



**SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION,  
PROHIBITION AND REDRESSAL) ACT, 2013 - "VISHAKA GUIDELINES" –  
EMPLOYER CHALLENGES IN HUMAN RELATIONS**

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**ABSTRACT**

*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 They were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. The procedural implementation is challenge for the employer if the public or private companies or even in the government organizations and as it is new act it should be followed in true spirit because of the increasing number of working women and even working in night shifts in Information technology companies or Information Technology enabled companies or even in factories in seasonal busy business cycles. The implementation is must in order to following meaning in terms of good governance principle in terms of equity. Global meaning or view on gender justice is Equal participation by women and men in both economic and social development, and women and men benefiting equally from societies' resources is crucial for achieving gender justice. Further, the Article 14, 15 and 16 also stress in this regard. Due to the increased incidents of the harassment now and then in news and its hardly one year from the commencement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the present study is concern about the challenges the employer faces and awareness about act among the women employees.*

**INTRODUCTION**

In the 21<sup>st</sup> century, where there is increasing number of educated women in the global level from different countries exceptional only in few countries where still some hindrances against women education occasional happens, it very high time to think in terms of the equity for the women in every aspect. Particularly when it comes with safety there raises several issues from the cultural backdrops, country to country and however, UN also taken initiatives in this regard from the governance and participation of women in governance. From the legal frame work existing in India, the Constitution of India has various provisions to ensure equality of the sexes and also to dismantle the prevalent imbalances in gender hierarchy. Article 14 of the Constitution states that there shall be equality before the law and equal protection of the law. Article 15 safeguards the right against discrimination. The Constitution also provides for positive discrimination and affirmative action on some counts. Article 15(3) permits special provisions for women. Article 16 provides equal opportunity with respect to public employment and they shall not be discriminated on the basis of sex of the person. Article 39(a) aims at providing the right to adequate means of livelihood for men and women, equally.

Sexual harassment at the workplace has been one of the important concerns of the women's movement in India since the 1980's and the movement got severe in its expression following the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme. 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 (Samhita, 2001). After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- "educated and upper caste affluent men" -- were allowed to go free. This enraged a women's rights group called Vishakha that filed a public interest litigation in the Supreme Court of India (*Combat Law*, 2003). In 1997, the Supreme Court passed a landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to be implemented until legislation is passed to deal with the issue (Mathew, 2002). Further, Article 51(A)(e) of the Constitution provides that it will be the duty of every citizen to renounce practices derogatory to the dignity of women. Under present circumstance where news of every day carries such kind of incidents very frequently it is more high to educate women and create awareness regarding the new Act. Hence, present paper cover the back drop of the history of Vishaka guidelines and analyses the facts that are to be considered from the women employees and from the employers for implementation of said Act in its true spirit and how to involve HR department in handling the issues as a part of Human Relations.

## LITERATURE REVIEW

For the present paper review on aspect purely cover back drop of the history for passing of the Vishaka guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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 made more disappointment and enraged a women's rights group called "**Vishaka**" that filed a public interest litigation in the Supreme Court of India. This said case brought very hard fact 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.**"

Sexual harassment at the workplace has been one of the central concerns of the women's movement in India since the '80s. Presently, women's groups are lobbying to get the bill on sexual harassment at the workplace, 2005, passed by Parliament. During the 1990s, the most controversial and brutal gang rape at the workplace involved a Rajasthan state government employee who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme. 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 (Samhita, 2001). After an extremely humiliating legal battle in the Rajasthan High Court the rape survivor did not get justice and the rapists -- "educated and upper caste affluent men" -- were allowed to go free. This enraged a women's rights

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Based on the developments of above case, 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. From this perspective, now 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. Hence understanding Vishaka guidelines and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is very much required for the Employer and Human Resource department professionals.

### OBJECTIVES OF THE STUDY

1. To study and understand Vishaka Guidelines
2. To know the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
3. To observe role of Employer as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

### DEFINITION OF SEXUAL HARASSMENT AND EMPLOYER'S ROLE

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. The Act is enacted by the Indian Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Sexual harassment is termed as a violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and right to life and to live with dignity under Article 21 of the Constitution of India. Sexual harassment is also considered a violation of a right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. The Act has adopted the definition of 'sexual harassment' from Vishaka Judgment. According to The Supreme Court definition, sexual harassment is any unwelcome sexually determined behaviour, such as:-

- Physical contact

- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other physical, verbal or non-verbal conduct of a sexual nature.

**SEXUAL HARASSMENT TAKES PLACE IF A PERSON:**

- ☐ subjects another person to an unwelcome act of physical intimacy, like grabbing, rushing, touching, pinching etc.
- ☐ makes an unwelcome demand or request (whether directly or by implication) for sexual favours from another person, and further makes it a condition for employment/payment of wages/increment/promotion etc.
- ☐ makes an unwelcome remark with sexual connotations, like sexually explicit Compliments /cracking loud jokes with sexual connotations/ making sexist remarks etc.
- ☐ shows a person any sexually explicit visual material, in the form of pictures/cartoons/pin-ups/calendars/screen savers on computers/any offensive written material/pornographic e-mails, etc.
- ☐ engages in any other unwelcome conduct of a sexual nature, which could be verbal, or even non-verbal, like staring to make the other person uncomfortable, making offensive gestures, kissing sounds, etc.

*Quid pro quo and hostile work environment are the two broad types of sexual harassment.*

Sexual harassment at workplace is generally classified into two distinct types. 'Quid pro quo', means seeking sexual favours or advances in exchange for work benefits and it occurs when consent to sexually explicit behaviour or speech is made a condition for employment or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions. 'Hostile working environment' is more pervasive form of sexual harassment involving work conditions or behaviour that make the work environment 'hostile' for the woman to be in. Certain sexist remarks, display of pornography or sexist/obscene graffiti, physical contact/brushing against female employees are some examples of hostile work environment, which are not made conditions for employment.

**EMPLOYER ROLE**

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. Recently the minister for Women's Welfare Maneka Gandhi has stated that government will take tough steps against any organizations, including NGOs that do not implement the new law.

**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
- Organize workshops and awareness programs at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programs for members of the Internal Complaints Committee
- Treat sexual harassment as 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.

As an employer know the following:

I] First and foremost, acknowledge that it is your legal responsibility to provide safe working environment for women free from sexual harassment and discrimination and that you can be held liable for sexual harassment by employees.

II] Know that sexual harassment can have a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work, or leaving their job to seek work elsewhere.

III] Understand the reasons why women remain silent about sexual harassment. An absence of complaints about sexual harassment does not necessarily mean an absence of sexual harassment. It may mean that the recipients of sexual harassment think that there is no point in complaining because:



- Nothing will be done about it;
- It will be trivialized;
- The complainant will be subjected to ridicule, or
- They fear reprisals.

**IV] Recognize the tangible and intangible expenses and losses organizations experience:**

- Costly investigation and litigation
- Negative exposure and publicity
- Embarrassing depositions
- Increased absenteeism
- Lowered employee morale
- Reduced productivity
- Decreased efficiency
- Higher employee turn over
- Erosion of organisation's brand names, goodwill, and public image
- Negative impact on stock price

The best way to prevent sexual harassment is to adopt a comprehensive sexual harassment policy. The aim is to ensure that sexual harassment does not occur and, where it does occur, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence.

## **METHODOLOGY**

To understand the opinion and what are expectations and concerns from the employees of the this University and Government Offices in District Headquarters of Kadapa and Employees of the Banks and Life and General Insurance Companies, a field survey through administering questionnaire with 5 point scale about the present Act is conducted. The Sample Size is 165 respondents comprising 30 teaching staff from the university, 35 from the Government Offices, 45 from the Banks and 55 from Insurance companies. In complete Sample 55 are women and 95 are men. There are about 15 no responses. Thus considered sample for analysis is 150 in number. Scale of questions is: Strongly Agree scores 1, Agree score 2, Undecided score 3, Disagree score 4 and Strongly Disagree score 5.

## **Data Analysis**

**Table 1: Opinion of Employee on Major Concerns about Act - Men**

Statement	Strongly Agree	Agree	Undecided	Disagree	Strongly Disagree	Response Average	Total Percent
Are you Aware of the SHWW (P,P,R) ACT 2013?	40	25	6	15	9	2.24	95
	42.11 %	26.32 %	6.32%	15.79 %	9.47%		100.00 %
Has your organization is in	30	25	10	15	15	2.58	95

compliance of the Act	31.58 %	26.32 %	10.53 %	15.79 %	15.79 %		100.00 %
Does Act covers the complete problem	45	20	15	6	9	2.09	95
	47.37 %	21.05 %	15.79 %	6.32% %	9.47% %		100.00 %
Does the Male Employee is Protected against false complaint?	10	20	25	20	20	3.21	95
	10.53 %	21.05 %	26.32 %	21.05 %	21.05 %		100.00 %
Do you understand the severity of the Act	32	28	10	15	10	2.4	95
	33.68 %	29.47 %	10.53 %	15.79 %	10.53 %		100.00 %
Is Male Employee s' going to face any from egoistic women due false	40	25	15	5	10	2.16	95
	42.11 %	26.32 %	15.79 %	5.26% %	10.53 %		100.00 %

Source: Compiled by researchers using primary data

**Table 2: Opinion of Employee on Major Concerns about Act - Women**

Statement	Strongly Agree	Agree	Un decided	Disagree	Strongly Disagree	Response Average	Total Percent
Are you Aware of the SHWW (P,P,R) ACT 2013?	10	10	9	14	12	3.15	55
	18.18 %	18.18 %	16.36 %	25.45 %	21.82 %		100.00 %
Has your organization is in compliance of the Act	15	15	5	10	10	2.73	55
	27.27 %	27.27 %	9.09% %	18.18 %	18.18 %		100.00 %
Does Act covers the complete problem	6	4	5	10	30	3.98	55
	10.91 %	7.27 %	9.09% %	18.18 %	54.55 %		100.00 %
Does the Male Employee is Protected against false complaint?	5	10	15	15	10	3.27	55
	9.09% %	18.18 %	27.27 %	27.27 %	18.18 %		100.00 %
Do you understand the severity of the Act	30	10	5	4	6	2.02	55
	54.55 %	18.18 %	9.09% %	7.27% %	10.91 %		100.00 %
Is Male Employee s' going to face any from egoistic women due false	15	13	8	9	10	2.75	55
	27.27 %	23.64 %	14.55 %	16.36 %	18.18 %		100.00 %

Source: Compiled by researchers using primary data

From the Table 1 and Table 2 it understood that for the statements different options are obtained from the respondents. For awareness among the employees more than 60 per

cent of men aware and more 30 per cent of women are aware about the Act. Men mean score is 2.24 and women score is 3.15 which clearly indicates that men awareness about Act is more than Women. Similarly for implementation of said act in their organizations men mean score is 2.58 and Women is 2.73. These score clearly show that they agree that their organization are in compliance with Act. For the statement regarding severity of the Act towards they agree that it severe against problem with means scores of 2.4 and 2.02 from men and women employees respectively.

**Table 3: Comparison of Average Response from Men and Women**

Statement	Men	Women
Are you Aware of the SHWW (P,P,R) ACT 2013?	2.24	3.15
Has your organization is in compliance of the Act	2.58	2.73
Does Act covers the complete problem	2.09	3.98
Does the Male Employee is Protected against false complaint?	3.21	3.27
Do you understand the severity of the Act	2.4	2.02
Is Male Employee s' going to face any from egoistic women due false	2.16	2.75

From the Table 3 is clearly known from the means scores of Men and Women employees that they differ for the Does Act covers the complete problem. Men say that present had covered all aspects of the problem with a mean of 2.09 whereas women say that present Act is still missing certain elements in totally addressing the problem with a mean score of 3.98. The situation when the protection of male employees is concerned both men and women with mean score 3.21 and 3.27 indicate Men are not protected and hence mean is between 3 and 4 that is mid way between undecided and disagree. They agree that male employee may face problem with egoistic women with mean score of 2.16 and 2.75.

**Details of Statement 1 - Kruskal Wallis Test:**

**Table 4: Descriptive Statistics**

	N	Mean	Std. Deviation	Minimum	Maximum
Score	150	2.57	1.467	1	5
Department	150	2.70	1.134	1	4

**Table 5: Ranks**

	Department	N	Mean Rank
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Score	University	30	80.73
	Govt. Office	35	129.37
	Bank	35	31.57
	Insurance	50	65.40
	Total	150	

**Table 6: Test Statistics<sup>a,b</sup>**

	Score
Chi-Square	98.724
df	3
Asymp. Sig.	.000

a. Kruskal Wallis Test

b. Grouping Variable:  
Department

Using the Kruskal Wallis test the mean ranking is carried to obtain the inference regarding sampling from the four categories like University, Government Office, Bank and Insurance employees. It is observed the test is carried out for the statement regarding the awareness of the SHWW (P,P,R) Act, 2013 among the employees. Ranking with highest value to least value shows increasing nature of awareness. Government office has got mean rank of 129.37, University has rank of 80.73, Insurance has rank of 65.40 and Bank has rank of 31.57.

## CONCLUSION

The guidelines and norms framed by the Hon'ble Supreme Court in Vishaka Judgment are fountainhead of the Act. With the passage of time, it was felt that guidelines and norms are not sufficient to deal with the incidents of sexual harassment of women at workplaces and a strong piece of legislation is the need of the hour and accordingly the Act was enacted in 2013. Further, the Act went one step ahead and included various issues which remained unaddressed in the past such as extension of the definition of workplace to include almost all types of establishments including private sector organization, dwelling places or houses, inclusion of the term domestic worker and unorganized sector in order to address the issue of sexual harassment of women. From the Field observations it felt as only hardly one year has been passed post enactment of Act, the awareness of the women is still low compared with men employees in backward areas, though they are district headquarters like Kadapa a district headquarters of Y.S.R. District in Andhra Pradesh. For the awareness it felt that Banks and Insurance companies more aware than the University employees and Government office staff.



Therefore, it is strongly observed that organizing awareness among the employees should be taken care by the Human Resource Department on primary basis, first to stop the menace and second on implementation of the Act in true spirit. H.R. Department whether small or large companies needs observe the post implementation fact about Act and nature of complaints they receive and how they handle through Internal complaints committee and sending details to local complaints committee for successful implementation of the Act and safe guarding the women employees.

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