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OVERVIEW OF 'SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013

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RESEARCH ARTICLE

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ABSTRACT

Gender equality in all dimensions is a basic human right and the Constitution of India guarantees all its citizens equality of status and opportunity. Sexual harassment is considered as a violation of a woman's fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity as per Article 21 of the Constitution. It has also been considered as a violation of a right to practice or to carry out any occupation, trade or business under Article 19(1) (g) of the Constitution, which includes a right to a safe environment free from harassment.

Key Words: workplace Sexual Harassment, Gender equality, Aggrieved women.

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1. INTRODUCTION

Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. India's first legislation specifically addressing the issue of workplace sexual harassment was enacted in 2013. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Prevention of Workplace Sexual Harassment Act") was made effective from December 09, 2013 by the Ministry of Women and Child Development, India. The Government has also notified rules under the Prevention of Workplace Sexual Harassment Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("Prevention of Workplace Sexual Harassment Rules").

The paper tries to overview the provisions in act and simplifies them in order making it easy to understand by a lay person.

Case Study: Rupa is 34 years old, senior clerk in one of the government department at district place. She has been working here at same position for last 6 years. She is married and has 2 children. Rupa is very polite in her behavior and is punctual and sincere in her work, hence all the staff in the office has due respect for her. For last 4 months she looks disturbed and has been doing mistakes in her work. Very often she is on leave and seems to be unhappy.

One day she shared with her colleague, Chhaya who was of same age that her boss passes some remarks which make her feel uncomfortable. He makes her wait late in the evening almost daily even if there is no work and there is no one in the office other than both of them. He also gave an expensive gift to her on her birthday last month. She expressed that all this makes her feel uncomfortable and she feels very awkward to go in his cabin. This has hampered her work in the office as well as disturbed her personal life too. On the contrary Chhaya said that their boss is a very good person. His behavior is very decent towards all the female staff. Till date no one has had such type of experience. May be Rupa is misunderstanding his goodness and should remove such negative thoughts from her mind.

Rupa was again very disturbed and thought of sharing her problem with an elderly colleague could help. So she shared with Ashatai, a female typist around 55. But Ashatai advised her that it is alright that she shared with her but in

future not to share such matters with anybody else. Just ignore whatever is happening, things will automatically be alright.

This experience made Rupa to go into depression which affected her physical health too. She lost interest in work which she used to enjoy earlier and also affected her family relations.

Sexual harassment in workplace is a serious matter that renders women's involvement in works unsafe and affects right to work with dignity. It is violation of women's right to gender equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their economic empowerment and the goal of inclusive growth. Sexual Harassment is unwelcome verbal, visual or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment. Generally sexual harassment is a sexually oriented conduct that may endanger the victim's job, negatively affect the victim's job performance or undermine the victim's personal dignity. Its effects may manifest itself physically or psychologically. Its milder and subtle forms may imply verbal intimation, inappropriate affectionate gestures or propositions for dates and sexual favours. However it may also assume unashamed and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.

However, there was no domestic law to address this issue except a few provisions of the Indian Penal Code and the Supreme Court Guidelines in the case of Vishaka vs. State of Rajasthan. The increasing work participation rate of women made it imperative that a comprehensive legislation focusing on prevention of sexual harassment as well as providing a redressal mechanism be enacted. India has recently passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act") and has made the law effective from April 23, 2013. The law convincingly ardently states that "No women shall be subjected to sexual harassment at any workplace."

The salient features of the Act are as follows:

i) Aggrieved woman

The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

(ii) Workplace

- Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit established owned, controlled or wholly or substantially financed by funds directly or indirectly by appropriate government or the local authority or a government company or corporation or a co-operative society.
- Any private sector organization or private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service.
- Hospital or nursing homes,
- Any sports institution, stadium, sports complex or competition or games venue whether residential or not used for training, sports or any other activities relating to same.
- Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
- Dwelling place or house

(iii) Employee

Definition of employee covers a person employed at a workplace for any work on regular/temporary/ad hoc/daily wage employees, either directly or through an agent, including contractor with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis. It also includes Probationers, trainees, and apprentice.

The act also gives benefit to Domestic worker under following definition:

Domestic Worker – means a women who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer.

(iv) Employer

The definition of employer includes the head of the Government department/organisation/ establishment/ enterprise/institution/office/branch/unit. He/ She could also be the person responsible for management/supervisions/control of the workplace, the person discharging contractual obligations with respect to his/her employees.

(v) Sexual Harassment

- Physical contacts and advances or
- a demand or request for sexual favours or
- making sexually coloured remarks or
- showing pornography or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature

(vi) Theredressal mechanism

The redressal mechanism provided in the Act is in the form of Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All workplaces employing 10 or more than 10 workers are mandated under the Act to constitute an ICC.

Internal Complaints Committee (ICC)**Members of the ICC**

- Presiding Officer- women employed at a senior level at workplace from amongst the employees
- Provided in case senior level women employees are not available the presiding officer shall be nominated from other offices or administrative units of the workplace.
- Member amongst employee preferably committed to the cause of women or who had experience in social work or have legal knowledge.
- One member from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.
- Provided that at least one half of the total members so nominated shall be women
- The presiding officer and every member of the ICC shall hold office for such period not exceeding 3 years from date of their nomination
- The NGO member shall be paid such fees or allowance for holding the proceedings of ICC
- The ICC will be a committee with total odd number ie. 5, 7,9 and so on, under the Chairpersonship of a senior woman employee and will include 2 members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third party member (NGO etc.) as well.

Local Complaints Committee (LCC)

Complaints from workplaces employing less than 10 workers or when the complaint is against the employer will be looked into by the LCC. A District Officer notified under the Act will constitute the LCC at the district level. LCC will also look into complaints from domestic workers.

Jurisdiction of LCC

- Every district officer shall constitute in the district concerned, a committee to be known as the 'Local Complaints Committee' to receive complaints of sexual harassment from the establishments where the Internal complaints committee has not been constituted due to less than 10 workers
- The district officer shall designate one nodal officer in every block, taluka in rural or tribal area and ward or municipality in urban area to receive complaints and forward the same to the concerned Local Complaints Committee within a period of 7 days.
- The jurisdiction of LCC shall extend to the areas of the district where it is constituted Members of the LCC.
- LCC will also comprise of odd number of members with Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women
- 1 member to be nominated from amongst the women working in the block, taluka, tehsil or ward or municipality in the district.
- 2 members of whom at least one shall be women to be nominated from amongst such NGO or associations committed to the cause of women or a person familiar with the issues to sexual harassment.

- At least one of the nominees should preferably have a background in law or legal knowledge.
- At least one of the nominee shall be a women belonging to the scheduled caste or the scheduled tribes or other backward classes or minority community notified by the central government from time to time.
- The concerned officer dealing with the social welfare or women and child development in the district shall be member ex officio
- The Chairperson and every member of the LCC shall hold office for such period not exceeding 3 years from date of their appointment

(vii) **Complaint**

- Any aggrieved women may make in writing a complaint of sexual harassment at workplace to ICC if so constituted or the LCC in case it is not so constituted within a period of 3 months from the date of incident and in case of a series of incidents, within a period of 3 months from the date of last incident.
- Provided where such complaint cannot be made in writing, the PO or any member of ICC or the Chairperson or any member of LCC shall render all reasonable assistance to the women for making the complaint in writing.
- If the time limit of 3 months is exceeded for giving written complain if it is satisfied that the circumstances were such which prevented the women from filing a complaint within the said period.
- Where the aggrieved women is unable to make complain on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person may make a complaint.

(viii) **Conciliation**

The Act has a provision for conciliation. The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent, however this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. Further, if any of the conditions of the settlement is not complied with by the respondent, the complainant can go back to the Committee who will proceed to make an inquiry.

(ix) **Inquiry procedures**

The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.

- In case the complaint has been found proved, then the Committee can recommend action in accordance with the provision of service rules applicable to the respondent or as per the rules which will be prescribed, where such service rules do not exist. The committee can also recommend deduction of an appropriate sum from the salary of the respondent or ask respondent to pay the sum. In case the respondent fails to pay such sum, district officer may be asked to recover such sum as an arrear of land revenue.
- In case the allegation against the respondent has not been proved then the Committee can write to the employer/district officer that no action needs to be taken in the matter.
- In case of malicious or false complaint then the Act provides for a penalty according to the Service Rules. However, this clause has a safeguard in the form of an enquiry prior to establishing the malicious intent. Also, mere inability to prove the case will not attract penalty under this provision.
- The Act has provisions for providing reliefs to the aggrieved woman in the interim period including leave and transfer during the pendency of the inquiry.
- The Act prohibits disclosure of the identity and addresses of the aggrieved woman, respondent and witnesses. However, information regarding the justice secured to any victim of sexual harassment under this Act without disclosing the identity can be disseminated.

(x) **Duties of Employer**

- Provide a safe working environment which shall include safety from the persons coming into contact at the workplace.
- The Act casts a responsibility on every employer to create an environment which is free from sexual harassment. Employers are required to organize workshops and awareness programmes at regular intervals for sensitizing the employees about the provision of this legislation and display notices regarding the constitution of Internal Committee, penal consequences of sexual harassment etc.

- Where employer fails to constitute internal committee or contravenes provisions of this act or any rules made shall be punishable with fine which may extend to fifty thousand rupees.
- Treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.
- An employer will be liable to a fine of Rs 50,000 in case of violation of his duties under the Act and in case of subsequent violations the amount of fine will be double together with penalty in the form of cancelation of his licence, withdrawal or non-withdrawal of the registration required for carrying out his activity.

Limitations

Though the act is passed in 2013 but lack of awareness about act amongst women, committee members and employers have led to failure of implementation of act at all levels. Hence trainings and awareness workshops and creation of IEC are of prime importance. Awareness programs should create gender sensitization along with awareness about the provisions in the act for its effective implementation and create a safe, healthy and conducive work environment for women.

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References

- [1]. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Published in The Gazette of India. Press Information Bureau. 26 April 2013. [Online], Available: <http://www.iitbbs.ac.in/notice/sexual-harrassment-of-women-act-and-rules-2013.pdf>
- [2]. Law against sexual harassment at workplace comes into effect. Times of India. 14 December 2013. [Online], Available: <http://timesofindia.indiatimes.com/india/Law-against-sexual-harassment-at-workplace-comes-into-effect/articleshow/27308194.cms>
- [3]. Fostering safe workplaces" *FICCI-EY*. 29 November 2015. [Online], Available: [http://www.ey.com/Publication/vwLUAssets/EY-fostering-safe-workplaces/\\$FILE/EY-fostering-safe-workplaces.pdf](http://www.ey.com/Publication/vwLUAssets/EY-fostering-safe-workplaces/$FILE/EY-fostering-safe-workplaces.pdf)