

## LOCATING 'WORKPLACE' IN SEXUAL HARASSMENT LAW IN INDIA

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### ABSTRACT

*Sexual Harassment is an avoidable error at workplace. It is universally agreed that the problem has quadrupled in last few decades. Since the forces of globalization resulted in huge influx of population in various forms of occupation the number of incidences also rose drastically. Increase in numbers of people led increase in interactions of two sexes and hence the increase in incidences. The problem of sexual harassment though evident at every place, its intrusion at workplace does have serious outcomes. This is not to deny the veracity of drawbacks that it have at other places too. Movements against sexual harassment were evident at various places in different forms. But prominent voices were from the United States. It has contributed in establishing one of the remarkable laws against sexual harassment. Many countries have followed its footsteps to establish laws prohibiting sexual harassment. The uniform agenda penalizing offence of sexual harassment has encompassed all necessary instruments in accordance to the need of time and space. Laws forbidding sexual harassment at workplace have specifically mentioned its jurisdiction as 'workplaces'. States, without any lapse has acknowledged the terminology of 'workplace', directly or in subtle ways while enacting laws against sexual harassment. In the same run, India has established law prohibiting sexual harassment at workplace in the year 2013.*

**KEYWORDS:** *Sexual Harassment, Hostile Work Environment, Jurisprudence, Workplace.*

### Introduction

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act or POSH Act as it is called, aimed to address the issues of women harassment at workplace. Prior to that, it was *Visakha vs. State of Rajasthan (1997)* case which has provided guidelines for addressing issues of sexual harassment of women at workplace. The guidelines were treated as law under judicial legislation. Moreover, it was judicial interventions that have helped in making the law effective. Though efforts were laid by counter acting forces to dilute the spirit of law, judiciary stood firm to handle the same. Critical questions resolved in the courts gave enough rooms for an entirely new discourse on sexual harassment law. Of many areas that need exploration, issues of 'workplace' require special mention. It is one of the instruments employed by petitioners to make 'grey areas' in the courtrooms during judicial proceedings. On the lieu of 'workplace', petitioners used to advantage benefit of doubt to escape from the clutches of law. The POSH Act 2013 has widely defined as to what constitutes to 'workplace'. Section 2(o) specifically provides that, 'workplace' includes:

- any department, organization, undertaking, establishment, enterprise, institution, office, branch or until which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

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- hospitals or nursing homes;
- any sports institute, stadium, sports complex, or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- a dwelling place or a house;

With the above definition, there left no confusion as to what constitutes to workplace. Irrespective of that, petitioner in number of cases has raised the issue in various ways. Like, in *Saurabh Kumar Mallick vs. The Comptroller and Auditor General of India and Anr. (2008)* case, petitioner over disciplinary proceedings against the charges of sexual harassment has called numerable defenses of which the issue of workplace was one. In the case, petitioner an employee of Indian Audit and Accounts Service (IAAS) holding the position of Director (Administration) was charged of sexual harassment done to a lady co-employee holding the position of Director (Training) and who was also senior to him. He has offended her by following her to the hostel room and by forcibly entering in her room at late night hours. Both the employees were staying in Glen Mess Hostel during a training programme at National Academy of Audit and Accounts (NAAA) in Shimla. Petitioner has also offended her through verbal communication address to her in the room.

In the above case, petitioner has alleged that the incident took place at the residence of complainant, which is not a workplace. Citing the Supreme Court's verdict over *Visakha*, he submitted that the act of sexual harassment has to be at the workplace and in relation to work, otherwise it would lead to absurdity. Further, he has submitted that the incidence was a private dispute among the two employees and nothing to do with the employee-employer relationship. He made a point that the complainant herself has initiated inquiry on the pretext of 'trespassing in her private residence and outraging the modesty'. He has contended that it is an absurd situation where in the criminal case the petitioner faces the charge of house trespass whereas in the departmental proceedings on the same ground it is treated as harassment at workplace. So, holding inquiry by the administration over the act of sexual harassment is misperceived.

The administration here in the above case was Central Administrative Tribunal (CAT) which has initiated inquiry against the petitioner and till completion of the same has suspended him. It has marked that 'an employment and work when connected with a conjunction or gives it a wider scope and has to be liberally construed for achieving the object, i.e. to prevent sexual harassment of working women'. Based on this argument the Tribunal has accepted the resident as 'an extension or a contiguous part of the working place to come within the ambit of workplace'. They expressed that, it is not necessary that a workplace would be only a place where actually office work is performed. Any extension of place of work or any institution whether a hostel or a mess where the employer has control of management would be treated as workplace by giving wider connotation of the expression.

The Court in the case has pointed out that it cannot accept the narrow definition of the expression 'workplace'. It expressed that 'it is difficult to define the term workplace in straight jacket'. In pronouncing judgement, it has accepted that 'the place where the alleged incident happened would be treated as workplace'. And, whether any other place is to fall within the said definition or not would depend upon the facts and circumstances of each case. From the above case, it is clear that judicial legislation on the basis of doctrine of liberal interpretation has given wider connotation to workplace. It is to ensure that petitioners must not escape the law, if there stands any act of sexual harassment and related offences. There were cases in which court has taken liberal stand while interpreting workplace in a broader sense. Places in relation to workplaces were brought under the ambit of POSH Act.

Interestingly, the court has considered wider definition of workplace in a number of cases. In *Sarita Das vs. Union of India (2014)* case, the act of harassment has happened at the vicinity of petitioner's home. Petitioner was a lady constable working in the CISF Unit, Lilabari Airport, North Lakhimpur, Assam. She has alleged that one Assistant Commandant of the CISF Unit entered into her quarter and attempted to rape her. Later, an inquiry was held in which the accusation was proved and responded was slapped punishment of compulsory retirement. Unfortunately, on appeal of the respondent, DIG, CISF, Nazira has initiated counter actions on the petitioner. Premised on fake allegations, concocted enquiry was conducted without due process of law and the petitioner was dismissed. Appellate Authority has also rejected the appeal of the petitioner twice. It was a clear case of victimization of the victim. The Court while considering all the facts of the case did justice to the

petitioner. Interestingly, there was no confusion as to the workplace vis-s-vis POSH Act. Though, the act of sexual harassment has happened at home of the petitioner, respondent has not questioned the issue of workplace. It was settled without any conflict. Since, both the employees were in relation to a common employment, the petitioner's home was considered as an extension of the workplace and the offence as sexual harassment.

Moreover, in *B.M. Sanjeeva vs. Union of India (2014)* case, the incident of sexual harassment occurred at the staff quarters, which could be accepted as an extension of workplace but the victim was a girl child of hardly eleven years of age. She was not directly related to the petitioner but her parents. She was sexually abused by the petitioner in the vicinity of staff quarters of which the parents has taken cognizance and complained for suitable action. The Court, without any confusion as to workplace has relied on the findings of disciplinary committee and dismissed the petition seeking quashing of punishment of dismissal, imposed by the Appellate Authority, the CISF. The Court has taken broader framework for both the workplace and the employees' in-relation to the employment.

Workplace, though widely elaborated in the law itself, still petitioners drag the issue for complications, seeking escape out of the judicial catch holds. It goes to the Courts, in entirety, for providing wider connotation and liberal interpretation of workplace, so as to empower law and not the other way round. The horizons of legal jurisprudence are infinite, when it comes to implementing laws and infusing justice. This can be understood from the famous case of *D.S. Grewal vs. Vimmi Joshi and Others (2008)*, where an act of sexual harassment was committed through a letter. It was one of the first cases that went to the Apex Court on sexual harassment considering the issue of workplace. In this case, respondent Vimmi Joshi who was a teacher in an Army Public School, Pithoragarh received a letter from appellant Hitendra Bahadur. Contents of the letter has offended her. Since, the letter was posted from Sonamarg, the place where Hitendra Bahadur was posted, it was alleged that it does not fall within the definition of workplace. Court, while widening the ambit of workplace has considered the letter offending. It has submitted that the appellant has also made advances towards her, creating a hostile work environment. Based on the finding, court has directed the school for constituting Internal Complaints Committee (ICC) and holding inquiry against appellant, with due process.

Judicial legislation through case laws has facilitated the POSH Act in removing any difficulties arising out of confusion whether intended or otherwise. Issues of workplace were raised every here and then, only to complicate the judicial proceedings. Interestingly, petitioners many times knowingly employ the instrument of workplace as an alternative to escape from the provisions of POSH Act. It is extremely important to understand the rationale for this uniformity in complicating the issue of workplace. Petitioners understand the stringent provisions of POSH Act of which there rest no escape and for this reason they choose to opt for other legal proceedings. Indian judicial system is lethargic of huge delays and loopholes of which petitioners often escape of punishment. This incites a universal behaviour that shifting towards other legal provisions will help a petition in easing his way out of legal clutches.

Locating workplace in cases of sexual harassment is a critical task. Though courts have widen the scope of workplace to include all places where an employee encounters any act of sexual harassment, the demarcation line still lies blurred. Criticality of the task can be understood from the case of *Jaya Kodate vs. Rashtrasant Tukdoji Maharaj Nagpur University (2014)*. In this case the issue of defining workplace came for consideration of the court. It was due to the confusion over having two offices at one common workplace. In the case, petitioner an aggrieved woman, prayed for quashing and setting aside of order of her transfer, and to direct the respondents to set up an inquiry in the matter of her complain regarding sexual harassment. Petitioner being an Assistant Professor has submitted for constitution of a separate ICC as there stands two workplaces in a common building. Her objection was premised on the apprehensions over the constitution of ICC. It is because the members of ICC were from Junior College while the act of harassment occurred in the Senior College. Her contention was that the two colleges, one for the junior students and the other for senior students need separate ICC for the both. The court in the case has observed that legally Junior and Senior College form two distinct and independent establishments which have no functional integrality. Thus, even if very same management may run both these types of colleges, they can never be clubbed together. Hence, ideally there need to be two ICCs for both these establishments. But, after scrutinizing the definition of workplace the court submitted that, it does not contain a bar against providing a single ICC for such a single or common workplace. It may at the most only desire a separate ICC for distinct workplaces when the same are geographically separate or inconveniently located. Court observed that common or one ICC in a

contingency like present one is definitely helpful to all and also to smoothly deal with the allegations of sexual harassment at one go, avoiding the duplication and other related difficulties. Hence, the constitution of one/common ICC for a junior college and senior college in this case was justified.

What interesting finding one can infer from these type of cases is that the petitioner who hail apprehensions with regard to the workplace issues are not always those who are culprits and have malafide intentions. Aggrieved women might have reservations as to the workplaces. There could be chances where the aggrieved might not get justice delivered. And on that pretext they might argue many variables including the one of workplace. This means that both the parties in dispute over the matters related to POSH Act are having probable chances to question the issue of workplace. But the courts are uniform over their stand. They have widened it to all the possible extremities to endure justice to the victim of sexual harassment.

The extent to which judiciary has taken positive approach can be understood from the case of *Ayesha Khatun vs. The State of West Bengal & others (2012)*. In this case, the petitioner who is a teacher in Government Aided School was sexually harassed by her co-employee. He used to call her frequently and started blackmailing for her photographs. She has alleged of being molested and finally raped by him. In these conditions it was impossible for her to work. Due to hostile work environment she requested for her transfer to a different place. But there was no provision for transfer of posting from one government aided institution to another government aided institution under the Management Rules. And, transfer to any other school under the management of a different Managing Committee is not possible as such school transfer will amount to a new employment creating a new relationship of employer and employee between the school authority where she will be transferred and the employee who will be transferred there. Also, no school authority can give any employment to any teaching and non-teaching staff in a Government Aided Institution unless he/she is recommended for such appointment by the School Service Commission after being selected through the process of the selection conducted by the School Service Commission as per law. Without further recommendation by the School Service Commission she cannot be transferred to any other school. Hence, the court has to decide upon.

The court submitted that after giving anxious consideration to the circumstances under which the petitioner was compelled to file such a representation, it is felt necessary not only to entertain the writ petition but also to enter deep in the matter in view of various pronouncement of the Hon'ble Supreme Court which held that even in the absence of any legislation on a particular subject, the High Court is not powerless to issue appropriate writ under Article 226 of the Constitution, to do justice wherever injustice is found and to mould the reliefs to meet the peculiar and complicated requirements of the country. Hence, where statute is silent and judicial intervention is required, courts strive to redress grievances according to what is perceived principles of justice, equity and good conscience.

Moreover, the court also observed that in the absence of any expressed provision of law, the State being the supreme authority, can issue appropriate direction in an appropriate case, by exercising its inherent power. This is further feasible as there rest no restriction on transfer of teaching and non-teaching staff from one institute to another institute. The issue of workplace was for consideration of the court. Citing the *Visakha* Judgement and the Guidelines issued thereto, the court expressed that workplace has not been defined either in the said guidelines or in the said judgement, but a logical meaning should be given to the expression workplace so that the purpose for which those guidelines have been framed, is not made unworkable.

While deciding upon the case, the court has drawn its opinion on the issue of workplace. Justice Jyotirmay Bhattacharya of High Court of Calcutta said that, in his view, workplace should be given a broader and wider meaning so that the said guidelines can be applied where its application is needed even beyond the compound of the workplace for removal of the obstacles of like nature which prevents a working woman from attending her place of work and also for providing a suitable and congenial atmosphere to her in her place of work where she can continue her service with honour and dignity. He concluded that her transfer from the school to any other school in a different locality preferably beyond the District of Murshidabad, will be the only solution in such circumstances. The order was placed for execution by the Principal Secretary, hence giving rooms for the concept of extended workplace.

In this way, courts through judicial proceedings have paved the way forward for law to have its smooth implementation. The problem lies when petitioner alleges to have committed the offence and escape benefit of non-workplace. This is both for the reasons that petitioner on serious note does not understand the place to be workplace and if he knows the same, use to employ ignorance. To an extent it

goes to the established understanding of workplace too. People use to perceive that the moment an employee is out of the physical workplace, it is at non-workplace and hence can abuse the unfettered freedom. So, there rests a need for establishing the concept of workplace well understood by all.

Judicial interventions through liberal interpretation have established the concept of extended workplace while widening the same. It meant to cover all the places where an employee or employer resorts to visit. This infers that an employee or employer under the act cannot escape the workplace if they encounter any act of sexual harassment. By the virtue of the law an employee or employer cannot detach the workplace from them. So, at whatever be the place, if an employee is sexually harassed by another employee or employer of the same organization or the other, can be booked for justice. The difference varies only to an extent that the complaint will be entertained by the organization from where the accused is related to. Moreover, if an accused employs to harass a person non-employee or not working in any form, in that case also he will be answerable to the committee on inquiry over the complaint made. Only, the one who are not employed or not in relation to any workplace indulge in the act of victimizing for sexual harassment can't be booked under this law. But they can be equally brought to justice through criminal proceedings under Indian Penal Code and various laws.

The POSH Act has provided redress of grievance through Civil Remedy either under departmental proceedings done by Internal Complaint Committee (ICC) or through the courts. It has also the option of seeking justice through Criminal Remedy employing legal procedure. Overall, the law has ushered an entire discourse on sexual harassment. And the major contribution is in evolving the concept of workplace. But that can only be achieved when what is already known about workplace is unlearned from the common mindsets to replace what is utmost required. This is the time when the concept of extended workplace must be further stretched to workplace attached. The concept of workplace should establish itself to the next level where it cannot be detached from an employee if and when it falls to sexual harassment jurisprudence. There is a dire need for establishing the concept of attached workplace for employees in whatever occupation.

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