



Gender Justice at Workplace: Special Reference to Prevention of Sexual Harassment of Women at Workplace act, 2013

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ABSTRACT

India is a sacred land where women are compared to goddess. Women are compared to Mother Earth. In Vedic times enjoyed equal status with men. But during the periods followed, women's status declined. Social evils such as Sati, Child Marriage, Dowry system etc prevailed. Major change took place with the introduction of English education and the influence of western thoughts. Women organizations and social reform movements began to support women's causes. Laws such as Hindu Widows Remarriage Act 1856, The Child Marriage Restraint Act 1929, The Commission of Sati (Prevention) Act, 1987 etc were passed. After Indian Independence, more reforms were introduced. Slowly her status changed to a wage earning member of the family. Though, employment gave a new social status to women, still she faces lot of challenges at workplace. The paper analyses sexual harassments as a human right violation and critically evaluate the legislative framework in India.

Introduction

The Universal Declaration of Human Rights guarantees right to work as a human right. Right to work requires that everyone should be given opportunities to work for a better living wage. The ILO Convention describes 'discrimination at work' as distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin of opportunity and treatment in employment or occupation. The Convention on Elimination of all forms of Discrimination against women 1993 guarantees right to work as an inalienable right of all human rights. The Constitution of India guarantees equality to women and also empowers the State to adopt measures for the socio-economic and political upliftment of women. Fundamental Rights includes equality before the law and equal protection of law (Article 14); prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth (Article 15), and ensures state to make special provisions in favour of women (Article 15(3)). Constitution also promises equality of opportunity to all citizens in matters relating to employment (Article 16). All the citizens are also guaranteed the freedom to practice any profession, or to carry out any occupation, trade or business (Article 19(1) (g)). Right to life and personal liberty is protected under Article 21. The Constitution also imposes duties on the state to take steps in promoting the welfare of women such as adequate means of livelihood (Article 39), equal pay for equal work (Article 39(d)), free legal aid, humane conditions of work and maternity relief (Article 42). Apart from these guarantees, India has labor legislations to provide social security to women at workplace.

Sexual harassment at workplace

Sexual Harassment can be defined as "uninvited and unwelcome verbal or physical behaviour of a sexual nature especially by a person in authority toward a subordinate (as an employee or student)". Sexual harassment may be physical or verbal. Sexual Harassments may be two kinds. The first type is called as the 'Sexual coercion or quid pro quo sexual harassment'. It takes place under a condition of employment, where an openly or implicitly offer in keeping a job or getting a promotion is made by a supervisor to an employee in exchange for sexual favours. Other type is known as 'Sexual annoyance'. This type of

sexual harassment occurs when a co-worker in the workplace makes sexual advances to an employee. The impact of sexual harassment on the women employee is severe. It may lead to situations where the women lose her job or promotion opportunities may force her to leave the job, thus leaving mental and physical trauma.

Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013

The evolution of Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013 can be traced back to the judgment of the Supreme Court on the case of *Vishaka and Others v. State of Rajasthan and Others*. In this case, the Supreme Court issued several guidelines to prevent sexual harassment at workplace. Even though, several attempts were made to enact a law, the Act finally came into force on 22nd April, 2013. The main aim of the Act is to prevent women against sexual harassment at workplace and for the prevention and redressal of complaints on sexual harassment. The features of the Bill includes:-

1) Protection against Sexual Harassment

The Act defines Sexual Harassment as any one or more of the following unwelcome acts or behaviour (whether directly or by implications) namely-(i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexual coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. The Act extends protection to women employees working in governmental departments/organisations, private organisations, hospitals and nursing homes, sports institutes and places visited by the employees in course of the employment and to women employees in unorganized sectors. Section 3 of the Act reads as "No woman shall be subjected to sexual harassment at any workplace". The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment- (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 of-

fensive or hostile work environment for her; or (v) humiliating treatment likely to affect her health or safety.

2) Complaints Committee

It is mandatory for every employer of a workplace where not less than ten employees are employed to constitute an internal complaints committee. The internal committee shall consist of a presiding officer who shall be a woman employed at a senior level at workplace and not less than two Members from amongst employees and one member from amongst non-governmental organisations. The Act also provides for a Local Complaint Committee to be constituted by every district officer to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers. The committee will consist of a chairperson who is a woman and one member from amongst the women working in block, taluka or tehsil or ward or municipality in the district; and two Members, of whom at least one shall be a woman, from non-governmental organisations. At least one of the nominees should have a background in law. At least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or Other Backward Classes or minority community.

3) Complaint of Sexual harassment

The Act provides that a complaint of sexual harassment at workplace shall be made within 3 months from the date of the incident to the internal complaints committee or the local committee. However if there exists reasonable grounds for not making complaints within the prescribed time, the complaints will be entertained. Assistance will be provided to women who cannot reduce the complaints into writing. Legal heirs of the women who is incapable, physically or mentally or dead can make complaints on behalf of her. The Act also favours conciliation process to settle the matter. The internal committee or the local committee shall inquire into the complaint and has the power of a civil court. The committee shall also submit its report to the employer of the district officer within 10 days from the date of completion of inquiry.

4) Compensation as Penalty

If the allegation against the respondent is proved, then the committee can make recommendations to take action for sexual harassment as per service rules or to deduct appropriate sum from the salary or wages of the respondent to be paid to the aggrieved women. The compensation payable to the aggrieved woman depends on factors like the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; the loss in the career opportunity due to the incident of sexual harassment; medical expenses incurred by the victim for physical or psychiatric treatment; the income and financial status of the respondent; and feasibility of such payment in lump sum or in instalments. The Act prohibits the publication of identity and address of the aggrieved women, respondent and other details with regard to the complaint and penalty is imposed for the contravention of it.

5) Duties of the employer

The Act imposes duties on the employer with regard to the safety of the work environment. His duties include the publication of penal consequences of sexual harassments in the workplace, constituting internal committees, organising workshops and awareness programmes, assisting women in case she wish to file complaints, taking proper actions for such misconducts etc. The Act also imposes a

penalty on the employer in case he contravenes to comply with the provisions of the Act.

Role of Judiciary

Judiciary has played a significant role in providing a legislative framework to prevent sexual harassments at workplace. Some of the major decisions include:-

1) *Vishaka and Others v. State of Rajasthan and Others* (AIR 1997 SC 3011)

In this case, the Supreme Court issued several guidelines including the duty of the employer or other responsible persons in workplaces and institutions to prevent sexual harassments. Guidelines include preventive steps such as express publication of prohibition of sexual harassments at workplace, enactment of rules by Government and public sectors on discipline and conduct and appropriate penalties against the offender, measures as mentioned above must also be taken by private employers, provision for appropriate working conditions such as leisure, health and hygiene and friendly atmosphere to women employees etc. The guidelines provide for the need for taking criminal proceedings and disciplinary actions against misconduct by the employer. The victim can also demand transfer of the perpetrator or her own. Creation of a complaint mechanism and a complaint committee headed by women is provided. Workers initiatives through employer-employee meetings and the need for awareness among female employees about their rights are mentioned. Protection against third party harassment is also prescribed in the guidelines. The employer can take appropriate steps with regard to the same.

2) *Apparel Export Promotion Council v. A.K Chopra* (AIR 1999 SC 625)

In this case, the respondent, the chairman of the Apparel Export Promotion Council was removed from his post as he was found guilty of sexual harassment of a junior female employee. The Supreme Court upheld his removal and observed "*Each incident of Sexual harassment at the place of work, results in violation of the fundamental right to gender equality and the right to life and liberty – the two precious fundamental rights guaranteed by the constitution of India.*"

3) *Medha Kotwal Lele & Others v. Union of India & Others* (2013) 1 SCC 297

In this case, Supreme Court ordered the states and union Territories and the state/public/private institutions or sectors to comply with Vishaka guidelines. Court also ordered the institutions such as The Bar Council of India, the Medical Council of India, Council of Architecture and other statutory Institutes to ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the Vishaka guidelines.

Conclusion with Suggestions

Though the Act appears to be a welcome step, it is not free from criticisms. The main criticism against the Act is that it describes sexual harassment as a civil wrong rather than as a criminal offence. The Act imposes fine only as penalty for such a heinous act. The Act fails to provide proper punishments in case service rules are silent on the issue. The Act does not prescribe a uniform punishment for the wrong. Punishment fluctuates as per financial and income status of the perpetrator, thus leading to inequality. The

Act fails to provide protection to men against sexual harassments at workplace. There is no provision in the Act to make out situations where the victim is unwilling to complain and employer is aware of the situation. In such case, there is no obligation on the employer to report it. The Act doesn't protect potential victimization of the complainant by an employee. The internal committees constituted under the Act have the power of a civil court such as summoning witnesses, requiring production of documents etc, but it does not require members with legal background or legal training. Another lacuna is that the Act does not make it mandatory for the employer to take criminal action against a person who is not an employee/an outsider.

Conciliation process supported by the Act is criticised as the respondent may use force or undue influence so as to compel the victim to compromise the matter. Apart from all this, the success of the Act depends on its proper implementation. Awareness programmes at workplaces shall be promoted. The role of non-governmental organisations is important in this regards. As most of the women are reluctant to report such incidents, more efforts are needed to make them aware of their rights. Thus it's high time, to take more initiatives to implement the Act in its true sense.

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