

Sexual Harassment Act: How far Effective?

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Abstract

Sexual Harassment of women at work place is a serious irritating factor that renders women's involvement in work unsafe and affects right to work with dignity. The Constitution of the India guarantees gender equality, the right to work with human dignity under articles 14, 15 19(1)(g), 42 and 21. Despite of this, working women face sexual harassment at workplace. A workplace free from the fear of sexual harassment is implicit and a pre requisite for gender justice. For a very long time, there was no specific legislation addressing this major issue. Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013 was a much awaited legislation for women. It is the result of consistent struggle for almost thirteen years after the landmark decision of the apex Court in the case of Vishakha v. State of Rajasthan(1997).This paper attempts to study the implementation of this Act especially to private sector. The present study was conducted to study the implementation of the Act in Call Centres.

KEYWORDS: Sexual Harassment, Gender Equality, Vishakha case, Call Centres

I. Introduction

Violence against women is regarded as a necessary concomitant of the generally oppressed position to which women are subdued in the social structure.¹Sexual Harassment of women at work place is a serious irritating factor that renders women's involvement in work unsafe and affects right to work with dignity. The Constitution of the India guarantees gender equality, the right to work with human dignity under articles 14, 15 19(1)(g), 42 and 21. Despite of this, working women face sexual harassment at workplace. A workplace free from the fear of sexual harassment is implicit and a pre requisite for gender justice. For a very long time, there was no specific legislation addressing this major issue.

Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013 was a much awaited legislation for women. It is the result of consistent struggle for almost thirteen years after the landmark decision of the apex Court in the case of Vishakha v. State of Rajasthanⁱⁱ.

This judgement was a breakthrough in several ways and is viewed as one of the major instances of judicial activism. It took a long time for the legislature to enact a law, till then the guidelines laid down in the Vishakha's case ruled the roost. Finally, after several drafts, Sexual Harassment of Women at Work place (Prevention, Prohibition and Redressal) Act, 2013 was enacted which is applicable to the private sector as well.

II. Origin of the research problem

With the women's entry into the work force, traditionally male dominated sectors became shared space, minimising the social division of labour based on gender. However, sexual harassment by co-workers became an issue for female professionals. Physical, mental, verbal and non-verbal sexual harassment at the workplace affects women's performance as the experience is humiliating and unsafe.

In *Rupan Deol Bajaj v. K.P.S Gill*ⁱⁱⁱ (1995), the Court recognized sexual harassment as a crime falling squarely under section 354 of IPC, by interpreting 'outraging the modesty of a woman' to include outraging the dignity of a woman. Further in *Saudi Arabian Airlines v. Shehnaz*^{iv}, the Court recognized that dismissal of a woman following a complaint of sexual harassment was an unfair labour practice and illegal, and reinstated the woman who had been dismissed.

The development of legal safeguards against sexual harassment of women at the workplace is a recent phenomenon following the sexual assault of a female in Rajasthan in 1990s. In 1992, Bhanwari Devi, a female social activist was gang raped while working against child marriage in a village near Jaipur in Rajasthan. Bhanwari Devi belonged to an oppressed caste and was financially marginalised. In 1985, she joined a women's development programme undertaken by government of Rajasthan and later she became vocal against child marriage. As a result of her opposition to child marriage, she became a target of the dominant caste population in the village. On September 22, 1992, she was gang raped by five men while working at a field along with her husband. An FIR was filed and she refused to accept extra legal settlement with money as compensation. In 1995, the District and Session court delivered an order stating that dominant caste men could not rape a women belonging to oppressed caste. The judgement provoked nationwide protest and the women's organisations in the country started campaigning for justice against sexual harassment at the work place.

The gang rape left an irretrievable damage in Bhanwari Devi's life. After her brutal gang rape, Bhanwari was ostracized by her community and was not allowed to live in the village. She was considered as a 'bad' woman in the community and this impacted her children's education and marriage prospects.

A women's group filed public interest litigation before the Supreme Court of India claiming enforcement of fundamental right to equality, right to life with dignity and the right to work and carry out a profession under article 14, 19 and 21 of the Indian Constitution. The Supreme Court delivered a landmark judgement in *Visakha v. State of Rajasthan*^v. This case is a landmark for more than one reason. Not only was sexual harassment at the work place recognized under the Indian jurisprudence as a crucial problem faced by women workers, it also set out detailed guidelines for prevention and redressal of this malaise. In doing so, the Supreme Court did not merely confine itself into interpreting the law but went into the legislative exercise of law making. The Court traveled beyond its traditional confines of being the interpretative organ of laws and went into the terrain of law making which it has historically shied away from.

But the Supreme Court itself was conscious of taking cautious steps while indulging in law making. It declared that it was not making any law but only declaring the law which any way existed. For doing this the Court came out with a legal principle which though not totally novel was definitely propounded with such force and clarity for the first time.

In the absence of statutory regime on this evil, the growth of law in India due to judicial activism in *Vishakha's* case has established new potentialities in law –society interactions.^{vi} Supreme Court relied upon the Convention for Elimination of All Forms of Discrimination against Women (CEDAW)- an international document which India has both signed and ratified. Also, the analysis of Articles 15, 42, 51-A, 51 and 253 evolved the new law. The extraordinary character of judicial law making was justified by the Court in the light of special circumstance of the case by observing, “ In view of the above and absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution.”

The Hon'ble Supreme Court laid down the guidelines and norms having regard to the definition of Human rights in Section 2 (d) of the Protection of Human Rights Act, 1993, and taking note of the fact that , the then civil and penal laws did not adequately provide for specific protection of women from sexual harassment of in work places and enactment of such legislation would take considerable time.

However, as always, the guidelines remained on paper. Implementation of the guidelines remained discretionary and no mechanism was created to monitor its implementation.

III. Significance of the study

In the age of earning with learning, more and more young minds are drawn towards call centres. Many youngsters are working with Call Centres. The Call Centres have odd hours of working. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is quite new. It has wide application. It covers private enterprises as well. It has provided for an exhaustive prevention, prohibition and redressal mechanism. It is a deep concern that the response of law enforcement mechanism is frustrating and humiliating for women.

Call Centres fall under the purview of this Act, as Act covers private enterprises. However, as with every legislation, the implementation is a major issue. Hence, this study has specific significance as it focuses upon finding out the implementation of this Act and finding out the awareness regarding sexual harassment and the redressal provisions thereto .

IV. Objectives

- i. To find out the awareness about this Act.
- ii. To find out the impact of the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013
- iii. To find out whether the employees are aware that sexual harassment amounts to violation of Fundamental Rights.
- iv. To find out whether the employees and employers are aware about what amounts to sexual harassment at work place.
- v. To find out whether the employees are aware about redressal procedure in case of sexual harassment.
- vi. To find out whether the call centres have Internal Committee as prescribed by the Act
- vii. To find out whether local complaint committee exists and functions
- viii. To find out how many complaint cases have been filed and what is the present status of those complaints.

V. Methodology

Population

The population of the study comprised of the following :

Employees and employers of the eight call centres in the city of Baroda

Sampling Technique and Sample

The non probability sampling technique with convenient sample was adopted by the researcher.

There are two exclusive set of samples .i.e employers and employees.

Employers

Employers of all eight call centres formed the sample.

Employees

Convenient sample was adopted.

Tools

In all , the following tools were developed by the investigator in order to study the objectives.

- Information Schedule cum questionnaire was prepared for employees to get information for objective nos. i to v , the information about awareness etc. that shall be collected.
- Structured Interview schedule was developed by the investigator for the employers to obtain information with regard to awareness about the Act, constitution of the Committee and the status of the complaints filed which will fulfill objective nos.vi to viii .

VI. Interpretation of data of employees

According to the definition given in the Act, "employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;^{vii}

All the employees who were given the questionnaire were from call centres which is a private sector organisation.

Maximum employees were aware about fundamental rights. Most of the employees knew what is meant by sexual harassment. Around 71% employees were found to know that sexual harassment amounts to violation of fundamental rights.

According to the Act, Sexual harassment includes,
"sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:- (i) physical contact and advances; or (ii) a demand or request for sexual favours; or (iii) making sexually coloured remarks; or (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature:^{viii}

Although, most of the employees had earlier answered that they know what is meant by sexual harassment, when actually questioned about the legal definition, only 45% were found to know what actually amounts to sexual harassment.

Complaint of sexual harassment

(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident: Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing: Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. (2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.^{ix}

Very less number of employees said that they had actually heard , experienced or witnessed sexual harassment in their organisation. Out of those who had either heard, experienced or witnessed sexual harassment in their organisation, had reported the matter to higher authorities. Only 2% of said that they didn't do anything.

According to the Act, work place includes,

....any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health

services or financial activities including production, supply, sale, distribution or service;^x

67 % employees had heard about Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 while 33% had never heard about this legislation. The ones who had heard about the legislation, also knew that it is applicable to private sector also. However, training programme was conducted in very few organisations.

"workplace" includes- (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or service; (iii) hospitals or nursing homes; (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto; (v) 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; (vi) a dwelling place or a house;^{xi}

Most of the employees knew the definition of workplace. Most of the employees said there is an Internal Complaint Committee in their organisation. Around 81 % of the employees knew who all are protected under the Act.

Interpretation of data of Employers

According to the Act, employer means,

"employer" means- (i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation. For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;^{xii}

Nearly 75% of the employers were aware about the legislation. And they are also aware that the Act is applicable to them. However, most of them said that they have not received any notification from the Government.

Duties of employer

Every employer shall-

... (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

Only 25 % had conducted training programmes for spreading awareness. They had conducted more than two training programmes.

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":^{xiii}

Most of them have not set up Internal Complaints Committee (Internal Committee) and neither are they aware that it is obligatory to do so.

The Internal Committee shall consist of the following members to be nominated by the employer, namely:- (a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation; (b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge: (c) one member from amongst non-governmental organisations 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.^{xiv}

And , even the ones who had Internal Complaints Committee (now Internal Committee), have denied to provide a copy of composition of the ICC. Also, the ones, who had ICC, did not have any member of NGO in it. The ones who had ICC, had received complaints. And, interestingly, action was taken against the guilty, mostly in the form of termination of the accused.

Duties of employer

Every employer shall-

...

...(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments: and the order constituting, the Internal Committee under subsection (1) of section 4^{xv};

However, most of them have not affixed a Notice of prevention of sexual harassment at work place.

VII. Conclusion and Suggestions

The researcher has the following findings.

Observations

Sexual Harassment and Fundamental Rights

It was found that although 82% respondents knew about the fundamental rights only 70.9% knew that sexual harassment is a violation of fundamental right.

Sexual Harassment

It was found that only 45 % of the respondents knew the exactly what is included in definition of sexual harassment.

Applicability of the Act

The employers of the Call Centres were found to know that the Act is applicable to them. However, the respondents in the employee category did not know what is exactly included in the definition of workplace.

Awareness about the Act

This Act is applicable to the private sector also. The employers as well as the employees were found to be having heard about the Act. However, when asked it detail, it was found that they did not know much about it. While doing research, it was observed that there is a high level of secrecy in the call centres and they were found unwilling to give information regarding the implementation of the provisions of the Act.

Training Programmes

Further, even the training programmes for creating awareness and sensitization among its employees were not conducted by most of them.

Awareness about the redressal Procedure

It was found that the respondents had reported the matter to the higher authorities. So it can be inferred that they were unaware about the redressal procedure.

Existence of Internal Committee

Section 26 of the Sexual Harassment of Woman at Work place (Prevention, Prohibition and Redressal) Act, 2013, imposes penalty for noncompliance with provisions of Act

(1) Where the employer fails to- (a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, **he shall be punishable with fine which may extend to fifty thousand rupees.**

However, the response to the question about constituting Internal Complaints Committee was disheartening. Only 37.5% of the employers said they constituted Internal Complaints Committee. This brings before us the major question of implementation of the law. This Act is a major breakthrough for women's right at the workplace.

Internal Complaints Committee is the most important part of redressal mechanism. However, it was found that even the basic requirement was not in place despite of it being a mandatory provision in the Act. Although only a few call centres visited by the investigator asserted the existence of Internal Complaints Committee, none of them was willing to give a copy of the same. This raises an iota of doubt over the existence of the Committee.

Composition of Committee

The call centres that had an Internal Complaints Committee was headed by a female employee. However none of the call centres who had an Internal Complaints Committee had a member of NGO.

Action against Complaints filed

The investigator found that the call centres who had the Internal Complaints committee in place, had taken action on the complaint. It was found that the punishment awarded was termination of service.

Suggestions

- **Sexual Harassment and Fundamental Rights**

Fundamental rights should be taught compulsorily at the graduation level also.

- **Awareness about the Act**

It is suggested that there is a need for creating awareness about the Act. Everyone should know to whom the Act is applicable. Everyone should know the meaning of sexual harassment and also what is meant by work place. It is also necessary

- **Training Programmes**

The Law Faculties should be given the responsibility of conducting awareness programmes relating to provisions of the sexual harassment Act. The manner of organizing workshops, awareness programmes for sensitizing the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19;

- **Awareness about the redressal Procedure**

It is suggested that there is a need for creating awareness about the redressal procedure prescribed in the Act.

- **Internal Committee**

It should be mandatory for every organisation/ workplace to post on the official website the composition of Internal Committee. This shall enable more transparency.

- **Amendment of the Provisions**

Composition of Internal Committee:

The composition of the Internal Committee may be amended to the extent of inclusion of additional external members. Apart from one member of the NGO, one woman lawyer with a minimum of ten years of practice be included.

Punishment for non compliance: Section 26 of the Sexual Harassment of Woman at Work place(Prevention, Prohibition and Redressal) Act, 2013 which imposes penalty for noncompliance with provisions of Act be amended. Presently, the fine for contravening the provisions of the Act is Rs. 50000. This may be increased to five lakh rupees and cancellation of license.

The preliminary object of the study was to find out the implementation of the Act.

The Act aims to provide protection to all women against sexual harassment at workplace. It has a threefold objective: protection, prevention and redressal. The Sexual Harassment (Prevention, Prohibition and Redressal) Act of 2013 is a much needed legislation. It provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Whereas sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution

and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. After conducting the study, the researcher infers that there is a need for effective implementation of this much awaited and important legislation for the protection against sexual harassment at workplace.

References:

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