

Critical Analysis of Sexual Harassment of Women at Workplace Act, 2013

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1. INTRODUCTION: -

When it comes to the women of our society, sexual harassment of women is not a new concept that has been talk of the town recently and, it has been happening all over the country and is not indigenous in nature. The issue regarding sexual harassment of women in the workplace is a worldwide issue because, in this modern era, women are not restricted only to household work and have the same capability as men when it comes to the application of mind.

On the other hand, women tend to be inferior to the men of society in physical strength and that is one of the great causes that has led to the exponential growth in the number of cases of sexual harassment. The biggest concern among these is that the issue of sexual harassment is mostly ignored when it is addressed to the proper authority and, in some cases, women feel ashamed or have the apprehension of their reputation being ruined, so the matter will be put aside.

There was a need for a proper legislature to act to protect the interests of the women of society. In that circumstances,, the protection of women from sexual harassment was passed in the year 2013.

Before this act the framework for such guidelines was the case of Vishaka v/s State of Rajasthan, in this particular case, several guidelines were issued in favor of protection of the interest of women . Later on a specific act was passed by the legislature that contained these guidelines.

2. MEANING OF SEXUAL HARASSEMENT

It is a basic rule of law. In order to ascertain rights and duties or violations of something, first of all, that the thing needs to be defined. On an international level, the term sexual harassment has been defined by the **Equal employment opportunity commission** of the United States of America . It includes unwelcoming sexual advances and it also includes if a person is requesting sexual favours from a woman or any other conduct that falls in the ambit of sexual nature and that is related to any condition of employment.

In the year of 1993, in the seminar that was held in Manila at the **International labour organization**, sexual harassment of women at the workplace is a sort of discrimination towards women that is based upon their gender.

In the leading case of Vishaka vs. The State of Rajasthan court as defined to what constitutes sexual harassment, is as follows:-

1. Physical contact and advances
2. A demand or request for sexual favours
3. Sexually coloured remarks
4. Showing pornography
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Such a definition covers a wide angle when it comes to sexual harassment and it was reiterated, and it was said sexual harassment includes any action or gesture, whether it can be directly or such implication is aimed towards in order to outrage the modesty of a woman.

The term modesty can be defined as the virtue attached towards her sex or the feeling of possessiveness towards her sexual parts.

BACKGROUND OF INDIAN JUDICIARY ON SEXUAL HARASSMENT

History tells us that women have always been considered the weaker section of society, The traditional role or responsibilities that were given her was giving birth to children and household work and she was also responsible for raising these children. In a happy family, men were always considered responsible for earning the bread and butter for the family.

In this modern era of globalization, women are not restricted to only household work, but they work the same as compared to a man, There has been an exponential growth in the number of working women now after the workplace has widened its dimensions.

But with the sudden increase in the number of working women, whether in the private or public sector, there has been a constant problem of sexual harassment of women at the workplace.

In the year of 1992, Bhawari Devi, working under the instruction of the government, meaning she was a government worker, She was subjected to rape by numerous men for the reason being that she was against the marriage of a child and that resulted in havoc in particular in the community of working women. The long fought battle for the protection of women resulted into the form of guidelines issued by the Supreme Court in *Vishaka vs. State of Rajasthan* and it was held by the Supreme Court.

In the situation where any act is committed under circumstances where the victim has a reasonable doubt that it is related to the employment it can be in the public or private sector, both are covered under this ambit, and the nature of such conduct can be humiliating and it does amount to sexual harassment of women at the workplace, in simple words if men is taking advantage of his position or authority by taking disadvantage of women in relation to her employment.

For better understanding of employment could be related to either her recruitment or promotion and, as a result of it, a hostile working environment has been created and if the woman chooses to oppose it, the result could be she loses employment.

TYPES OF SEXUAL HARASSMENT: -

When it comes to the types of sexual harassment, there is no specific classification, but it does include not only a physical act but also mental aspects also, even disturbing the mental state of women by such conduct is included.

Furthermore, we can divide sexual harassment into the following.

1. Quid pro quo harassment
2. Hostile work environment

In the first circumstances, sexual harassment is done by giving the false hope of employment, For example, A has offered b a job under the circumstances that she will have sexual intercourse with her, In this type of situation, usually, men take advantage of their authority or of the power given to him by the statue.

Under the second circumstances, the work environment is usually affected by the conduct of another employee, it can be through asking for sexual favors or unwelcoming sexual advances or by making sexual colorful remarks it can be physical as well as verbal.

WORKPLACE UNDER POSH ACT

In order to understand sexual harassment in the workplace, first, we have to understand what places fall under the ambit of the workplace, The term workplace has been expressly defined under the act itself. It includes any incident that has resulted in harassment that took place during the course of employment. The year 2020 has caused slight changes in the definition of the workplace because during the pandemic of covid the work from office was shifted to the resident of the employee, so the ambit of the workplace does include both the physical and virtual workplace.

If any activity is done through the use of any internet resources with the intention of outraging the modesty during the course of employment, even in a virtual workplace, it will result in sexual harassment of women in the workplace and such person will be liable under this act will be held accountable for such conduct.

SAFEGUARD UNDER INDIAN CONSTITUTION: -

Every country has its own constitution that works as a legal framework for essential aspects of public administration. The constitution gives the power to the legislature to make the laws for public procurement because a constitution works as a safeguard for the citizens of a country.

The constitution of India gives some rights and has established some duties for the citizens and gives us principles upon which justice should be based.

The constitution aims at securing equality based upon gender, and also aims at that a person should have a right to life and liberty as to how he wants to live his life and live with dignity.

These are the main principles which are reflected under the other articles of the constitution:-

Article 14 of the Indian constitution states that every person is equal before the law, Furthermore, in the context of women, it can be interpreted as the law applies to every person in the same way and affects the same way irrespective of caste, gender and religion, Therefore it is implied that there should be no discrimination between men and women based upon gender, otherwise it would be a violation of article 14 of the Indian constitution.

Furthermore, the article 15[1] states that there shall be no discrimination on the grounds of sex, The article 15[3] is specific dedicated to women, It states that a state can make special provision for the benefit of women and children because women and children are considered weak as compared to the men in the society.

Article 16 of the Indian constitution gives equality of opportunity to all citizens regarding employment and regarding appointment and article 16[2] states that no person shall be discriminated on the basis of sex.

Article 19 [1][g] of the Indian constitution states that every citizen residing in this country has the right to practice any profession and carry on any occupation of his or her choice.

Personal liberty is one of those principles that has given great value under the Indian constitution, so according to article 21 states that under any circumstances, a person shall not be deprived of his or her personal liberty except any procedure established by law and the right to live under the Indian constitution is not only restricted to physical existence, and it also includes a right that is given to women to live a life with dignity and lead to peaceful life.

The Supreme Court in the landmark judgment Vishaka vs. The state of Rajasthan stated that if a woman is subject to sexual harassment, that is a clear violation of gender equality, and also the right to life and liberty and thus it is a violation of articles 14, 15 and 21 of the Indian constitution.

Because in the right to life, the right to live in embedded, and it is an essential part of it, both runs simultaneously with each other. It is the duty of the legislative and executive to create a mechanism for the protection for the protection of the rights and enforce it.

DIRECTIVE PRINCIPLES UNDER INDIAN CONSTITUTION

Part 4 of the Indian constitution directs the state that a state should improve the status of women in society and should protect such interests.

article 39[a] of the Indian constitution directs a particular state to make such a policy that treats men and women in the society equally.

THE POSH ACT, 2013:-

The protection of women from sexual harassment in workplace act, 2013 was the first act passed by the legislature aiming towards specifically challenges faced by women in this modern era during their course of employment in the workplace and that includes physical and virtual modes of work. The ministry behind enacting such was the ministry of women and child development , The main purpose

behind the formulation of such ministry is that it is aimed towards the betterment of women and children in this complex society.

This act aims to prevent the sexual harassment of women at workplace, but is also address the effective redressal of any received complaint in regarding this matter.

The same bill was introduced in the year 2010 in the lok sabha, but was rejected because of a number of reasons in short the act had some defects in its previous version.

SALIENT PROVISIONS OF THE POSH ACT, 2013:-

First of all, the posh act of 2013 has 8 parts and 30 sections.

The jurisdiction of such an act is given under section 1 and it states that it shall extend to the whole of India . That means that every state shall be the subject of the implication of this act. it shall apply to all the states equally.

According to section 2[A] an aggrieved woman is in relation to a woman who has been subject to sexual harassment at workplace or it is alleged that she has been the subject to sexual harassment by the respondent in this situation.

The term workplace is also defined under section 2[0] and that includes both physical and virtual places of work. Here the term physical is in relation to an immovable property and virtual means when the work is done through any internet source, even working from home does fall under the ambit of the workplace.

The Section of the posh act suggests that women should not be the subject of sexual harassment at the workplace; it is an essential principle and premise of this act.

Chapter 2 of this act states the constitution of a committee to address such issues.

1. The act lays down certain guidelines regarding the constitution of an internal committee and such committee shall be created at every thread of this institution or organization, the power regarding the constitution of this committee shall lie in the hands of the employer and the framework will be in writing regarding the same .

2. Furthermore, it has also established some rules as to who can be a member of the committee, Further, in this context, it states that there shall be one presiding officer and it will be a woman and in the committee there shall be two people doing social work in the area of betterment of women and he should have some legal experience as well regarding the legal framework.

One of the members of the committees should be from an organization that is not related to the government in any sort of way and he should be paid by the organization appointing such person. When it comes to the percentage, half of the members of the committee should be women and there is a particular restriction regarding the time limit as it given that a person can hold his position for a maximum period of 3 years.

There is a strict provision that gives the right to removal of a member of a committee and it is given under section 16 that states, in case the information regarding any victim is leaked, there is a breach in the confidentiality of a person in this case by any member of the committee such person shall be removed from his post as the contravention of section 16 by prejudicing the position.

CHAPTER -3 [INSTITUTION OF THE LOCAL COMPLAINT COMMITTEE]

The power regarding the appointment is given to the state government in this matter, a district magistrate or an additional district magistrate shall be appointed by the state government in order to exercise the power given under this statute for the purpose of receiving the complaints of the women who has been the subject of sexual harassment at the workplace.

An officer will be appointed in order to receive complaints and he shall forward this to the committee and there are also rules and regulations established regarding the members of the committee, and the chairperson of such committee shall hold his position of chairman for a period not exceeding three years.

CHAPTER- 4[PROCEDURE OF COMPLAINT]

Under the section of the POSH act, the procedure of filling in the complaint is given, in case the woman is not capable on her own of filing the complaint or she is not in the mental condition as of now to file the complaint. In that case, such complaint shall be filed by the heirs of such women shall be in writing and there is a time limit given regarding the filling of such complaint. It is stated that such complaint shall be filled within three months from the date of the incident that took place and the inquiry can be initiated and completed within the span of three months.

On receiving of such a complaint, the committee will try to use alternative dispute resolution in the form of conciliation between the respondent and the victim of sexual harassment and in case the conciliation between the parties, the report of successful conciliation and such report shall be forwarded to the district officer and a copy free of cost will be provided to the parties also.

In case, the result of the conciliation of the parties is negative, an inquiry will be initiated under section 11 of this act and it is restricted that such inquiry shall be completed within 90 days and such committee shall have equivalent to the powers bestowed under the provision of civil procedure code and the committee is bound to hand over such report to the police for the purpose of a filing a case under the section 509 of the Indian penal code.

CHAPTER-5 [PROCEDURE OF INQUIRY OF COMPLAINTS]

During the time pendency in regarding the inquiry of the complaint, the complainant has given the right that he can ask for the transfer to another workplace, and after the inquiry is complete within the 10 days of such conclusion the report shall be given to the officer and to the parties of the case as well such respondent shall be subject to the rules that are applicable to him and in case the charges that are framed against such person are not proved beyond the reasonable doubt in that case, no further action will be taken against him.

In the case if the complaint is based upon false grounds and the grounds cannot be proved in such case, such female shall be subject to the proceedings against her.

In order to calculation as to the sum that has to be paid to the victim of sexual harassment, the following points will be taken in the notice.

1. Mental trauma, pain, suffering and emotional distress
2. In the case of loss of any career opportunity
3. Medical expenses
4. Income and financial status

Furthermore, the act states that any piece of information regarding this case shall be in the ambit of the right to information and such information can only be produced in the interest of justice.

If any person is acquainted with the information of the case and in the case of contravention, shall be liable to the subject of punishment.

The right to appeal against such an order or decision is only limited to 90 days.

CHAPTER-6 [DUTIES OF EMPLOYER]

Under section 19 of this act there are some duties assigned to the employer.

1. It is the duty of the employer to build a friendly working environment.
2. It is essential all the provisions that are provided under the penal statute regarding sexual harassment
3. The lack of awareness plays an essential role in the deprivation of rights, so it is the duty of the employer to organize workshops and make the employees aware about the rights.
4. It is the duty of the employer to ensure the attendance of the respondent and the victim.
5. Providing the information to the constituted committee on the current incident.
6. Initiating the action according to the Indian penal code is essential for the delivery of justice.

CHAPTER- 7[POWERS OF DISTRICT OFFICER]

1. It is the paramount duty of the district officer that he has to verify that all the submissions regarding the case were made on time.
2. To make all the crucial measurements for the purpose of creating awareness of rights that are entitled to women under this act.

CHAPTER-8[MISCELLANEOUS]

1. Section 21 states that a report that is prepared by the internal committee shall be on an annually basis and will be presented to the district officer and the employer and it is the duty of the district officer to hand over such a report to the state government for the inspection.

2. Under section 22, it is the duty of the employer to keep records as to the number of filled cases and such kept records shall be presented before the district officer.
3. It is the duty of the appropriate government it can be the state as well as the center government as the case may be, to keep the records of the cases that are registered and the cases which are disposed off.
4. The offences that are the committee under this act will be non cognizable and the power to take cognizance be given to the judicial magistrate of first class and the metropolitan magistrate.
5. In case there is any ambiguity or difficulty, the power is bestowed on the central government to remove the same and such a decision shall be put forward before the houses of parliament.

OTHER INDIAN LAWS:-

The protection of women from sexual harassment at the workplace is specifically oriented towards sexual harassment that takes place at the workplace of such women, There are some other provisions under different statues that deal with the sexual harassment of women.

1. **The Indian penal code, 1860:-**

1. Section 294 of the Indian penal code deals with obscene acts and songs.
2. Section 354, to 354A to 354D, In this particular section the following things are explained, what do you understand the modesty of women, stalking, voyeurism.
3. Section 376 defines rape and as well as punishment of rape
4. Section 509- That covers the ambit of any use of any words, or any gesture that was done with the purpose of insulting the modesty of women.

2. **The Industrial Employment Act, 1946-**

Some particulars as to guidelines that were given in the Vishaka case, In this act misconduct has been identified that includes sexual harassment.

3. **The Indian contract act:-**

The principle of good faith is an essential part of every agreement in every contract, means any contract that asks for sexual favors or that impeaches the amicable environment and it has resulted in a hostile nature its breach of such principal.

4. **The indecent representation of women Act, 1990-**

If a person harasses a woman by using any book or any film that can be interpreted as an indecent representation of women, can be held accountable under this act.

5. **National commission for women act, 1990-**

The paramount aim of the national commission of women is to protect the interests of women and should promote the principle of women's empowerment

CONCLUSION.

India is making tremendous progress towards its developmental objectives, and an increasing number of women are entering the workforce. An essential part of defending the human rights of women is acknowledging their right to protection from sexual harassment. Every action is a step toward granting women's independence and equal opportunity and the right to a dignified job at work. However, it is an undeniable fact that sexual harassment has not been stopped and is actually getting worse. It is unfortunate that sexual harassment is viewed as a normal sexual desire between a man and a woman. Sexual harassment is frequently regarded as vulgar, yet it is typically viewed as a love game that is appropriate between men and women. Actually, sexual harassment is an attempt to intimidate, mistreat, and degrade the victim by a person in a position of authority.

The major obstacle which abstains a woman from reporting such incidents is the fear and unawareness of the authority of the accused. Also, if the reports of such severe acts won't be noticed then, how can any action be taken.

Hence, to strive against sexual harassment, legislative measures need to be backed by preventive mechanism. The employers and employees shall be aware of the enhancement in existing forms of sexual harassment, measures to prevent it, and legal framework on approaching and preventing sexual harassment. Activities leading to awareness and dissemination shall be conducted and assessed to enhance the best practices for dealing with sexual harassment in the workplace and further to warn and educate about sexual harassment so that potential victims can avoid it. Combating it can be aided by improving sexual harassment training programs and offering documentation or a manual on how to prevent it at work.

“While a murder destroys the physical frame of the victim, sexual harassment degrades and defiles the soul of a helpless woman.”