbal conduct of sexual nature), 376 (rape) and 376 (2) (k) (rape by a person of a women in his custody taking advantage of his position) of the IPC.²⁷ The former Supreme Court judge has also step down as head of west Bengal Human Right commission in 2014 after a law intern accused him of sexually harassing her at hotel room. The Chief justice of India took immediate action and constituted a three three-member Supreme Court panel comprising of justice Lodha, justice H.L. Dattu and Justice Ranjana Prakash Desai to probe the charges of Sexual Harassment against the retired Supreme Court judge. The panel indicated Ganguly for 'unwelcome behaviour' and 'conduct of sexual nature' promoting his resignation.²⁸

¹⁶ AIR 1999 SC 625; (1991) 1 SCC 759.

¹⁷ (2009) 2 SCC 210

¹⁸ Gibran Naushad & Susanah Naushad. The sexual harassment of women at workplace ; An unmanned territory, at www.indialawjournal.org last accessed on 13/12/2016.

¹⁹ (1995) 6 SCC 194.

²⁰ (1999) 2 LLJ 109 (Bom).

²¹ Suhani Rao. "Bias and the Anti- Sexual Harassment Law" Lex Witness, Vol 6 Issue 11 June 2015, at 27.

²² 2004 (5) SCALE 573; (2013) 1 SCC 297.

²³ (1999)2LLJ 109 (Bom)

²⁴ (2004) 1 GLR 168

²⁵ 1995 AIR 1476

²⁶ Criminal Misc Application No. 11878 of 2007

²⁷ Tehlka sexual assault case : Tarun Tejpal in 12-day judicial demand, gets special cell DNA e-paper Wed, 11 Dec 2013 at www.dnaindia.com last accessed on 8/1/2019
<https://www.outlookindia.com/website/story/tarun-tejpal-vs-state-of-go/288725>.

²⁸ Sonal Bhadoria, "Judge accused of Sexual Harassment named" November 29, 2013 at www.indiatimes.com last accessed on 8/1/ 2019.

Despite the elaborate scheme, the complaints of sexual harassment continue to grow. The problem does not lie with the Act. It lies in its implementation. Several Organization who employ more than minimum required 10 or more employees do not have the internal committees in place to deal with the complaints. Wherever the committees have been set up, there is no proper functioning or awareness. This extends to the local committees which are to be set up under the Act. The Order of the Supreme Court discussed above is the tell-tale indication.

The allegation of sexual harassment has far reaching consequences; both for the accused employee and the employer organization. In case, the accused employee belongs to the higher echelons of the organization, the complaint employee finds the situation even more daunting. One of the major challenges faced by a complaint employee is that the committee sometimes acts like a judge in its own cause. This happens because of two keys reasons. Firstly, the members know the accused employee personally and closely. Secondly, the fear backlash both within and outside the organization.

In the event that a complaints ends up being considered, the approach of the committee sometimes poses a great obstacle. The primary reason is that in most organization, the Human Resource department is entrusted with the responsibility of formation and functioning of the committee.

The expertise to handle such complaints is found lacking - both in terms dealing with the high stakes involved in a complaints of this nature and the ability to function as a fact – finding body. In most organization, the committee is viewed as necessary evil – a classic case of compulsion over commitment to the cause. More often than not, an employee is left with no alternation but to switch organization rather than go through the ordeal of seeing a complaint to its logical conclusion.

One of the ways to overcome these challenges is to overhaul the complaint redressal mechanism by substituting the internal and local committees with a more empowered authority in the form of a Commission or a Special Court. Such a forum will be more committed, responsive and sensitive to the cause. In addition, the complaint redressal should be made time bound (as in the case of other offences against women) in order to instill confidence in the system. These measures will go a long way in carrying out the mandate of the judgment in Vishaka's Case in its true letter and spirit.²⁹

In the case of **Shanta Kumar v. Council of Scientific and Industrial Research (CDIR) & Ors, Delhi High Court**³⁰, the Delhi High Court held that there must be physical contact having an undertone of sexual nature to constitute 'sexual harassment' under the POSH Act. It opined that an altercation in the context of unwelcoming environment prevailing at the workplace is not a case of sexual harassment.

In **K.P Anil Rajgopal v. State of Kerala, Kerala High Court**³¹ another instance, the Kerala High Court held that the Act or behavior must be connected with sexual harassment including allegation of promise, threat or an offensive or hostile work environment towards female

²⁹ Sexual Harassment at the Workplace: The Journey so far", by Chinmoy Pradeep Sharma. Bar & Bench May 13 2018, <https://barandbench.com/sexual-harassment-workplace-journey-far/>, last accessed on 16/11/2023.

³⁰ (2018) 156 FLR 719.

³¹ (2018) 1 KLJ 106.

employees. A solitary allegation of intemperate language against a female employee in a report does not constitute an offence under the POSH Act.

The Delhi High Court in **Gaurav Jain v. Hindustan Latex Family Planning Promotion Trust and Ors**³², upheld the decision of the employer to terminate the employment of the accused in line with the recommendations of the internal committee (“IC”), where the accused was alleged to have sexually harassed a female colleague during an outstation visit for work.

The Bombay High Court pointed out in **Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University**³³ that the definition of ‘workplace’ is inclusive and deliberately kept wide by the Parliament to ensure that any area where women may be subjected to sexual harassment is not left unattended or unprovoked for.

The **Rajasthan High Court** held in **Shital Prasad Sharma v. State of Rajasthan and Ors**³⁴ that the aggrieved women can file a complaint with the IC without having to submit the complaint in person. The complaint could be sent to the IC through another person or by any other media, the main point being that it should be received by the IC.

The **Delhi High Court** in **Sarita Verma v. New Delhi Municipal Corporation & Ors**,³⁵ held that merely because the petitioner has an alternate remedy to file the given case before another forum, it would not act as a constitutional bar for the Court to adjudicate upon the matter. It also held that the findings of IC should not be ignored on vague and general grounds.

The **Delhi High Court** in **Ruchika Singh Chhabra v. Air France India and Anr**³⁶ has opined that the appointment of external member of the IC should be in strict compliance with the POSH Act and the rules there under. Accordingly, enquiry proceedings conducted by an IC that is not properly constituted as the law, may be treated as invalid.

In another matter before the **Rajasthan High Court**, **Shital Prasad Sharma v. State of Rajasthan and Ors**³⁷ it was held that the external member need not necessarily have legal background or knowledge in the aspects of sexual harassment against women. Having experience in the social work is sufficient for being a valid member of the IC.

The **Bombay High Court** **Jaya Kodate v. Rashtrasant Tukdoji Maharaj Nagpur University, Bombay High Court**³⁸ held that an IC which does not have at least two members (who are either dedicated to the cause of women or have experience in social work or have legal knowledge), would be illegal and contrary to the provisions of the POSH Act. In that judgment, the court also re-emphasized that it is employer’s responsibility to constitute proper IC. ,

The **Delhi High Court** **Tejinder Kaur v UOI**³⁹ held that the IC could extend the time limit for filing a complaint by another 3 months, i.e. up to six months from the date the incident has

³² 2015 SCC On Line Del 11026.

³³ 2014 SCC On Line Bom 814.

³⁴ 2014 SCC On Line Raj 1676.

³⁵ 2016 LLR 785 (2).

³⁶ 2018 SCC On Line Del 9340.

³⁷ 2018 SCC On Line Raj 1676.

³⁸ 2014 SCC On Line Bom 814..

³⁹ 2017 SCC Online Del 6801.

taken place, by recording reason in writing, if it is satisfied that circumstances prevented the complaint filling of complaint earlier.

In another case, **Confidential v. Indian Institute of Corporate Affairs** ⁴⁰ it was clarified that the petitioner has the right to approach IC for immediate protection that may be required and that the IC is empowered to grant interim relief, if it fits in.

The Delhi High court has clarified that the IC is empowered to enforce the attendance of any person as per the provision of the POSH Act. **Ashok Kumar Singh v. University of Delhi and Ors**

The Bombay High Court **Vidya Akhave v. Union of India, Department of Women & Children & Ors** ⁴¹ held that where the enquiry has been conducted by the IC after giving adequate opportunity to all the parties and it has reached a conclusion, then merely because two views are possible, the court is not expected to re-appreciate the evidence and come to a different conclusion than the one which has been arrived by the ICC.

It was ruled that the enquiry proceedings should be fair and impartial. If there is any allegation of bias against any member of the IC, the enquiry proceedings should be stayed or put on hold until the disciplinary authority takes a decision. If the disciplinary authority believes that the allegation of bias is true, then it would invalidate the proceedings, a new committee would be formed and proceedings would need to start afresh. **Tejinder Kaur v. UOI, Delhi High Court,** ⁴²

The Madras High Court **K.Hema Latha v. State of Tamil Nadu, Madras High Court,** ⁴³ set territorial jurisdiction for conducting the inquiry proceedings – it ruled that the inquiry proceedings should be conducted within 500 kms of the place of the incident. In that case, the honorable judge opined that requiring the victim to travel more than 500 kms to attend the inquiry proceedings would itself constitute harassment.

It was held that the inquiry as per the POSH Act is not a preliminary inquiry but instead a full-fledged enquiry, which needs to be done in the same manner as is done to prove misconduct in disciplinary proceedings. The court mandated that the IC to follow principles of natural justice and give fair opportunity to the respondent to defend himself. **Sibu v. Air India Limited** ⁴⁴

The role of judiciary has been instrumental in advancing the concept of sexual harassment in India, so much so that the recent Sexual Harassment of Women at Workplace (prevention, prohibition and Redressal) Act, 2013, has come into being as a direct result of the Vishakha judgment. In this judgment the Supreme Court held that each incident of sexual harassment results in a violation of the fundamental right of gender equality and the right to life and liberty under the Indian Constitution. The court further held that the fundamental right in the Indian Constitution ‘to practice any profession or to carry out any occupation, trade or business’ is also violated by incidents of the sexual harassment.

Judiciary in all the cases of sexual harassment lays down streets on gender equality with protection from sexual harassment and right to work with dignity, which is universally

⁴⁰ 2017 LLR 1014.

⁴¹ 2017 LLR 357.

⁴² 2017 SCC Online Del. 12221.

⁴³ MANU/TN/1414/2018.

⁴⁴ (2016) 2 KLJ 434.

recognized as a basic human right. The Indian judiciary while pronouncing the judgments on sexual harassment cases also relied on international human right convention and norms.⁴⁵ So the role of judiciary cannot be undermined and rather the efforts of judiciary should be complimented with greater efforts from the legislature and the executive to create fool-proof system to protect such incidents and protects the women-workface otherwise the efforts of judiciary will become ineffective. So the enactment of laws with strict compliance is the need of the hour to protect women from sexual harassment at workplace.

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⁴⁵ The international sources the Indian decision relies upon include women’s rights provisions in international conventions, such as CEDAW and the ICCPR and the international customary law.