

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSES) ACT, 2013: A STUDY OF CARDINAL FEATURES

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Accepted: 07.01.2023

Published: 01.02.2023

Keywords: Sexual Harassment, Women, Workplace.

Abstract

The Constitution of India provides men and women equal employment opportunities. Women are participating in the workforce. The working environment for women should be devoid of fear, tension, and exploitation. The women face sexual harassment, which is a kind of sex discrimination. The Indian Criminal Code of 1860 effectively continued to oversee these matters. This issue was initially addressed by the Supreme Court, particularly in the Visakha Decision. This decision has paved the way for legal protections against sexual harassment. After 16 years, the Parliament has passed legislation. The goal of this study is to investigate the 2013 Act. There are four sections in this manuscript. An introduction to sexual harassment is given in the first part. The history of how knowledge of sexual harassment emerged is covered in the second part. The most crucial facets of the Act are briefly covered in the third part. In the fifth and last section, the conclusion and its compatibility with other laws are covered.

Paper Identification



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I. Introduction:

Sexual harassment of women at the workplace is a global issue that has a detrimental influence on workplace quality, women's welfare, gender equality, and costs to businesses and organisations. Sexist discrimination includes sexual harassment. This threat deters them from continuing to work in the job as the number of women in the workforce rises. The majority of the time, women are hesitant to categorise their personal experiences as sexual harassment out of concern for the social and professional fallout.¹

Among all crimes, sexual harassment of women at work receives the least amount of recognition. A growing number of sexual harassment charges have forced women to quit their jobs.² This has had a very negative effect on women's mental health. Several professional women report about sexual harassment on a yearly basis. There are several types of sexual harassment. *Quid pro quo* harassment is a type of sexual harassment where male employer serves as a manager or supervisor, harassment of this kind occurs. The employee who is in this situation must decide between surrendering herself for sexual requests and losing job.³ The second form of harassment is a work environment which is hostile, where the woman employee will not work in proper way. The dignity and self-respect of the victimised woman as an employee and as a human are damaged by sexual harassment at work. Therefore, addressing the issue of sexual harassment is directly linked to the core principles of improved working conditions and respect for the dignity linked of workers. An ILO report published titled as, "Those who have experienced sexual harassment" states, "that the victim often avoids taking action against the harasser, not only for fear of reprisal but also so as not to have to remember and relive the incident or incidents repeatedly. The negative effects of sexual harassment are not confined only to victim but also reduce the productivity sharply". Thus, is it being loss to human dignity as well as loss to economic. The ILO in its reports cited reasons why employer is eager to act against sexual harassment, among these reasons mainly are legal compliance, litigation cost, business ethics, not malign image of institution, to create conducive environment for productivity and high performance. Another interesting reason cited that women client is increasing very fast, so make it gender sensitive.

II. Recognition of Sexual Harassment as Distinct Crime:

¹Dr. Anuradha Chadha, 'Law Relating to Sexual Harassment of Women at the Workplace in India: A Critical Review', p. 1 available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3171264 (visited 22.08.2020 at 17:36)

² Ratna R. Bharamgoudar, Sexual Harassment at Workplace: A Dignity Wrong on Women, 6 INDIAN J.L. & Just. 5 (2015). P.1

³ Surinder Mediratta, Oxford Handbook of Law, Women, and Employment: Policies, Issues, Legislation and Case Law, 1st Edn. 2009, Oxford University Press, New Delhi p. 81

It appears that phrase of 'sexual harassment' first used in the world media by the year 1975 onwards. It is said before this there was not universally accepted term like; sexual harassment. This term first came in USA thereafter it has been used in other countries like Australia, Canada, New Zealand, Japan and several countries of Western Europe. In the late 1980s and early 1990s, several nations made an effort to create a legislative framework for the prevention of sexual harassment at work.

In India, the Supreme Court was required to take the action against this menace as there was no explicit statute for the prevention of sexual harassment. In *Vishaka v. State of Rajasthan*, the Supreme Court defined sexual harassment by using the Convention on Elimination of Discrimination Against Women (hereafter CEDAW), established by the United Nations. This definition is heavily influenced by the one provided by CEDAW. "Sexual harassment includes such unwelcome sexually-determined behaviour (whether directly or by implication) as:

- a. Physical contact and advances;
- b. A demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing pornography;
- e. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

Whenever any workingwoman faces the actions given above, it will constitute sexual harassment. The women may be who is drawing a salary, honorarium in, public or private undertaking. The above conduct will be embarrassing and can create problems related to health. The Supreme Court further stated that until the specific law is not made the guideline given by the Court would be applicable at all public or private and organised or unorganised workplace.

III. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redresses) Act, 2013.

The "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redresses) Act, 2013" was passed by Parliament in order to protect women from workplace sexual harassment. Sexual harassment violates both Articles 14 and 15 of the Indian Constitution as well as the right to a dignified life under article 21 of the constitution of India. Each profession or business must be able to operate in a safe space free from sexual harassment. The Parliament of India passed this law in order to fulfill the obligations under CEDAW, which the Indian government ratified on June 25, 1993.

(i) Sexual Harassment at Workplace: Definition and another related Concept

The 2013 Act's definition of workplace sexual harassment is the same as that pronounced in the Vishaka judgment. The term of "aggrieved woman" under the Act encompasses women of any age, whether or not they are employed, as well as a woman who works at dwelling place.⁴ Regular, temporary, ad hoc, or daily wage earners who are hired by a contractor or the main employer are all considered to be employees. It also covers whether or not it is done for remuneration or not⁵ Employer has defined to include of all organisation, undertaking, establishment, enterprise, institution, office branch or unit of the appropriate Government or local authority. It also includes those who employs for dwelling house.⁶ The workplace has been defined as to take comprehensive definition. It includes all government and private undertakings, hospitals or nursing house, sport institutes, dwelling place or house.⁷

Sexual harassment includes directly or indirectly behaviour of physical contact and advances. It is so extensive that it includes oral or non-oral action of sexual type.⁸

Sexual harassment cannot be construed in a narrow sense as it may include sexual advances and other verbal or physical harassment of a sexual nature. As per section, 2(n) of the Act sexual harassment includes unwelcome acts, physical contact, advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography.

(ii) Internal complaints committee

The Act requires all employers, whether they are corporations or associations in the public or private sectors, to set up an internal complaints committee (ICC). There is no deadline set forth in the Act or the Regulations for all employers to form an ICC. It is not necessary to form the ICC for any workplace with less than 10 employees. The local complaint committee, established in accordance with the Act by district authorities of each district, would receive any complaints at such a workplace. So, when an employer has a workforce of 10 people at the workplace, he is required to establish an ICC. The ICC must be a permanent body. The ICC must have four members, with a requirement that half of them be women. A woman in a senior position would serve as the ICC's chairwoman. If a high level female employee is not accessible, any other location of the same employer, as well as another department or organisation, may suggest the presiding officer. The ICC has two purposes: one is to inquire against the issues raised of sexual

⁴ S. 2(a)

⁵ S. 2(f)

⁶ S. 2 (g)

⁷ S. 2(o)

⁸ S. 2(n)

harassment, and to create and take precautionary measures helping a working environment for more participation of women employees.⁹

(iii) Local complaints committee:

The Act lays provision for formation of “Local Complaints Committee' ('LCC')” at the District level to take cognizance of charges of sexual harassment at the workplace for unorganised sector. The LCC has been established in the light of Visakha Judgement for the protection of working women in unorganised sector, where the employees are less than 10 in number.¹⁰ The Chairperson and every member of LCC shall hold office for term as per rules but not more than three years. Women’s from OBC, SC and STs should be part of LCC.

(iv) Disqualification of members of ICC and LCC:

The members of ICC and LCC will be disqualified if: -

1. The members breach the confidentiality in respect to publication or inquiry proceedings.¹¹
2. The member has been convicted or under prosecution for any offence.
3. Member has been found guilty in disciplinary action or any such pending action

If the above has been found, he must be removed from the ICC and LCC.

(v) Limitations on filing Complaint:

S. 9 provides that an aggrieved woman can file a complaint in writings within three months of an alleged incident. If not possible to file, the complaint within three months then the ICC/LCC may allow for next three month after recording reason for delay.

(vi) Procedure for Filing the complaint:

A woman who has been harassed sexually can file a written complaint. The ICC/LCC must provide assistance in making a formal complaint in the event that the aggrieved lady is unable to do so. Because of a physical or mental handicap, a terminal illness, or for any other reason, a woman may not be able to register a complaint. Nevertheless, a relative, friend, heir, coworker, or representative from the National Women Commission may do so.¹²

(vii) Interim orders

During the pendency of inquiry interim order may be passed. This interim order may be passed either at instance of written request of aggrieved woman or at the discretion of ICC/LCC. The interim order may include to transfer aggrieved woman or respondent to any other workplace or

⁹ Indira Jaising, ‘Sexual Harassment at Workplace’ 2nd Edn. 2014, Universal Law Publishing House, New Delhi at p. 140

¹⁰ Id. at 141

¹¹ S. 16

¹² S.9 (2), read with rule 6 of the 2013 Act.

Interim orders may be made while the investigation is ongoing. This temporary injunction may be issued at the ICC/discretion LCC's or in response to a written request by the aggrieved lady. The interim order may include transferring the respondent or the offended lady to another place of employment, granting three months of leave, or providing any other remedies. If the respondents work for any educational institutions, he could only be allowed to watch over the lady who felt wronged.¹³

(viii) Monetary compensations:

If the ICC or the LCC determines during the investigation that sexual harassment at work has occurred, the Act allows them to suggest compensating the victimised woman in addition to taking disciplinary action. This is a financial compensation. The 2013 Act gives the employer or district officer the authority to withhold a person's pay or wages from them or, if termination of work is not an option, to treat the arrears as land revenue. Notwithstanding anything in the respondent's service guidelines, this regulation is to be followed.¹⁴

(ix) Conciliation:

When an aggrieved woman lodges a complaint under the Act, before ICC and make request to ICC to settle such matter by way of conciliation, the ICC may take appropriate process to have the complainant and respondent to resolve the matter by conciliation. The conciliation must be recorded, and copies of record of conciliation should be given to the victim and respondent. There is apprehension also whether conciliation can lead to coercion of the complainant. On this issue, the Government responded that the conciliation would start at the instance of complainant.¹⁵

(x) Prosecution for false and malicious complaints:

The Act punishes the complainant if it has been found that the complaint is false, and it leads to prosecution. If the ICC/LCC finds during inquiry of false complaint or false evidence has given by witness, then ICC/LCC may recommend the employer to act as per service rules.¹⁶

(xi) Appeal

When there are appeal provisions provided in service rules, they shall be "applied in line with the requirements of the service rules to the exclusion of 2013 Act. The appeal must be submitted in 90 days.¹⁷

(xii) Functions of the Employer

¹³S.12 read with rule 8 of the 2013 Act.

¹⁴ Supra note 11 at p. 150

¹⁵S.10

¹⁶ S. 14

¹⁷ Supra note 11 at p. 151

The employer is required by law to provide a sexually harassment-free workplace that is safe for female employees. The 2013 Act's primary responsibility is to ensure that a complaints procedure has been established that can be used to investigate complaints and provide a resolution. A punishment of 50,000 would be enforced if the mechanism wasn't established. If the offence is committed again, the conciliation process will not be pursued. As the offence is not legally recognised, the court cannot hear the case until a complaint has been filed.

(xiii) Duties of the State and its Agency:

According to section 29 of the 2013 Act, the Central government is responsible for notifying Regulations. It is regrettable that the 2013 Regulations were only announced eight months after the Act was approved by Parliament and received the President's approval. After two years of the Act's entry into effect, the Central Government was unable to make arrangements to address its problems.

IV. Conclusion:

The Act was passed by the legislature to combat sexual harassment rather than to legislate over employment issues or workers' rights. The legislation itself makes this quite obvious. Section 28 is significant in this context. The provisions of this Act shall be in addition to and not in derogation of the terms of any other legislation now in effect, according to Section 28. This means that workplaces that are subject to other laws but do not have any laws that apply to them must abide by the Act's provisions to ensure the prevention of sexual harassment, and workplaces that are subject to other laws but do not have provisions for the prevention of sexual harassment at work must abide by the Act's provisions. Although the Act tries to address all sexual harassment concerns, there will still be a number of situations that may not fall within the definition of workplace.