



“SEXUAL HARASSMENT AT WORKPLACE: THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013”:- A Review

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Abstract

Sexual harassment in any form is one of the most common crimes against women in all societies and is also seen as unconstitutional infringing on the fundamental right of women in Democratic Countries. Sometimes women raise their voices against such injustice but it is buried with time. There is need for preventing such injustice and appropriately dealing with such cases. The sexual Harassment at workplace Act, 2013 was brought in to law books to save the dignity of women effectively. The act explains and broadens the definition of sexual harassment and how workplace need to be proactive about ensuring safety of women, the paper is an attempt to explain the periphery of the Act and how organizations are bound to act upon in protecting and preserving the dignity of a woman.

Key words:- women, sexual harassment, fundamental right to equality

Limitation

This research is based on the secondary sources available and judicial pronouncement in this regard.

Hypothesis

Constitution of India guarantees Right to dignified life to women's, special laws are enacted for this purpose. But the executives are passive in performing their duties and implementing judicial pronouncement.

Introduction

Sexual harassment in all forms are prohibited by religious and Indian moral values. But it seems that it is in existence one or more forms in all era of societal development. In new modern global world women are also working with men either in Govt. sector or private sector. Due to the various complaint there is need of special law to handle this problem. Sexual harassment is considered as a violation of the fundamental right to equality as guaranteed under Articles 14 and 15 of the Constitution of India, and her right to life and to live with dignified life as per Article 21 of the Constitution.¹ It is also 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,² which includes a right to a safe environment free from harassment.

Definition of sexual harassment

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¹ Available at <https://www.lexology.com/library/detail.aspx?g=cb74f2ac-f7c5-44f8-b607-aea2f735cef4>

² See constitution of India 1950



Workplace harassment is unwelcome conduct which includes a boss, coworker, and group of coworkers, vendor, or customer whose actions, communication, or behavior mocks, demeans, puts down, disparages, or ridicules an employee. Physical assaults, threats and intimidation are forms of harassment.³

Harassment may also include offensive jokes, name calling, offensive nicknames, and offensive pictures or objects. Interfering with an employee’s ability to do his or her work is also considered harassment.

Harassment can also be experienced by employees who are not the target of the harasser because of the workplace environment that can develop and they experience as a result of his or her actions.⁴

What is considered workplace harassment?⁵

Any actions by one employee toward another which are unwelcome and lead to an employee having difficulty doing his or her work can be considered workplace bullying and can lead to a hostile work environment. Harassment in the workplace is considered illegal at the federal and state level and can be based on several factors including religion, gender, age, ethnicity, race, genetic information and sexual orientation. If you feel uncomfortable at work due to the actions of others, the best thing you can do is to call an experienced employment attorney who can help.

What Are the Two Types of Sexual Harassment?⁶

There are two types of sexual harassment that are legally recognized:

- Quid pro quo sexual harassment⁷
- Hostile environment sexual harassment⁸

1. What Is Quid Pro Quo Sexual Harassment?⁹

Quid pro quo sexual harassment occurs when an employee gets on the promotion track or even gets to keep his/her job is based on if the employee submitted to or rejected sexual advances or other types of inappropriate sexual comments. For example, if a supervisor were to tell an employee she would be more likely to be promoted if she dressed sexier, that would be considered quid pro quo sexual harassment.

Remember, if an employee submits to the sexual advance or comment, it does not necessarily mean that the employee is then barred from ever making a complaint. If the employee should change her mind, she can still complain against the supervisor who made the comment.

³ See U.S Equal Employment Opportunity Commission. Available at <http://www.thebalance.com/what-is-the-equal-employment>

⁴ ibid

⁵ ibid

⁶ Available at <http://www.legalmatch.com/law-library/article/types-of-sexual-harassment.html> Last visited on Nov. 12, 2016

⁷ Available at <https://www.lexology.com/library/detail.aspx?g=cb74f2ac-f7c5-44f8-b607-aea2f735cef4> Last visited on Nov. 10, 2016

⁸ ibid

⁹ ibid



2. What Is Hostile Environment Sexual Harassment?¹⁰

This type of sexual harassment occurs when a co-worker or supervisor in the workplace makes sexual advances or comments to an employee that, while not affecting promotions or the future of the employee's job makes the working environment of the employee offensive and hostile. In general, the comments tend to affect the employee's ability to do her job. Some instances of hostile environment sexual harassment can be:

- Personal questions of a sexual nature
- Vulgarities and other offensive language
- Physical conduct that is sexual or degrading to any reasonable person
- Any sexually explicit or offensive pictures or literature that is in plain site of other employees.

What constitutes Sexual Harassment at Workplace?¹¹

- Circumstances of promise (implied or explicit) of preferential treatment in employment;¹²
- Threat of detrimental treatment in employment;¹³
- Threat about employment (present or future);
- Creating an intimidating or offensive or hostile work environment, or interference with work for the above;¹⁴
- Humiliating treatment that may affect the lady employee's health or safety
- Unwelcome sexually determined behavior (whether directly or by implication) such as physical contact and advances,¹⁵
- Demand or request for sexual favors, sexually colored remarks, showing pornography,¹⁶
- Any other unwelcome physical verbal or non-verbal conduct of sexual nature.¹⁷

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013¹⁸

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

¹⁰ *ibid*

¹¹ *Id* at p 2

¹² Available at <https://www.lexology.com/library/detail.aspx?g=cb74f2ac-f7c5-44f8-b607-aea2f735cef4>
Last visited on Nov. 12, 2017

¹³ *ibid*

¹⁴ *ibid*

¹⁵ *ibid*

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ Available at [https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_\(Prevention,_Prohibition_and_Redressal\)_Act,_2013](https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_(Prevention,_Prohibition_and_Redressal)_Act,_2013), Last visited on Nov. 1, 2017



passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012.¹⁹ It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013.²⁰ The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013.²¹ This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employer's have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. The government has threatened to take stern action against employers who fail to comply with this law.²²

10 Key Salient Features of Vishaka Guidelines:²³

1. Awareness & Publication of Women Employees Rights:

Organizations need to publish, notify and circulate 'prohibition of sexual harassment policy' at work place. This policy should be included in a company's rules & regulations relating to conduct & discipline and provide for appropriate penalties against the offender.

2. Criminal Proceedings:²⁴

Employer should initiate criminal proceedings with appropriate authority if a conduct of sexual harassment amounts to specific offence under the Indian Penal Code or any other law.

3. Indiscrimination:²⁵

Organizations need to ensure victims/ witnesses are not victimized or discriminated against while investigating sexual harassments. They should be given option to seek their own transfer or transfer of their perpetrator.

4. Disciplinary Action:²⁶

¹⁹ ibid

²⁰ "Action against sexual harassment at workplace in the Asia and the Pacific". p. 121. available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/... 12 November 2014.

²¹ "Law against sexual harassment at workplace comes into effect". *Times of India*. available at timesofindia.indiatimes.com/india/Law-against... 14 December 2013.

²² DNA 18 September 2014 (2014-09-18). "Serious legal action against organisations without a sexual harassment committee, says Maneka Gandhi". DNA. available at <http://www.dnaindia.com/india/report-serious-legal-action-against-organisations-without-a-sexual-harassment-committee-says-maneka-gandhi-2019478> Last visited on Nov. 12, 2016

²³ Available at <http://www.quiztalk.in/sexual-harassment-at-workplace-10-things-a-hr-manager-must-know-about-vishaka-guidelines> Last visited on Nov. 12, 2015

²⁴ ibid

²⁵ ibid

²⁶ ibid



Organizations should initiate appropriate actions where such conduct amounts to misconduct in employment as defined under company rules and regulations.

5. Investigating Committee:²⁷

To investigate the complaint, a committee should be formed and **headed by a woman**. Half of its members should be women and to avoid duress, a third neutral party should be involved, either an NGO or any other body familiar with the issue of sexual harassment.

6. Confidentiality:²⁸

The investigating committee formed should be self sufficient and be able to provide adequate support services such as special counselling as well as maintenance of confidentiality.

7. Forum to voice sexual offences:²⁹

Organizations should allow and provide forums to enable employees to raise issues of sexual harassment and women should be allowed to discuss them positively in such forums without any fear.

8. Third Party Harassment:³⁰

Where misconduct has occurred due to an act by a third party/ outsider than the organization/ person in charge will take all necessary and reasonable steps to extend support and to assist the affected person in ensuring preventive action.

9. Preventive Steps:³¹

Organizations/ Persons in charge should take appropriate steps to prevent sexual harassments by expressing prohibition of sexual harassment, adding them in their rules and regulations and by providing for appropriate working environment thereby ensuring there is no hostile environment towards women at work.

10. Hygiene Factors:³²

Provision for appropriate work, leisure, health and hygiene should be provided to women employees so that they do not have ground to believe that she is disadvantaged in connection with her employment.

Amendment in Indian Penal Code³³

Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man

²⁷ Ibid

²⁸ Ibid

²⁹ Ibid

³⁰ Ibid

³¹ Ibid

³² Ibid

³³ Available at [https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_\(Prevention,_Prohibition_and_Redressal\)_Act,_2013](https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_(Prevention,_Prohibition_and_Redressal)_Act,_2013), Last visited on Jun. 12, 2016



committing such an offence. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.³⁴

Conclusion

The New Law provides the much needed and awaited grievance redressal process for working women require at their workplaces. The Act widen the scope of the law, so as to include all women, including domestic worker, as the household is her workplace. Hence, The New Law not only provides a redressal system for women in work as in the traditional sense, but also define the meaning of harrasment. However, the law being new, the effectiveness of the same needs to be tested, and its implementation needs to be monitored because there is always chance of misuse of the laws.

Suggestion

- (1) 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.³⁵
- (2) 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. This fear is baseless because no women can raise question on her own dignity.
- (3) There is always a chance to manipulation of evidences and witness. So the law relating to perjury be used strictly.
- (4) The investigating agency should be a independent and impartial in nature because once social character is lost it cannot re-achieved at any cost.

³⁴ Nishith Desai Associates, Veena Gopalakrishnan, Ajay Singh Solanki and Vikram Shroff, India's new labour law - prevention of sexual harassment at the workplace, Lexology, 30 April 2013 available at <https://www.lexology.com/library/detail.aspx?g=cb74f2ac-f7c5-44f8-b607-aea2f735cef4> Last visited on Feb 12, 2016

³⁵ Available at [https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_\(Prevention,_Prohibition_and_Redressal\)_Act,_2013](https://en.wikipedia.org/wiki/Sexual_Harassment_of_Women_at_Workplace_(Prevention,_Prohibition_and_Redressal)_Act,_2013), Last visited on Nov. 12, 2016