

Analysis of Status of Women Towards Sexual Harassment

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Abstract

India took 50 years to come up with a definition for what constitutes sexual harassment in the workplace, courtesy of a Supreme Court judgment 23 years ago Vishaka Vs. State of Rajasthan. The act uses the definition of sexual harassment as laid down in Vishaka case. This Judgment had come to be passed in the aftermath of a gang rape of a social worker (in Rajasthan) who had opposed certain discriminatory practices. The focus of the case shifted from a criminal wrong to a systematic gender discrimination which needed eradication. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishaka Guidelines for Prevention Of Sexual Harassment (POSH) introduced by the Supreme Court

(SC) of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute.[failed verification] Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013. The government has threatened to take stern action against employers who fail to comply with this law.

Keywords: Harassment of Women, Workplace Exploitations, Workplace Exploitations of Women

Introduction

Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourage women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth¹. With this idea the legislature formulated the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

The need for such legislation was observed first time by the Supreme Court, in Vishaka v State of Rajasthan². In the absence of any law at that time providing measures to check the evil of sexual harassment of working women, the Supreme Court, in exercise of power available under Article 32 of the Constitution, framed guidelines to be followed at all workplaces or institutions, until a legislation is enacted for the purpose. The Supreme Court incorporated basic principles of human rights enshrined in Constitution of India under Article 14, 15, 19(1)(g) and 21, and provisions of Convention on Elimination of All Forms of Discrimination against Women (CEDAW), which has been ratified in 1993 by the Government of India. The guidelines laid down by the Supreme Court were to be treated as the law declared under Article 141 of the Constitution.

The Act defines sexual harassment as unwelcome acts or behavior (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature⁴. Any act of unwelcome and sexual nature shall be considered as sexual harassment. The Delhi High Court in *Shanta Kumar vs CSIR* held that "undoubtedly, physical contact or advances would constitute sexual harassment provided such physical contact is a part of the sexually determined behaviour. ...a physical contact which has no undertone of a sexual nature and is not occasioned by the gender of the complainant may not necessarily amount to sexual harassment."⁵

The Act also provides the circumstances under which an act may amount to sexual harassment. These are:

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment ; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

The important feature of the Act is that it envisages the setting up of Internal Complaints Committee at every office of the organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment⁷. Where the number of employees are less than 10, the Act provide for setting up of Local Committee in every district by the District Officer. The committee while inquiring into such complaint shall have the same power as vested in a civil court. The Delhi High Court in its judgment in *Ruchika Singh Chhabra vs M/s Air France India and Anr.* "...directed that the ICC should be constituted in strict compliance with the requirements under law...".

An aggrieved woman can file a written complaint to ICC/LC from three months from the date of the incident and in case of series of such incidents within three months from the last such incident. However, any delay in filing the complaint can be condoned by the committee upto further three months. In case of physical or mental incapability of the aggrieved woman, her legal heirs or such other person as described in Rule 6 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("the Rules") may make a complaint.

On receiving the complaint the committee, before initiating an inquiry, may take steps to settle the matter between her and the respondent through conciliation and when a settlement is arrived no further inquiry is conducted. If the conciliation fails or any term of the settlement arrived at has not been complied with by the respondent, the committee shall proceed further with the inquiry.

In case of a domestic worker, the Local Committee shall, if prima facie case exists, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of Indian Penal Code or any other relevant provisions of the said Code where applicable.

Where both the parties are employees, the principle of natural justice is followed and both the parties are heard and opportunity is given to make representations against the findings of the committee. For the purpose of making an inquiry, the committee shall have the same powers as are vested in a civil court. The committee has to complete the inquiry within a period of 90 days. The committee can give certain interim reliefs to the aggrieved woman during the pendency of the inquiry.

The committee within 10 days after completion of the inquiry shall provide the report of its findings to the employer/District Officer and the concerned parties. When the allegation against the respondent has been proved the committee shall recommend the employer/District

Officer to take action for sexual harassment as misconduct in accordance with provisions of service rules or where no such rules have been made, as prescribed in Rule 9 of the Rules and to pay such sum to the aggrieved woman as it consider appropriate, in accordance with the provisions of section 15, from the salary of the respondent. The employer/District Officer shall act upon the recommendations within 60 days.

In case of filing of false or malicious complaint or false evidence the committee may recommend to the employer or District Officer to take action in accordance with the provisions of service rules or where no such service rules exist, in such manner as prescribed in Rule 10 of the Rules.

An appeal 15 can be filed against the recommendations made by the committee before the court or tribunal, within 90 days from the recommendations, in accordance with service rules and in absence of service rules, to the Appellate Authority under Section 2 of the Industrial Employment (Standing Orders) Act.

There is a prohibition on publication of identity of the aggrieved woman, respondent, witnesses, contents of the complaint, inquiry proceedings or recommendations of the committee, except information regarding the justice secured to any victim of sexual harassment. In contravention of Section 16 of the Act, such person shall be liable for penalty in accordance with service rules and in absence of service rules, in accordance with Rule 12.

The Act lays down certain duties of the employer and District Officer under Section 19 and 20 respectively such as creating awareness on sexual harassment at workplace, sensitize the employees, assist the complaints committee in conducting the inquiry, act upon recommendations of the committee, monitor timely submissions of reports of the committee etc.

The non compliance of the provisions of the Act by the employer may result in fine which may extend to fifty thousand rupees and can also lead to cancellation of his license or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be 18.

Even though the Act is in force since 2013, the awareness regarding consequences of sexual harassment and its redressal against the same is limited. The effective implementation of POSH Act not only requires creating an environment where women can speak up about their grievances without fear and get justice but sensitization of men towards treatment of women at workplace is equally necessary.

Critical Points

Brinda Karat, serving in the Rajya Sabha as a Communist Party of India (Marxist) member for West Bengal, initially complained that the Bill does not cover women in the armed forces and excludes women agricultural workers, "a gross injustice to agricultural workers who are the single largest female component of work force in the country." However, the final bill includes the clause "No woman shall be subjected to sexual harassment at any workplace" (clause 3.1), and is considered to have addressed those concerns.

In the May 2012 draft Bill, the burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted, which has raised concerns about women being even more afraid of reporting offences. Before seeing the final version of the bill, lawyer and activist Vrinda Grover said, "I hope the Bill does not have provisions for penalizing the complainant for false complaints. This is the most under-reported crime. Such provision will deter a woman to come forward and complain." Zakia Soman, a women's rights campaigner at ActionAid India said that "it helps to have a law and we welcome it, but the crux will lie in its implementation once it is enacted."

Manoj Mitta of The Times of India complained that Bill does not protect men, saying it "is based on the premise that only female employees needed to be safeguarded." Nishith Desai Associates, a law group, wrote a detailed analysis that included concerns about the role of the employer in sexual harassment cases. They called out the fact that there is no stipulated liability for employers in cases of employee-to-employee harassment, something upheld in many other countries. They also viewed the provision that employers are obligated to address grievances in a timely manner at the workplace as problematic because of potentially uncooperative employees.

Furthermore, the law requires a third-party non-governmental organisation to be involved, which could make employers less comfortable in reporting grievances, due to confidentiality concerns. Compliance to this statute has so far been left to the vagaries of the employers and government has not taken any significant step to enforce the law so far. For example, 6 months after the law came into effect, the state in UP remained dreadful as women could not participate in the workforce due to sexual harassment. Some tribunals have commented on the constitutionality of some of the provisions of the statute, especially section 4 and Section 7.

Conclusion

Sexual harassment at workplace is a universal problem in the world whether it be a developed nation or a developing nation like our country India or an underdeveloped nation, atrocities and cruelties against women is common everywhere. Today's world is accustomed to the term Sexual harassment. Sexual Harassment can be identified as a behavior. It can in general terms be defined as an unwelcome behavior of sexual nature. Sexual harassment at workplace is a universal problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities and cruelties against women is common everywhere. It is a problem giving negative effect on both men and women. It is seen to be happening more with women gender as they are considered to be the most vulnerable section of the society

these days. Sexual harassment therefore is a serious problem in the workplace and it has become one of those issues that receive a lot of negative attention.

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