

## **Prevention of Sexual Harassment at Workplace in Covid Times**

The landmark judgment in the matter of Vishakha versus State of Rajasthan, (1997) 6 SCC 241 laid the foundation for recognition of equality at workplace and gender parity in the professional space. The Indian Penal Code of 1860 did not recognise the subsets of sexual harassment till the 2013 amendment. It is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 (hereinafter referred to as 'Act' which provides for a safe environment at workplace and a redressal mechanism. It is relatively easier to identify verbal and physical harassment, within the confines of the workplace. However the Covid 19 Pandemic has changed the scope of both the definitions; workplace and sexual harassment as defined in Sections 2 (o) and 2(n) of the Act, respectively.

With work from home becoming the norm in these peculiar times, workplace is no longer the designated office but the home of the employee, which in many cases is not even in the same State as the office. This would not fall within the category of an institute, organisation or unit. A dwelling house has been recognised as a workplace as per Section 2(n) of the Act, however, in most Companies, which have their independent Prevention of Sexual Harassment at Workplace Policies, they have not defined the workspace to include the home of the employees. The Hon'ble Delhi High Court in the case of Saurabh Kumar Mallick versus Comptroller and Auditor General of India and Others Writ Petition (Civil) No 8649 of 2007 has interpreted the term "workplace" in its wider sense to include: *"We are of the opinion that the approach adopted by the learned Tribunal viz. the expression 'workplace' is to be defined having regard to the objective with which Vishakha (supra) was decided is correct in law. In Vishakha (supra), the Apex Court while issuing its concern to the problem of sexual harassment of women at workplace went to the extent of formulating guidelines for taking action against the erring officials in the absence of proper legislation and mandated that till such legislation is enacted, the guidelines provided therein would be binding law. The aim and objective of formulating these guidelines was obvious, namely, in order to ensure that such sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view this objective behind the said judgment, a narrow and pedantic approach cannot be taken in defining the term 'workplace' by confining the meaning to the commonly understood expression 'office' that is a place where any person of the public could have access."*

The rationale behind the aforementioned observation is two fold: 1) In the present case the victim of sexual harassment was a public servant and it was held that the role of the public servant is not a 9-5 job restricted to office, a public servant continues to hold that

office and the duties associated with it after work hours. Therefore the workplace includes the residence and mess not just the office.

2) Reliance was placed on the Judgment of the Hon'ble Supreme Court in the matter of ESI Corporation and Another versus Francis De-Costa wherein the definition of workplace was interpreted to include all places "arising out of or in the course of the employment."

I laud the liberal view of the Hon'ble High Court and it paves the way for access to justice and helps women attain their fundamental right to work and practice business or an employment of choice. The Hon'ble Bench., further made the following observations, which are of extreme relevance in this digital age;

*"It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with other person while sitting in some other country by means of video-conferencing. It is also becoming a trend that office is run by certain CEOs from their residence. Obviously members of public would not have access to that place, though personal staff of such an officer would be present there. In a case like, this if such an officer indulges into an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'workplace', but at his 'residence' and get away with the same. It is also a matter of common knowledge that in educational institutions, hostel accommodation is provided to students and teachers are also provided the residential flats. These may be within the vicinity of the college complex. An officer or teacher may work from the accommodation allotted to him. He would not be allowed to say that it is not a workplace. These are some of the illustrations, which are given to bring home the point that we cannot accept the narrow definition of the expression 'workplace' as sought to be projected by the learned counsel for the petitioner."*

Harassment is no longer confined to verbal and physical harassment, it now includes harassment in the form of cyberbullying, breach of privacy in digital meetings, harassment through text messages and on phone calls. When the employee is no longer in the territorial confines of the workplace Section 3(2) (iv) "interference with her work or creating an intimidating or offensive or hostile work environment for her;" gets diluted substantially. The Delhi High Court Judgment was before the enactment of the 2013 Act, however the Hon'ble Rajasthan High Court has implemented the Act of 2013 to include digital space as workplace in the matter of Sanjeev Mishra v The Disciplinary Authority and General Manager, Zonal Head, Bank of Baroda SB Civil Writ Petition No. 150 of 2021, "In the present digital world, workplace for employees working in the Bank and who have earlier worked in the same Branch and later on shifted to different branches which may be situated in

*different States has to be treated completely as one workplace on a digital platform. Thus, if a person may be posted in Jaipur and acts on a digital platform harassing another lady who may be posted in a different State, it would come within the ambit of being harassed in a common workplace.”*

In light of the judicial interpretation of the definition of workplace, I have the following suggestions for effective implementation of the Act of 2013, in Covid times: -

1. Duties of the Employers to ensure a safe working environment cannot be diluted on account of employees working from home. Therefore it is essential to amend the anti sexual harassment policies at organisations to include harassment in the digital workspace.
2. Video conferences should be recorded and such recordings should be preserved for 6 months to ensure that any allegations of harassment in conferences can be reviewed.
3. Section 19 of the Act mandates periodic training of employees in order to familiarise them with the prevailing mechanism of the Internal Complaints Committee. Such training should be continued on the digital platform.
4. The members of the Internal Complaints Committee need to be sensitised about electronic evidence, this could include emails, text messages, social media posts and messages and video conferences.
5. The Anti Sexual Harassment policies need to enunciate the procedure to be established in case of receipt of a complaint in these times. It is essential to have a mechanism in place for digitally recording the proceedings and examination of witnesses in a time bound manner, else valuable evidence is diluted.
6. Cyber security is an essential part of working from remote locations because harassment is no longer verbal and physical but it could also include threats of jeopardising projects and influencing performance at work.
7. Access to counselling for employers and employees.