

VISHAKA GUIDELINES

The **Vishaka Guidelines** were a set of procedural guidelines for use in India in cases of sexual harassment. They were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

Background

Pre-1997 the person facing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman.

During the 1990s, Rajasthan state government employee Bhanwari Devi who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme was raped by the landlords of the community. The feudal patriarchs who were enraged by her (in their words: "a lowly woman from a poor and potter community") 'guts' decided to teach her a lesson and raped her repeatedly. The rape survivor did not get justice from Rajasthan High Court and the rapists were allowed to go free. This enraged a women's rights group called Vishaka that filed a public interest litigation in the Supreme Court of India.

This case brought to the attention of the Supreme Court of India, "the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places."

Vishakha vs. State of Rajasthan

In 1997, the Supreme Court passed a landmark judgment in the same Vishaka case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. **Vishaka Guidelines** were stipulated by the Supreme Court of India, in Vishakha and others v State of Rajasthan case in 1997,

regarding sexual harassment at workplace. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue.

The court decided that the consideration of "International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein."

What is sexual harassment

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

a) physical contact and advances; b) a demand or request for sexual favors; c) sexually colored remarks; d) showing pornography; e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where the victim has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem.

It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment.

Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Thus, sexual harassment need not involve physical contact. Any act that creates a hostile work environment - be it by virtue of cracking lewd jokes, verbal abuse, circulating lewd rumours etc. counts as sexual harassment.

The creation of a hostile work environment through unwelcome physical verbal or non-verbal conduct of sexual nature may consist not of a single act but of a pattern of behavior comprising many such acts.

Thus, it is important that the victim report such behavior as soon as possible and not wait for it to become worse. In some cases, the psychological stigma of reporting the conduct of a co-worker might require a great deal of courage on the part of the victim and they may report such acts after a long period of time. The guidelines suggest that the complaint mechanism should ensure time bound treatment of complaints, but **they do not suggest that a report can only be made within a short period of time since the incident occurred.**

Often, the police refuse to lodge FIRs for sexual harassment cases, especially where the harassment occurred sometime ago.

Employer's obligations

Note that the Vishaka Guidelines are not sufficient for legal compliance for employers as the same has been replaced by a full fledged statute of the Parliament. Although the statute mostly retains the framework provided in the Guidelines, there are significant differences and it is the statute that the employers must follow. For instance, the definition of sexual harassment has significantly changed.^[6] From this perspective, the Vishaka Guidelines is of only historical and academic importance now. It will also be relevant in cases that were brought up before 2013 enactment of the law.

Recently the minister for Women's Welfare Maneka Gandhi has stated that government will take tough steps against any organisations, including NGOs that do not implement the new law. It is a good idea to use a checklist to make sure that your organisation is compliant with the law. A sample checklist for sexual harassment compliance is available here.

Internal Complaints Committee and Local Complaints Committee: The Sexual Harassment Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch having more than 10 employees of any gender.

The government is in turn required to set up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.

The Sexual Harassment Act, 2013 also sets out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

Interim Reliefs : The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Act casts certain obligations upon the employer to, inter-alia,

- provide a safe working environment
- display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee
- organise workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee
- treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.
- The employer is also required to monitor the timely submission of reports by the ICC.

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.

Complaints mechanism

All women who draw a regular salary, receive an honorarium, or work in a voluntary capacity in the government, private sector or un-organised sector come under the purview of these guidelines.

- All workplaces should have an appropriate complaints mechanism with a complaints committee, special counsellor or other support services.
- A woman must head the complaints committee and no less than half its members should be women.
- The committee should include an NGO/individual familiar with the issue of sexual harassment.
- The complaints procedure must be time-bound.
- Confidentiality must be maintained.
- Complainants/witnesses should not experience victimization/discrimination during the process.

Preventive steps

- 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 adopt measures, including legislation, to ensure that private employers also observe the guidelines.

- Names and contact numbers of members of the complaints committee must be prominently displayed.

From Guidelines to Act

The Sexual harassment at workplace Bill was passed by the Lok Sabha on the 2nd of September, 2012. It is now The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It defines sexual harassment as laid down by the Supreme Court in Vishakha and others v State of Rajasthan (1997) case.¹

Recommendations

National Commission for Women has asked the government to ensure constitution of Internal Complaints Committee (ICC) in accordance with Supreme Court guidelines in its departments, institutions and autonomous bodies to address such cases. It has also recommended conducting gender sensitisation workshops for top level management officials.

NCW recommended publicizing committee using posters, etc. and explicitly mention the contact details of the members. The commission also highlighted the need for orientation programs for employees to sensitize them on sexual harassment. Another recommendation was to enhance communication strategies to combat violation against women.

The rules for the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 have come into force on 9th Dec, 13'. <http://www.lawyerscollective.org/wp-content/uploads/2013/12/Sexual-Harassment-at-Workplace-Rules.pdf>

Adopted



प्रचारक
सकलडीहा पी०जी० कालेज
सकलडीहा-चन्द्रोली