

BOOK REVIEW

SEXUAL HARASSMENT AT WORKPLACE (2014). By Ritu Gupta. LexisNexis, 14th Floor, Building No. 10, Tower B, DLF Cyber City, Phase II, Gurgaon, Haryana. Pp. xxvi + 305. Price Rs. 325/-.

THE BOOK¹ under review deals comprehensively with one of the most complex issues facing the Indian society and the world today. It describes and analyses in detail the various ways in which sexual harassment is committed against women at the workplace. It highlights the reasons, though not all, behind such a practice and attempts to identify the people who are victimized by this form of sexual violence. It acknowledges that many cases of sexual harassment at the workplace remain unreported because of the cumbersome trial procedures and the social stigma attached with it. The book emphasizes that the problem of sexual harassment at the workplace is prevalent across all classes and it is a myth to believe that it is only women in low paid jobs who suffer from this social evil.

The book is divided into nine chapters. The first chapter introduces the subject of sexual harassment at the workplace and highlights the intensity of the problem. It describes what constitutes sexual harassment and asserts that women of all ages, classes and groups face this menace. In fact, the author very explicitly states that the problem of sexual harassment at workplace is linked to the unequal power relationship that exists between men and women. The author rightly asserts that sexual harassment is actually sex based discrimination which naturally reinforces the subordination of women to men at the workplace.

The second chapter of the book measures the gravity of the problem of sexual harassment and deals with the different types of sexual harassment committed at the workplace. The author by quoting important sources explains that a claim of sexual harassment at workplace may arise when employment benefits are assured to a woman in return for sexual favours sought by the employer or when the woman is harassed irrespective of the economic benefits assured to her and a hostile or offensive environment is created at the workplace. This point is further explained by citing relevant American and Canadian case law.

The third chapter focuses on the role played by the Supreme Court of India in conceptualizing the law relating to sexual harassment at the workplace in the case of *Vishaka v. State of Rajasthan*.² This matter finally led to the enactment of the Sexual

1 Ritu Gupta, *Sexual Harassment at Workplace* (2014).

2 AIR 1997 SC 3011. Hereinafter *Vishaka*.

Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The author enumerates in detail the guidelines laid down by the Supreme Court in *Vishaka* case for employers in both public and private sectors. She also explains how the *Vishaka* case expanded, the 'principle of a fair and reasonable procedure' as laid down in *Maneka Gandhi v. Union of India*³ to include within its ambit 'a gender just procedure' in order to achieve the constitutional goal of substantive equality for women. In this chapter, the author also traces, very systematically, the gradual evolution in the definition of sexual harassment at the workplace through various judicial decisions. This chapter also discusses how the Supreme Court undertook to monitor the implementation of *Vishaka* guidelines across the country.

Chapter four of the book discusses the judicial pronouncements made prior to *Vishaka* case and subsequent to it. With the help of case law the author explains how a case of sexual harassment includes both the elements of 'quid pro quo' and 'hostile work environment'. The author reiterates how difficult it is for the woman who is a victim of sexual harassment to make a complaint about sexual harassment and gives examples of most cases of sexual harassment being reported only with the help and support of non-government organizations. However, in the recent past due to greater awareness about the law relating to sexual harassment there has been an increase in the number of complaints filed by the victims themselves. In this regard the author gives examples of Tarun Tejpal case and Justice Ganguli's case.⁴ In both the cases the victims of sexual harassment at the workplace mustered courage and initiated complaints against two high profile persons.

Prior to the *Vishaka* case and before the enactment of the Act, 2013 the issue of sexual harassment could have been dealt with under the relevant provisions of the Constitution, criminal law and other specific and welfare legislations. All these laws were sufficiently adequate to curb the menace of sexual harassment but there was not a single statute dealing specifically with the issue.

Chapter five of the book gives a detailed account of the plethora of legal provisions, existing in India, which could have identified, recognized and defined the problem of sexual harassment at the workplace. The author discusses the relevant fundamental rights and the directive principles of state policy which together protect the civil, political, social and economic rights of the women under the Constitution of India. She vividly emphasizes that the 'right to life' as embodied in article 21 of the Constitution of India includes a woman's right to live with human dignity and all that goes along with it. While referring to *Vishaka* case she rightly asserts that each incident of sexual harassment at the workplace is a violation of the right to life and the right to live with dignity under article 21 of the Constitution of India.

3 AIR 1978 SC 597.

4 *Supra* note 1 at 66-68.

In addition to the constitutional provisions the author enumerates the relevant sections under criminal law, labour law and other social welfare legislations which deal with the issue of sexual harassment at the workplace in one way or the other. This chapter is essentially a compilation of the above mentioned legal provisions with rather few illustrations.

An analysis of the Act, 2013 is given in chapter six of the book. First and foremost the author highlights the objective of the Act, which is to provide a safe and secure environment to every woman at her workplace irrespective of her age or employment status. Subsequently, she gives a commentary on each section though only in brief. A few sections are explained through illustrations. Section 8 of the Act which deals with the grants and audit to be utilized for the payment of fees or allowances to the members of the local complaints committee has been explained through a simple flow chart. Certain other sections could also have been explained in a similar manner. Section 10 of the Act, which deals with the possibility of a conciliation between the victim of sexual harassment and the harasser should have been analyzed and explained with the help of illustrations. The author should have dealt with the advantages and disadvantages inherent in the section keeping the objective of the Act in mind,⁵ which is to provide redressal to the victim of sexual harassment and not exert pressure on her to withdraw the complaint.

In chapter seven of her work, the author discusses how the issue of sexual harassment at the workplace has been addressed at the international level. She refers to all the important international covenants and declarations, such as, the International Covenant on the Economic, Social and Cultural Rights (1966), the International Covenant the Civil and Political Rights (1966), the International Labour Organization Discrimination (Employment and Occupation), the Universal Declaration of Human rights (UDHR) 1948, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which contain provisions to provide safe and healthy working conditions for women across the world. In this context the author has applauded the role played by the United Nations in imposing obligations on the member states to enact specific legislations to prevent and curb the menace of sexual harassment at workplace in member states. The chapter also discusses the steps taken by various countries to combat the incidents of sexual harassment at the workplace. It explains the position of law in countries like the US, the UK and the European Union.

Chapter eight is a relatively short chapter. It deals with the procedure relating to the conduct of an inquiry in cases of sexual harassment at the workplace under criminal

5 *Id.* at 152-154.

law as well as under the Civil Service Rules. The chapter explains how an act of sexual harassment can be brought within sections 509, 354 and 354-A of the Indian Penal Code, 1860. While section 354-A of the Indian Penal Code specifically defines sexual harassment and provides punishment for the same, sections 509 and 354 respectively, deal with insulting the modesty of a woman and assaulting or using criminal force on a woman with intent to outrage her modesty. The chapter also explains the procedure to be followed under section 154 of the Criminal Procedure Code, 1973, for the registration of the first information report with respect to the victim of sexual harassment.

Where a disciplinary action has to be taken against a harasser for having committed an act of sexual harassment the chapter explains the procedure to be followed for conducting an inquiry under the relevant service rules. A few decisions of the Supreme Court and high courts have been given to explain how a disciplinary inquiry can be vitiated if a fair and reasonable procedure is not followed for conducting an inquiry.⁶

It is an established fact that law in itself cannot control and prevent instances of sexual harassment at workplace unless it be accompanied with effective preventive policies and mechanisms introduced at the workplace. The author has discussed this aspect at length in chapter nine of the the book. She makes it very clear that it is the responsibility of the employer to create a work culture that would reduce the occurrence of sexual harassment at workplace. She suggests the adopting of a preventive policy which should be properly documented and well published. The author also conceived of establishing a complaint mechanism that would be simple and informal. Unfortunately, the author makes only a passing reference to the necessity of extending support to the victim of sexual harassment in building her confidence level. In fact the Act, 2013 does not address the issue of rehabilitation of the victim of sexual harassment as such. Keeping this in mind the author should have dealt with the victim's position in more detail and sensitivity.

The author suggests that any senior manager of an organization who is a specialized and trained officer should oversee the implementation of the policy and push it through the whole organization.⁷ She insists that the staff or its representatives should actively participate and cooperate throughout the development of the sexual harassment preventive policy. Surprisingly, the author suggests the application of the principle of 'presumption of innocence' equally to both the harasser and the victim. This seems rather odd as the principle of presumption of innocence can be logically applied only to the harasser and not to the complainant.

6 *Id.* at 214-217.

7 *Id.* at 125.

Chapter nine also includes some case law relating to the departmental proceedings against the harasser resulting in the exoneration of the harasser or the termination of his services. In most of these cases the procedure of inquiry has been challenged. It is observed that these cases should have been included in chapter eight which deals with the conduct of inquiry in both criminal and civil law.

On the whole, the book is useful for anyone who wishes to know and understand the problem of sexual harassment at the workplace. Certain chapters of the book which discuss the legal aspect law may appear tardy to some readers as they reproduce the law in its original form which is rather technical and the common man may find it little difficult to comprehend. There is also lot of repetition in some of the chapters of the book which could have been avoided.

In some parts of the book the author loses focus on the subject of sexual harassment and perceives even simple harassment and gender injustice as similar to sexual harassment. There is no doubt that an act of harassment may also be a sex-based discriminatory act but such an act may not have sexual connotations. Further, the author describes sexual harassment as a systematic and planned discrimination in our society,⁸ which seems a little out of place considering that men in our country have always viewed women as home makers and not as ones stepping out of their homes to work. Therefore, sexual harassment of women at the workplace is a reflection of the patriarchal mindset of the men which has for centuries perceived women as sex objects only. Despite these minor shortcomings, the book will be useful to the readers in understanding the concept of sexual harassment at workplace.

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8 *Id.* at 44-45.

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