



Constitutional Validity of Section 14 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

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ABSTRACT

Sexual harassment is an act which makes working atmosphere hostile that may be by way of cracking loose comments, lewd jokes, verbal, mental or physical abuse, passing false rumors assassinating character etc. India is a signatory to many international conventions on protection of women at workplace like Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW) but for a very long period of time India did not enacted any specific legislation to deal with this menace. Now, in 2013 Indian Parliament passed a law i.e. the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on this issue more or less based on the guidelines that were issued by the Honorable Supreme Court in Vishaka v. State of Rajasthan case. This article mainly focusses on the controversy surrounding section 14 of the Act which makes frivolous complaints punishable which shall affect the victims filing complaints therefore the researcher has made an attempt to check the constitutionality of section 14 of the Act.

KEYWORDS

Sexual Harassment, Women, Workplace, CEDAW, Verbal & physical abuse, Section 14 of the Act, Constitutionality.

INTRODUCTION:

Sexual Harassment at the Workplace (SHW) has remained one of the central concerns of the women's movement in India since the early-'80s. Women has always been victim of sexual harassment at workplace. Earlier there were no specific laws which could deals with the cases of sexual harassment. Before 1997, women experiencing SHW had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman'. The Supreme Court of India, in 1997, in the Vishaka Judgment, for the first time, acknowledged sexual harassment at the workplace as a human rights violation. The Supreme Court relied on the Convention on the Elimination of All Forms Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. In its judgment, the Supreme Court outlined the Guidelines making it mandatory for employers to provide for sympathetic and non-retributive mechanisms to enforce the right to gender equality of working women. As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject is drawn-up and enacted, have the effect of law and the Guidelines are to be mandatorily followed by organizations, both in the private and government sector. While there were several attempts made to enact a law on this subject previously, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was eventually passed by the Lower House of the Parliament (Lok Sabha) on September 3, 2012, then passed by the Upper House of the Parliament (Rajya Sabha) on February 26, 2013 and received the President's assent on April 22, 2013. However, there is hiccup as 'to punishment clause for filing of false and malicious complaint by the complainant against the Respondent' as if the section prevail under the Act then this will deter the women to come forward and file even the genuine cases. Hence, the researcher would like to discuss the constitutional validity of the above section and its consequences.

WHAT IS SEXUAL HARASSMENT:

Finally, the 2013 sexual Harassment Act will provide some protection to women. According to the act, sexual harassment constitutes of the following unwelcome acts or behavior (whether directly or by implication) namely:

- (i) Physical contact and advances; or
- (ii) A demand or request for sexual favors; or

- (iii) Making sexually colored remarks; or
- (iv) Showing pornography; or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Further on, the act states that the following circumstances, along other circumstances, if they occur or are in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-

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

CONSTITUTIONAL PRESPECTIVE:

The rights of women have the originating source in the constitution of India; for, all Indian laws are emerged from, and clothed with sanctity by constitution. The India constitution guarantees equality of status and opportunity to men and women. The fundamental rights are enshrined in the constitution of India. It must be borne in the mind that when the fundamental rights are infringed, the natural basic human rights, inherent in human beings, are violated. The relevant Articles of the constitution of India, which bestow legal rights upon women, are:

(1) Article 14:

Confers the equality before law or the equal protection of the law to every person.

(2) Article 15:

15(1) prohibits any discrimination on grounds of religion, race, sex, or place of birth. 15(3) empower the state to make any special provision for women and children.

(3) Article 16:

Guarantees equality of opportunity for all citizens in matters relating to employment or opportunity to any office under the state and forbids the discrimination on the grounds only of inter alia sex.

(4) Article 19:

Guarantees the two important freedoms:

- (a) Freedom of speech and expression - art. 19(1) (a); and
- (b) Freedom to practice any profession or to carry out any occupation, trade or business-art. 19(1) (g).

(5) Article 21:

Ensures; 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. Women have a right to lead a dignified, honourable and peaceful life with liberty.

CONSTITUTIONAL VALIDITY OF THE SECTION 14 :

As per guideline given by Supreme Court under Vishaka case stated clearly that it had to be ensured that victims or witness are not victimized or discriminated against while dealing with complaints of sexual harassment. As per section 14 of the act it provides punishment for filing of false and malicious complaints. According to some of the activist "if this section will prevail it will deter the women to come forward and file cases of sexual harassments and it will defeat the real purpose of proposed law."

However Article 21 which guarantees the right to life to every citizen which includes a life with dignity and without violence and also Directive Principles of State Policy, under Article 42 directs the State to make provision for securing just and humane conditions and maternity relief...

- As this section is against the very the purpose of the above mention Articles. If the woman does not able to substantiate her case against sexual harassment it does not mean that the case was not genuine. Generally, such kind of cases of sexual harassment took place behind close doors or in private place which in most cases might not have any documentary evidence or any witnesses. In such a situation, a subordinate had to muster up courage to make a complaint who might also face social approbation for false and malicious complaint.

For example: It is complex position of an aggrieved woman who has to muster great courage to come forward to file a complaint of sexual harassment. Also, she is given the unequal nature relations with employer. It would not be easy for aggrieved woman to prove her case. If at all a witness come forward, such a provision may act as a deterrent which is very against the scope of Vishaka case and also the provision given under the Indian Constitution because if once the women is charged with filing of false even though the case was genuine but due to lack of evidence and some manipulation made by the employer she is unable to prove the case then she will be punished under this section and may lose her job also and become culprit in the eyes of her colleague and the society even though she was innocent. So this section may be considered as against the Right to Dignity guaranteed under Art 21 of the Indian constitution and also Art 42 which provide "Just and Human conditions at work place".

- As this section also violates the Right of Speech and Expression under the constitution as if the women who is the victim of the sexual harassment wants to file a case but due to lack of evidence and witnesses she may get a threatened warning from the employer that if she proceeds with case then she will be charged for filing false and malicious complaint so, this may definitely deter the woman to come forward and file case so this section can be said as violating her right of freedom of speech and expression guaranteed under art 19(1)(a) of the Indian constitution.
- Section 14 of the Bill dissuades women from complaining. There is a perception that the internal complaint committees may not be effective, given that most instances of harassment either arise from active participation, or conscious acquiescence of the senior management. Also, vesting internal committees with the powers of summoning, discovery and production of documents has been criticized by the Committee on the ground that members of the committee would not have adequate legal training and may misuse the process so this is against the notion of so-

cial justice.

Issues raised by some of the activists against section 14:

- Though there may be merit in providing safeguards against malicious complaints, this clause penalizes even false complaints (which may not be malicious). This could deter women from filing complaints. Recent Bills such as the Public Interest Disclosure Bill, 2010 (commonly known as the Whistleblower's Bill), penalize only those complaints that are mala-fidely *and* knowingly false. The National Advisory Council (NAC) has recommended that the entire clause be removed as it might deter victims from seeking protection of the proposed legislation. The NAC also decided to ask the government to drop a clause in the bill that they felt could prevent women from coming forward to seek protection against sexual harassment at workplace.
- The safeguards provided to them (women) by this bill are weakened by the inclusion of clause 14 (punishment for false or malicious complaint and false evidence), which might deter victims from seeking protection of the proposed legislation," the NAC said in a statement a few days ago.
- However, there was a hiccup, in the nature of action being sought to be taken against *false or malicious charges*. The Parliamentary Standing Committee that submitted its report in June 2011, had recommended removal of 'malicious' and retention of 'false'. The present version of the bill, to the dismay of activist and lawyers, retains the contentious S 14 calling for action against the complainant in case the "internal committee or the local committee as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false..." The danger in this is that the entire purpose of Vishaka and this law is defeated. Complaint 'not proved' does not mean that the complaint is false. There are remedies under the ordinary law (e.g. defamation) to resort to if the complaint is found to be 'false'.

Second, how is malice to be determined? Such provision will have a chilling effect and a woman will hardly if ever make a complaint when sexually harassed. A Bill seeking to remedy complaints of the most under reported crime needs to do away with such provision. Are members of complaints committee competent to measure if complaints are made 'maliciously'? The answer is a clear 'No'.

- As has been already widely observed, Section (14) which makes provision for punishment of false or malicious complaint or evidence must be removed, as the threat of punitive action for false complaints will definitely act as a deterrent. Most complainants approach inquiry committees tentatively in the first place, given that acts of sexual harassment usually happen behind closed doors, without witnesses. If Section (14) stays, aggrieved women will quite naturally evaluate their own complaints as ones that can be judged as false or motivated.

- A major area of concern in the draft was the provision for punishment of complainants who register 'false complaints' against their employers. "This is a provision that we objected to strongly. It is well known that sexual harassment at workplace is rampant and under reported. Most women, even if they do report a case, quickly become isolated at the workplace without support to prove their case. So in such an environment, the women have to deal with the provision of being penalized in case a complaint is not proved. This goes against the very spirit of the Bill.

- 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."

Sec 14 could be hindrance to the act. Though passing the Bill is an important step towards filling the gap, it provides for an action against the complainant in case of a false or malicious complaint. Clause 14 of the Act makes provision for punishment in case of a false or malicious complaint. The threat of punitive action for false complaints will definitely act as an obstacle. Given that not many women approach the police to register a complaint, this clause should be amended," said Arvind Narrain of Alternative Law Forum.

CONCLUSION AND SUGGESTIONS:

At last after studying the Sexual Harassment Act 2013 the researcher would like to conclude that State has the power under Article 15(3) to make special provisions for the development of Women and Children and Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 is one of the outcome of such provision of constitution. This act is enacted for the protection of women working at workplace but still this Act contains certain lacunae. One of such lacuna is the section 14 i.e. punishment for false and malicious complaints and false evidence. Hence, at the end the researcher would like to say that though, over all I am against view of filing false cases and consider that these should be punishable. However, in case of sexual harassment, my view is that the women should not be punished. In all probability, there will be a few false cases filed by some crooked women. But in India due to society's attitude, very few women have the courage to fight sexual harassment publicly. Secondly, if they file a case against senior managers, with corruption level existing in the country, most cases can be made into false complaints. This Act is constitutionally valid but still it affects the certain fundamental rights so this section has to be removed or amended by the parliament.

SUGGESTIONS:

Here, are some of some suggestions against section 14:-

- This provision would discourage those women who required protection from sexual harassment at the workplace and needed to use the law.
- It added to the hindrance faced by women in their unequal labour relationship and their gendered relationship with their employer.
- Intent of complaint may not be false but the lack of evidence or objectivity stating the issue could be regarded as false.
- Distinction to be made between false and malicious.
- Instead of punishing the women who has made a false allegation, she should be given a chance to explain and withdraw her complaint.
- Present provision under the IPC could be invoked to deal with forged evidence and false or malicious complaints.

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