

SEXUAL HARASSMENT AT WORKPLACE IN 2020: MYTH OR REALITY

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“You can tell the condition of a nation by looking at the status of its women”

Pt. Jawaharlal Nehru.

Abstract:- A brief study of the human society clearly illustrates that in no society of the world has any woman enjoyed absolute equality at par with men. Women have always been denied equal rights. Sexual Harassment includes unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances, a demand or request for sexual favours, sexually-coloured remarks, showing pornography or any other unwelcome verbal or physical conduct of sexual nature and when it is at workplace, it accounts for ‘Sexual Harassment at Workplace’. There still exists a huge difference between the goals enunciated in the constitution, legislations, policies, plans, programmes and related mechanisms on one hand and the situational reality of the status of women in India on the other. This paper wishes to critically analyse the present situation and statistics with respect to Sexual Harassment at Workplace. Lastly, the paper analyses the Vishakhav State of Rajasthan case and recommendations and suggestions to be brought about in the POSH Act, 2013 to conclude the paper.

Keywords:- Harassment, POSH Act, 2013, Women at workplace.

1. INTRODUCTION

Firstly, as the forum for discussion is National Commission for Women, I would like to state that NCW released a report in December, 2017 that an average of 1.7 complaints is received by the Commission every day. 60% of the complaints are from these 5 states: UP, Delhi, Maharashtra, MP and Haryana. These are the ones which get reported, clearly indicating just the tip of the iceberg. The reality is truly horrifying! One of the most significant legislation related to Sexual Harassment at Workplace is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It is a very small Act comprising of only 30 sections.

We have come a long way from the Vishakha Judgment, where the Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. The POSH Act defines ‘sexual harassment’ as including any 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.

While the Vishaka Guidelines were confined to the traditional office set-up, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an ‘extended workplace’. 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 employment.

The most important feature of the POSH Act is that there is a provision for setting up a grievance redressal forum. It comprises of Internal Committee, Local Committee and their powers. The complaint mechanism includes Conciliation, Inquiry, Interim Relief, Compensation etc. There is also a provision for Frivolous Complaints, Confidentiality and consequences for Non-compliance. Even after all of this, the Act is not flawless and awaits a relook.

2. POSITION OF WOMEN AND HUMAN RIGHTS

The United Nations Charter sets as a basic goal to reinstate faith in human rights and in the equal rights of men and women. It states that the aim is to have international cooperation in promoting and encouraging respect for human rights and fundamental freedoms for the people without distinction as to race, sex, language or religion. The UDHR



has time and again affirmed the principle of the inadmissibility of discrimination and proclaimed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.

However, discrimination against women continued because women and girls face a multitude of constraints imposed by society. It violated the principle of equality of rights and respect for human rights. There have been several documents discussing the Rights of Women at the International Level. On November 7, 1967 the General Assembly adopted a Declaration on the Elimination of Discrimination against Women, and in order to implement the principles set forth in the Declaration. A Convention on the Elimination of All Forms of Discrimination against Women was adopted by the General Assembly on December 18, 1979.

The Convention often described as an International Bill of Rights for Women came into force in 1981. The Convention under Article 1 defines the term discrimination against women as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedom in the political, economic, social, cultural, civil or any other field.

The Convention under its Part III lays down a number of fields where States Parties are required to take steps to eliminate discrimination against women which includes the following :-

- Education
- Employment
- Health care
- Socio Economic life
- Rural area women
- Marital and Family relation
- Equality before law
- Destituteness of women

3. CONSTITUTIONAL RIGHTS OF WOMEN IN INDIA

The rights and safeguards guaranteed by the Indian constitution for women are as below:

- **Article 15 (1)** - The state shall not discriminate against any citizen of India on the ground of sex.
- **Article 15 (3)** - The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women.
- **Article 16 (2)** - No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex.
- **Article 23 (1)** - Traffic in human beings and forced labour are prohibited.
- **Article 39 (a)** - The state to secure for men and women equally the right to an adequate means of livelihood
- **Article 39 (d)** - The state to secure equal pay for equal work for both Indian men and women.
- **Article 39 (e)** - The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength.
- **Article 42** - The state shall make provision for securing just and humane conditions of work and maternity relief.
- **Article 51-A (e)** - It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women.
- **Article 243-D (3)** - One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women.
- **Article 243-D (4)** - One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women.



- **Article 243-T (3)** - One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women.
- **Article 243-T (4)** - The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide.

4. LEGAL RIGHTS FOR WOMEN IN INDIA

1. Right to Free Legal Aid
2. Right to Privacy while recording statement
3. Right to register complaint at any time
4. Right to no arrest and not being called to the police station for interrogation
5. Right to virtual complaints and Zero FIR
6. Right to Confidentiality
7. Right to no sexual harassment

5. RECOMMENDATIONS

Some of the recommendations, I would like to draw all your attention towards, are:

1. Implementation of Act has a very different approach in urban and rural areas in terms of manner/procedure. As in unorganized sector and in rural areas, to approach LCC is very difficult and thus, an easy process for registration of sexual harassment complaint should be evolved.
2. The Act does not restrict companies to transfer women or send them on leave during a sexual harassment investigation.
3. The complaint mechanism should be simple and informal and should support the victim of sexual harassment in building her confidence rather than insecurities.
4. There is always a lack of documentary proof for sexual harassment charges.
5. Once internal complaint committee has settled a case of sexual harassment and if victim is not satisfied with the findings of ICC then it provides no scope for further inquiry.
6. The Act must focus on mature approach towards sexual harassment through gender sensitization. During inquiry the victim, should feel strong about herself rather than guilty and the victim's privacy must be protected.
7. Punishment for Sexual Harassment should be clearly mentioned in the policy of every Industry, Enterprise, Government and Non-Governmental Organizations.
8. Every Organization must try to prepare and publish an effective preventive mechanism to control cases of sexual harassment and a compulsory training module should be provided to every employee joining the organization with the help of the HR Department.
9. The POSH Act, 2013 is silent about the rehabilitation of the victim of sexual harassment.
10. There are some inherent problems in proving a case of sexual harassment as it deals with delicate human relationship. Cases of sexual harassment generally occur within the 4 walls of an office, which requires a mandatory provision for CCTV cameras.
11. The term 'Committed to the cause of women' is not explained in the Act: The committees which will look into all the sexual harassment cases should consists of minimum 2 employees as members who are 'committed to the cause of women'. But the term 'committed to the cause of women', has not been explained. Further, a member has to be from amongst NGO and the majority of the members of the committee must be women. By defining the constitution of the committee in such a way, at the very first step itself bias has been introduced. The committee which is specifically formed to promote women specific-causes seems to be arbitrary.
12. Conciliation is "Yet another way in which the dignity of women is undermined": Section 10 of the Act discusses the provisions relating to conciliation wherein a settlement with the offender would be tried to be achieved. This would hamper the whole objective of the Act.
13. Members of ICC or LCC should also have legal knowledge as it is very important to shape the decision of the Committee. For eg: section 11 of the Act states that the committee shall have the same powers as vested in a civil court. If it does not make



it mandatory for members to have legal knowledge than providing powers of a court to persons having no legal knowledge does not seem to be practical.

14. The question as to whether a victim of sexual harassment should be provided with "compensation" to settle the complaint is quite strange and needs reconsideration. This provision might defeat the whole purpose of the Act. In case of harassment the damages awarded must not only be compensatory but also punitive and exemplary.
15. An audit mechanism should be developed yearly for all the complaints received by LCC/ICC, inquiry procedure and action taken against the accused keeping in mind the privacy of victim.

6. CONCLUSION

Gender sensitization and creation of environment providing equal status to women in family, society and in the country is the need of the hour. Empowerment of women through Self-help groups (SHGs) is to be promoted effectively. There is a need to optimize the sex-ratio which is declining rapidly. The entrepreneurship in corporate sector, medium scale, small scale, cottage industries and multinationals and pharmaceuticals should be entrusted to women. And lastly, any offender of statutes relating to women should be punished stringently.

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