



LAWS RELATED TO SEXUAL HARASSMENT AT WORKPLACE IN INDIA

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1. INTRODUCTON

Globalization has brought dynamic change in industrial sector. The work force ratio of women has increased. Earlier men were used to be the only bread earners for the family. But the time has been changed now. The indulgence ratio of women has risen. Due to which sexual harassment cases at work place is at greater pace. Sexual harassment is a common problem faced in every country.

In general terms, sexual harassment is an unwelcoming behaviour towards any one. It is not gender specific. But women have faced sexual harassment way more than the men counterparts. Sexual harassment is a kind of gender discrimination. It is estimated that thirty five percent of women worldwide are the victims of sexual harassment. It is a growing problem and efforts have been made at international as well as national level to combat this problem. Many International conventions have been made to curb this issue. Also, the legislations related to sexual harassment have been enacted at national level.

In India, the devaluation of women's status and male domination still prevails. India has highly substandard Gender Gap Index. India ranks 112 out of 153 countries in Global Gender Inequality Index due to rising discrepancy in women workforce in economy. According to World Economic Forum, the Gender Gap is based upon four key factors- health, education, politics and economy.

Initially, there was no specific law related to sexual harassment of women at workplace in

India. The act of sexual harassment is a gender specific form of assault against a particular gender. It violates the Article 14(Right to Equality), 15 (Prohibition of Discrimination) and 21 (Right to Life and Personal Liberty) of Indian Constitution. It hampers the constitutional, fundamental rights, integrity and dignity. Sexual harassment is an inappropriate behaviour that violates just not the fundamental rights of women but also makes them suffer physically as well as emotionally. Cold and insecure working environment affects the growth of women and depletes the ability of women to compete with this world. It puts all career ambitions of women at the stake.

In 2013, India enacted its first legislation related to sexual harassment – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (POSH Act). This act was introduced Union Minister of Women and Child Development. Also, the year 2013

1 brought Criminal Law (Amendment) Act that criminalised the offences like sexual harassment, stalking, voyeurism etc.

POSH Act is enacted to prohibit sexual harassment at workplace and aims at providing a secure, safe and friendly working environment for women. However, it's hard to achieve the guidelines provided under POSH Act. Still due to many challenges, the objective of this act is under achieved. There are various aspects which are not clarified properly under the statutes. Even after the formulation of numerous statues the picture remained same. The whole objective of this act is to achieve safe environment for women; though complexities have increased. The act is not implemented in righteous way or spirit.

This research paper focuses on the laws related to Sexual Harassment in India. The evolution, problems and solutions related to sexual harassment will be discussed in detail.

2. WHAT AMOUNTS TO SEXUAL HARASSMENT?

Sexual harassment is defined as an unwelcome behaviour of sexual nature. In general sense, it is termed as unwelcome sexual favour and other verbal or physical conduct of sexual nature that tends to create a hostile environment for work. Sexual harassment is identified as a term which is difficult to define as it involves a range of different behaviours. Efforts are made at international as well as at national to define sexual harassment still there is no single definition that define prohibited behaviour. The International Instruments has defined sexual harassment as violence against women which is discriminatory in nature. This definition has broader meaning compared to national laws.

The Supreme Court of India has defined Sexual Harassment for the first time in the landmark judgement of Vishaka & Others V. State of Rajasthan¹. The Apex Court defined Sexual

Harassment as any unwelcome behaviour sexually determined behaviour (whether directly or by implication) such as;

1. Physical contact and advances,
2. A demand or request for sexual favours,
3. Sexually coloured remarks,
4. Showing pornography,
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The key part of the definition is unwelcome or unwanted. Sexual harassment is a one sided and unwanted behaviour.

In 2013, substantial changes were made within the criminal justice of India. The Criminal Law (Amendment) Act, 2013 came into the effect from April 3, 2013. Through this Act Section 354A was included in the Indian Penal Code, 1860 that defined the term Sexual Harassment.

According to Section 354A of the Indian Penal Code,

A man committing any of the following acts—

(1997) 6 SCC 241: AIR 1997 SC 3011.

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(i) physical contact and advances involving unwelcome and explicit sexual overtures;

or

(ii) a demand or request for sexual favours; or

(iii) showing pornography against the will of a woman; or

(iv) making sexually coloured remarks, shall be guilty of the offence of sexual harassment.²

The POSH Act defines 'sexual harassment' in line with the Supreme Court's definition of 'sexual harassment' in the Vishaka Judgment. As per the POSH Act, 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.³

The following circumstances, among other circumstances may amount to sexual harassment:

(i) implied or explicit promise of preferential treatment in employment;

(ii) implied or explicit threat of detrimental treatment in employment;

(iii) implied or explicit threat about present or future employment status;

(iv) interference with work or creating an intimidating or offensive or hostile work

environment; or (v) humiliating treatment likely to affect the lady employee's health or safety.⁴

The definition under POSH Act is wide enough to cover both direct and implied sexual conduct that involves verbal, physical and written conduct. The key feature is unwelcome or unwanted conduct. According to POSH Act, the sexual harassment can be distinguished in two forms: (i) quid pro quo (means this for that) and (ii) intimidate, hostile environment. The quid pro quo includes blackmailing. In this situation, the woman is pressurized by the person in power for the sexual favours and in exchange for advancement. The second form of the sexual harassment means creating hostile environment for woman by demanding sexual favours which embarrass her and unable her to work properly.

²The Indian Penal Code, 1860 (Act 45 of 1860), s. 354A. ³The Sexual Harassment of Women at Workplace (Prevention, Prohibition and

Redressal) Act, 2013 (Act 14 of 2013), s. 2(n). 4The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 3(2).

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3. EVOLUTION OF LAWS ON SEXUAL HARASSMENT AT WORKPLACE

The concept of Sexual Harassment was coined by Lin Farley. It could be traced to 1975 during the New York Human Rights Commission Hearings on Women and Work. Lin Farley's work popularised the term Sexual Harassment by her work known as 'Sexual Shape down: The Sexual Harassment of women at Job'. This made people conscious about social issue. Catherine Mackinnon's book 'Sexual Harassment of Working Women' threw light on legal ways to compensate the victims and helped in establishing the guidelines for Equal Employment Opportunity Commission in United States of America in 1980.

The issue of Sexual Harassment at Workplace was first raised in India by a cover article in Manushi magazine, a feminist magazine focussing on harassment faced by students and teachers of Delhi University.

3.1. PRE-VISHAKA SCENARIO

In early 80s, sexual harassment remained a major issue in India. Civil society claims that around 70% women have faced sexual harassment at work. Before "The Vishaka" guidelines were introduced, women had to lodge complaint of sexual harassment at workplace through IPC Section 354 and Section 509. As, it infringes the fundamental rights- Article 14, Article 15 and Article 21 of the Indian constitution.

In 1980s, Forum against Oppression of Women took the charge against sexual harassment for nurses, colleagues, teachers and other staff.

In early 1993 at ILO seminar held in Manila recognized sexual harassment of women at workplace as a form of gender discrimination. In Convention on Elimination of all forms of Discrimination against Women (CEDAW) and Beijing Declaration directed all the states to take measures to prevent Sexual Harassment at workplace.

Until "The Vishaka guidelines came into the picture in India, no law was there to govern the sexual harassment cases. The guidelines were the outcome of international treaties that

recognized protection of sexual harassment as human rights of women. The guidelines were derived from Convention on Elimination of all forms of Discrimination against Women (CEDAW). Even the constitution of India had the grounded provisions of Right to life, Right to equality, Right against discrimination and Freedom to profess any trade or occupation.

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3.2. VISHAKA AND OTHERS V. STATE OF RAJASTHAN⁵-

Sexual Harassment was recognized for the first time by the Supreme Court of India in this case. After this case, there was an urgent need to curb this inequality against the women. The Landmark Judgement of Vishaka case laid down the guidelines of sexual harassment at workplace.

FACTS: In 1997, a dalit woman Bhanwari Devi was a social activist. She was employed with a rural development programme by Government of Rajasthan to stop child marriages in rural areas. Ramkaran gujjar was trying to do marriage of his infant daughter who was not even one year old. As a part of her duty, Bhanwari tried to stop this marriage but all went in vain. After that she was socially boycotted. In September, out of revenge she was gang raped by Ramkaran gujjar and his four friends in front of her husband. Later, when she filed a complaint of rape the medical examiner denied to do her medical examination. This was not all, in police station she was continuously taunted by women constable. Also, she was asked to leave her lehnga as an evidence of incident and go back to her village.

DECISION: The Trial Court didn't held the accused guilty. The decision was challenged in High Court. The High Court held this incident as a gang rape. Thereafter, PILs were filed in Supreme Court by numerous NGOs under the banner of Vishaka. The Supreme Court framed certain guidelines and issued directions to Union Government to enact an appropriate law to curb the sexual harassment at workplace. Nothing more than an irony the POSH Act was enacted 16 years after the judgement. In the absence of any specific law, the Supreme Court issued several guidelines that were mandatory for every employer to follow. It was obligatory for every employer to provide a mechanism to redress grievances according to the Vishaka guidelines until the enactment of POSH Act.

As per the Vishaka judgement,

“‘Sexual Harassment’ includes such unwelcome sexually determined behavior (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 nonverbal conduct of sexual nature. Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she

Supra note 1.

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is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.”⁶

3.3. POST- VISHAKA SCENARIO

The Vishaka judgement leads to nationwide discourse workplace on sexual harassment. It wide opens the issue related to sexual harassment. The first case before the Supreme Court after the Vishaka case was of Apparel Export Promotion Council v. A.K Chopra.⁷

FACTS: In this case, it was held that the appellant was personal secretary of the chairman. The respondent forced the appellant to accompany him to Taj Hotel for dictation and typing the matter. The appellant refused as she was not competent to take the dictations. She was pressurized to take the dictation for director. On 12.8.1988, the respondent and appellant went to Taj Hotel for meeting with the director. While waiting for the director, the respondent tried to do objectionable behaviour with her. The respondent resisted and told him that she would leave the place if he continued to do such overtures. While going to business centre in the lift, the respondent tried to physically molest her. She saved her by pressing emergency exit. On 16.8.1988 she was unable to meet the director as he was busy for lodging complaint against the respondent. Finally, she managed to meet the director and submitted the whole incident in the oral as well as written. The respondent was suspended and was served with the charge sheet. In respond to the charge sheet, he denied all the allegations by asserting that the

allegations were imaginary. An enquiry committee was formed for investigation and examination purpose of the incident. All the evidences oral as well as circumstantial were against respondent. The disciplinary committee agreed the decision of enquiry officer of removing the respondent from service. The respondent appealed in front of staff committee.

DECISION: There was a conflict of opinion between members and chairman of staff committee. The respondent without knowing the minutes of the meeting filed an appeal in

6Vishaka and others v. State of Rajasthan and others 1997 6 SCC 241: AIR 1997 SC 3011. 7(1999) 1 SCC 759.

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High Court challenging his removal from service. The High court upheld the decision of the Staff committee of The High Court upheld the decision of the staff committee. The appellant challenged the decision of High Court under Special Leave Petition. The decision of termination of service was upheld.

In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that

“sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.”⁸

3.3.1. MEDHA KOTWAL LELE & ORS. V. UNION OF INDIA⁹

FACTS: A letter was written by Dr. Medha Kotwal of Aalochana (NGO) highlighting the numerous cases related to sexual harassment at workplace. She argued that the Vishaka guidelines were breached and were not implemented in the righteous way. The letter was converted into a writ petition.

DECISION: The Supreme Court started monitoring of implementation of Vishaka guidelines by the States. The Apex Court found that the States fall short in this regard. They were not implementing the Vishaka guidelines at all. Also, some States just amended the legislation. The Supreme Court went on to note that some States were not implementing the court's decision which had to implement the legislation. The Court held that the States should implement the legislation in compliance with the Vishaka guidelines. The Vishaka guidelines should not be remained symbolic but implemented in the form of the spirit. So that it will help in curbing the issue of gender disparity and sexual harassment. The court provided some directions to the States to enact and amend the legislations within the two months of the

⁸India's Law on Prevention of Sexual Harassment at the Workplace, available at:

https://nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf (Visited on May 1,2020).

⁹(2012) INSC 643.

⁸ judgement, to follow the mechanisms for efficient implementation of Vishaka Guidelines and to form Complaint committees. Also, the Bar council of India was also directed to ensure the proper implementation in the State Bar councils. Finally, the Supreme Court stated that in the case of non-compliance of the court's decision and the Vishaka guidelines, the aggrieved person should approach the High Court of the concerned State.

3.4. LEGISLATIVE TIMELINE OF POSH ACT

In the year 2007, the Draft Protection of Women against Sexual Harassment at Workplace Bill was approved by the Union Cabinet. Later, in 2010 the Bill was introduced in Lok Sabha and was re-introduced in 2012 in Lok Sabha. On 3.09.2012, the Bill was passed by Lower House. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill was passed by Rajya Sabha on 26.02.2013. The assent was given by President on 23.04.2013.

4. LAWS RELATED TO SEXUAL HARASSMENT AT WORKPLACE IN INDIA

After the landmark judgement of Vishaka & others V. State of Rajasthan¹⁰, the Supreme Court of India issued directions for Union Government to formulate separate provisions and legislations related to Sexual Harassment at Workplace. The Constitution of India ensures the equality and dignified life to women. Many other laws related to sexual harassment were enacted and amended by the legislature to curb the issue of Sexual Harassment at Workplace. The law of India protects the dignity of women from such social evil through following laws:

4.1. CONSTITUTIONAL PROVISIONS

The Constitution of India ensures wide range of rights to women to tackle the problem of Sexual Harassment at Workplace. Article 14 of the Indian Constitution provides Right to Equality which ensures that women will be treated equally in the eyes of law in all the sectors. Article 15 of the Constitution of India creates an obligation on the State to prohibit the discrimination related to gender. Article 15(1) makes constitutional obligation for advancement of women. Article 15(3) empowers the State to make special provisions for recognition of women. Article 16 of the Indian Constitution embodies the right to equal opportunity for employment to all the citizens. Article 19(1)(g) guarantees freedom to profess any profession which includes right to safe environment free from harassment. Article 21 entitles every citizen right to life and personal liberty which include right to live with dignity. Article 39(A)- State should provide justice, Article 39(D)- Equal pay for Equal work, Article 39(E)- Health and strength of workers, Article 42- Provisions for just and humane conditions of work and maternity relief and Article 51 obligates duties on the States and imposes duties on the citizens. Article 51A (e) imposes duty on every citizen to uphold dignity of women.

4.2. INDIAN PENAL CODE OF 1860

Section 354 of the Indian Penal Code penalizes anyone who assaults any woman or whoever intends to outrage modesty of woman. The Code penalizes with one year of imprisonment extended to five years or with fine or with both. Section 509 of the Code punishes whoever

¹⁰See Supra note 6.

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intends insults the outrage of modesty of a woman by uttering words or through gesture. The offender is penalised with the simple imprisonment may be extended to one year or fine or both. 4.2.1. RUPAN DEOL BAJAJ V. KUNWAR PRATAP SINGH¹¹- It is also famously known as butt slapping case. This case changed the meaning of privacy and modesty.

FACTS: Mrs. Bajaj (an IAS officer) was attending a party. She was talking to Mrs. Bijlani and other ladies on the said night. Mr. Gill (Senior Inspector) came in garden walking and requested took seat next to her as he wants to talk to her. Mr. Bajaj continuously pulled his chair close to her. Mrs. Bajaj was feeling uncomfortable so she got up and sat somewhere else. Mr. Gill came to her and stood in front of her very close. And after that he asked her to get up but she refused and asked him to go away from there. She tried to leave but he blocked her way. Being frightened she turned around and pulled her chair backwards. In front of everyone, he slapped her on posterior.

DECISION: Mr. Bajaj lodged FIR. But no investigation was held as Mr. Gill was Senior Inspector in Chandigarh Police. Mr. Gill filed a petition in High Court for quashing FIR by Chief Judicial Magistrate. The High Court also quashed both FIR and complaint against Mr. Gill. Both Mr. and Mrs. Bajaj filed an appeal in the Supreme Court. The Apex Court held that Section 354 and Section 509 of the Indian Penal Code would be applicable.

The Criminal Law (Amendment) Act of 2013 introduced new sections- Section 354A- Sexual Harassment at Workplace, Section 354B- disrobe, Section 354C- Voyeurism and Section 354D- stalking which is related to sexual harassment at workplace.

Section 354 A deals with the sexual harassment at workplace. It is a cognizable offence and gender specific law. Any man commits the act of (i) physical contact and advances involves unwelcoming and explicit sexual proposition (ii) demand for sexual favours (iii) showing pornography without will of women (iii) making sexual coloured remarks shall be guilty of the offence of sexual harassment. If any man commits any act mentioned in (i),(ii) and (iii), he will punishable with rigorous imprisonment extended to three years or with fine or with both. Also, if any man commits any offence mentioned under (iv), he will be punishable with imprisonment extended upto one year or with fine or with both. The amendment act

111996 AIR 309, (1995) SCC (6) 194.

11 penalized the offences related to sexual harassment at workplace as it is not only wrong against a woman rather it is against society and public morals.

Section 354 B deals with the offences related to disrobing of a woman. If any man uses criminal force or abets any woman with an intention to disrobe or compels any woman to be naked shall be punishable with imprisonment not less than three years extended to seven years. This section is cognizable offence but it is also non-bailable in nature.

Section 354 C deals with the offence of voyeurism. Any man watches or captures the picture of woman involved in any private act in circumstances where any perpetrator is not expected will be held punishable for this offence. Also, if the consent of the victim is involved to capture images but not with the purpose to disseminate to third party, such dissemination will be treated as an offence under the purview of this section. The man will be punishable with the imprisonment not less than a year which may extend to three years for first conviction. In the second conviction the accused shall be punishable with the imprisonment not less than three years which may extend to seven years. He shall be liable for fine also. This is a cognizable offence and bailable at the time of first conviction but it will become a non-bailable offence at the time of second conviction.

Section 354 D deals with the offence of stalking. This section explains that if any man continuously follows or contacts a woman despite her disinterest or monitors her use on internet or electronic communication then he shall be held guilty for the offence of stalking under this section. He shall be punished with the imprisonment of not more than three years and fine at the time of first conviction. At the time of second conviction, the term of imprisonment may extend to five years and shall be liable for fine. There are some exceptions under the purview of this section. If man was continuously doing the act to prevent the crime, or if he is bounded by the law or if he has justifications for his act then he will not be held liable for the offence of stalking.

The amendment act intensified the crime of sexual harassment by penalizing the offences.

4.3. THE FACTORIES ACT, 1948

Section 19 of the act provides separate toilets for men and women. Section 66 of act restricts

the women to work between 6 A.M to 7 P.M in any factory and under no circumstances would she be allowed to work between 10 P.M to 5 A.M. Section 48(1) of act obligates employer to provide crèche to women employees if there are more than thirty three percent of 12 women working in the factory. Also, under Section 56 of act provides that no women would be allowed to do work for more than nine hours.

4.4. THE INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

Under this act, harassment through books, pamphlets, magazines, films, photographs, paintings etc that contain indecent representation of women would be punished for the minimum sentence of two years. Under Section 7 of the act punishes the companies for representing women indecently and showing pornography for the sentence of two years. The aggrieved woman can knock the doors of civil courts through tort law under physical harassment, mental torture etc.

4.5. THE INDUSTRIAL EMPLOYMENT (STANDING ORDER) ACT, 1946

The Industrial Employment (Standing Order) Act, 1946 creates obligation for the employer to define the conditions of employment in the form of standing orders. The order should contain terms of employment including hours of working, wage rates, leaves etc. Also, the Act prescribes the list of acts that constitutes misconduct and specifically includes sexual harassment. The Model Standing Orders defines the sexual harassment and also obligates employer to set Complaint Committee for redressal of grievances.

4.6. THE INDUSTRIAL DISPUTE ACT, 1947

The Act provides the provisions of unfair labour practices which includes sexual harassment at workplace. The worker can approach Labour Tribunal to seek redressal in case of sexual demands by the employer.

4.7. THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 came into effect from April 23, 2013. The Act was formulated by Union Government as

it was directed by the Supreme Court of India in the Landmark judgement of Vishaka & others V. State of Rajasthan¹². For the first time, the Supreme Court acknowledged sexual

¹²Supra note 5.

¹³harassment as human rights violation in 1997. The Act was enacted after 16 years of the judgement.

SCOPE: The Act has wide scope as it is applicable in organised as well as unorganised sector. It provides broader definition of 'workplace'. The statute applies to public & private sector, government bodies, sports institutions, educational institutions, non-governmental organisations, nursing homes & hospitals, entertainment, vocational, commercial, industrial, financial institutions and training institutes. The act introduced the term of 'extended workplace' as it covers the places visited by employee during the course of employment including commutation. As per the POSH Act, 'workplace' includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment¹³.

The definition of 'employee' under this act is wider enough as it covers permanent, temporary, ad hoc, employees hired on daily wage basis, apprentices, co-worker, trainees, contract labour, hired directly or indirectly through agents and probationers. The remuneration is not key feature as whether employee with remuneration or on voluntary basis, all comes under the purview of this act.

OBJECT: The object of the Act is to provide protection to woman from sexual harassment at any workplace. This Act laid guidelines to enforce gender equality at work. The statute outlines the guidelines for every employer to set up the retributive mechanisms. The Act was enacted with the objective of providing redressal complaints committee in every workplace. It obligates every employer to provide redressal mechanisms and set up complaint committees.

COMPLAINT COMMITTEE- The POSH Act envisages every employer to set a grievance redressal forum. The Act requires every employer set an Internal Complaint Committee

(ICC) at every branch or office, or organisations instituting atleast ten employees. Failure to set ICC leads to imposition of fine.

The composition of ICC should constitute (i) a presiding officer- woman employed at senior level at workplace (ii) members- not less than half of the members should be women, atleast

¹³The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 2(o).

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two members should be from amongst employee, the members should have legal or social background (iii) external member- from an NGO committed towards the cause of sexual harassment at workplace

The Government is also required to set a Local Complaint Committee (LCC) at the district level to investigate the cases of sexual harassment from the organisation where Internal Complaint Committee is not formed as the numbers of employees are less than ten employees. The composition of LCC is as follows: (i) a chairperson- eminent woman in field of social work (ii) NGO members- two members (atleast one should be nominated by a NGO or an association committed to cause of sexual harassment at workplace) ; atleast one member should have legal background and atleast one member should belong to SC/ST caste.

Also, the complaint committee works in time bound manner so that justice can be served on time.

POWERS OF ICC/LCC: The ICC/LCC vests the same power as the civil courts under Civil Procedure Code, 1908. The powers of ICC/LCC are prescribed in Section 11(3) of the POSH Act. The powers of complaint committee are as follows: (i) summoning the attendance of any person and examining him on oath (ii) requiring the documents of discovery and production (iii) any other matter prescribed.¹⁴

INTERIM RELIEF: The Act empowers the LCC or ICC to advise employer to provide interim measures to aggrieved woman at her request. The Interim Relief can be: (i) transfer of woman to other branch (ii) grant leave to aggrieved employee for a period upto three months.

COMPLAINT MECHANISM: An aggrieved woman who wants to file a complaint requires to submit six copies of written complaint along supporting documents of name, addresses of witnesses to ICC/LCC. The aggrieved woman should file complaint within three months of

the incident. The series of incidents should be explained properly. The complaint should be prompt as it looks more authentic. The copy of complaint should be served to respondent within 7 days. The respondent needs to reply along with supporting documents of name, addresses of witnesses within 10 working days. The Inquiry should complete within the period of 90 days. The Inquiry Report should be issued within 10 days from the completion

¹⁴The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 11(3).

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of inquiry. The employer needs to take action within 60 days of Inquiry report. The appeal against the decision of committee can be made within 90 days from the date of recommendations.

In instances where sufficient cause is demonstrated by the complainant for the delay in filing the complaint, the IC/LC may extend the timeline for filing the complaint, for reasons to be recorded in-writing. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.¹⁵

PUNISHMENT/ COMPENSATION: The POSH Act prescribes the punishment for the employees or employers who indulged in the act of sexual harassment under Section 13. The following are the punishment- (i) punishment prescribed by the rules of organisation (ii) if the organisation has not any prescribed rules then disciplinary action can be taken including warning, termination of service, reprimand, apology, counselling etc. (iii) deduction of compensation payable to aggrieved woman from the wages of respondent.¹⁶

The Act envisages the compensation payable to aggrieved woman. The compensation is determined on the basis of the following: (i) mental torture, mental agony, emotional distress caused to aggrieved woman (ii) medical expenses (iii) loss in career (iv) income and status of respondent (v) feasibility of payment in instalments or lump sum.

DUTIES OF EMPLOYER: The POSH Act obligates certain duties and obligations on the employer. These are as follows:

- (i) Promotion of gender sensitive environment
- (ii) Providing safe environment

- (iii) Provide assistance to aggrieved woman
- (iv) Creating awareness through workshops
- (v) Composition of ICC

In order to protect genuine respondent, the POSH Act envisages provision to take action against frivolous or malicious complaints. The POSH Act through this provision prevents the

¹⁵The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 6. ¹⁶The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act 14 of 2013), s. 13.

¹⁶malicious complaints as it ensures the disciplinary actions can be taken in accordance with the service rules of the organisation. In case, the organisation doesn't have service rules, the statute ensures disciplinary action against misleaders.



5. FAILURES IN IMPLEMENTING LAWS RELATED TO SEXUAL HARASSMENT AT WORKPLACE

It has been more than seven years since The Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013 was enacted and enforced in India. The main intent of the Act has been glorified still implementation of the law is the major concern. The Act has not been implemented in the righteous way and spirit. The implementation of such statutes is still a challenge.

5.1. DIFFERENCE BETWEEN HARASSMENT AND SEXUAL HARASSMENT

One of the challenges in implementation of such law is difference between the terms sexual harassment and harassment. The complaint of sexual harassment is done under purview of statutes but the general harassment in workplace is not dealt under the laws related to sexual harassment at workplace.

5.2. REQUIREMENT OF EVIDENCES

In the statutes, it is mentioned to provide the evidences to the complaint committee. But such acts take place in private. So, the requirement of providing evidences is a major challenge.

5.3. INDIFFERENT BEHAVIOUR TOWARDS AGGRIEVED WOMAN

One of the major hindrances in implementation of laws related sexual harassment at workplace is indifferent behaviour with the aggrieved woman. People taunt indirectly and make fun of suffering faced by the aggrieved. This discourages woman to report against such acts. Also, aggrieved woman face lot of partiality in career prospects due to previous complaints as senior males give less opportunity to such woman.

5.4. GENDER POLITICS

Due to fear of lodging false complaints, many companies don't offer the vacancies to females. This is the one of the biggest challenges in implementation of such statutes. It creates hindrance in career prospect of woman. Despite of providing safe environment for women, women are cursed in disguise.

5.5. UNDER REPORTING OF INCIDENT

The incidents of sexual harassment at workplace are under reported than misused. Woman doesn't report such incidents due to threats, fear of society and indifferent behaviour of people towards them. This also creates hindrance in proper implementation of laws related to sexual harassment at workplace

In order to improve, here's a need to include women participation, certain teeth is required so that the internal complaints committee can take suo moto basis, at the same time the employees particularly are to be made aware about the provisions of the act.

6. SUGGESTION TO PREVENT SEXUAL HARASSMENT AT WORKPLACE

About 90% of women have faced sexual harassment at workplace for once in their life. This is the high time to understand the importance of creating gender equality in India. The implementation of the laws should be done in the desired way.

- (i) Women should be encouraged to report such incidents and help in curbing the issue of sexual harassment at workplace.
- (ii) Employers should provide friendly and safe environment to women and should encourage women to report cases instead of hiding the facts for the reputation of company.
- (iii) Employers should organise a monthly meeting to know the grievances of the employees. This will help in creating a good bond between employer and employee and women will not hesitate in conveying the problems to employers.
- (iv) Awareness workshops should be organised by employers to make woman aware about the provisions of the laws related to sexual harassment at workplace.
- (v) Convenient complaint mechanism should set up so that aggrieved woman should not face inconvenience.
- (vi) The organization should show commitment towards this issue. The efforts should be made to investigate the matter without any delay.
- (vii) Proper surveillance measures such as CCTV camera should be taken for the protection of women employees.

7. CONCLUSION

Sexual harassment at workplace is highly prevalent in India. This is the high time to realise that women also constitute a part of working population. Government should ensure that laws enacted should be implemented in a proper manner. Effective implementation of the statutes cut down the chances of injustice. Organisations and government should ensure that the women should be treated equally and gender discrimination should not prevail. New strategies should be made by the employers to curb this social evil. At last women should raise their voices against sexual harassment. “Woman must not accept; she must challenge. She must not be awed by that which has been built up around her; she must reverence that woman in her which struggles for expression.” -Margaret Sanger.

