

## Aftermath of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013

**Swati Joshi**

Assistant Professor, Faculty Law, GHRLC Nagpur, Maharashtra, India

### Abstract

The Parliament of India has enacted 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. The purpose and the object of this Act was to provide safe and secured ambience at workplace for the women. It has been observed that the women are not given the dignified treatment by the men at workplace and on many occasion the women realized this unexpected treatment from the men. To remove this discrimination and to provide equal status and dignity to women at workplace this particular Act was enacted.

After the Act came into force it was expected that it shall provide a great sigh of relief to the women at workplace and how that has been provided by the Act has been discuss by the author in this article.

**KEYWORDS:** Sexual Harassment, Women, Act

*District officer* means an officer notified U/s 5.

*Sexual harassment* includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely : (i) physical contact and advances or (ii) a demand or request for sexual favors or (iii) making sexually colored remarks or (iv) showing pornography or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

*Internal Committee* means an Internal Complaint Committee constituted U/S 4.

*Local Committee* means the local complaint Committee constituted U/s 6

The act (The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 has been passed by the Parliament after comparatively a big gap of **Vishakha's** decision. In fact this act ought to have been passed earlier as it is essential for the protection of women at workplace. The provisions of the Act are well equipped for the purpose of catering the objects of the Act. This Act has been analysed by this author in a manner whereby the provisions of it can be understood by the common man.

The idea is this that the provisions of the Act should be reached to all strata of the society so that its effect must be reached to the people in a proper spirit.

Sexual harassment of women is the violation of fundamental rights of women. It violates the right of '**Gender Equality**' guaranteed under **Article 14, 15, 19(1)(g)** and **21** guaranteed under Constitution of India. This Act is the ultimate result/outcome of guidelines given by Supreme Court of India in **Vishakha V/s State of Rajasthan**

**(1997)7SCC 323.** It is the powerful and comprehensive enactment protecting all women without any discrimination. It consists of 30 sections divided into 8 chapters along with rules. The **objects** incorporated under the Act are: *(i) to protect women against sexual harassment at workplace (ii) to prevent and provide redressal mechanism for sexual harassment*<sup>1</sup>. The Act is applicable to whole of India and its actual effect was started from 9<sup>th</sup> Dec, 2013.<sup>2</sup> Like every statute section 2 of the Act provides for various terms and is very comprehensive and there is no doubt regarding its interpretation.

The Act provides for circumstances amounting to sexual harassment. These are: (i) implied or explicit promise of preferential treatment in employment (ii) implied or explicit threat of detrimental treatment in her employment (iii) implied or explicit threat about her present or future (iv) interference with her work or creating an intimidating or offensive or hostile work environment (v) humiliating treatment likely to affect her health or safety.<sup>3</sup>

**Chapter II** provides for Constitution of Internal Complaint Committee. If there are more than ten employees it is compulsory to establish 'Internal Complaint Committee' popularly called as ICC by employer by issuing express order. It consists of five members nominated by employer namely (a) Presiding Officer- senior women employee, if not available nominated from other offices or administrative unit of work place. (b) Two members having experience in social work or legal knowledge (c) One member from NGO dealing with issues relating to sexual harassment. One half of total members shall be women. All the members of the committee shall hold the office for term of 3 years from their nomination. The member appointed from NGO or other association is entitled for fees or allowances from employer prescribed by the appropriate government. The members of the committee including Presiding officer shall be disqualified if: a) contravenes the provisions of section 16 (Prohibition of publication or making known contents of complaint and inquiry proceeding)

b) convicted for an offence or an enquiry is pending against him under any law for time being in force

c) found guilty in any disciplinary proceedings or disciplinary proceeding is pending against him

d) abuse his position as to render his continuance in office prejudicial to the public interest.

The vacancy created shall be filled by fresh nomination as per the provisions of section.<sup>4</sup>

**Chapter III** provides for constitution of Local Complaints Committee. The appropriate Government by issuing notification directs a District Magistrate or Additional District

---

<sup>1</sup> Preamble

<sup>2</sup> Section 1

<sup>3</sup> Section 3 Prevention of sexual harassment

<sup>4</sup> Section 4 Constitution of Internal Complaint Committee

Magistrate or Collector for every District to exercise powers or discharge functions under this Act as 'District Officer'.<sup>5</sup>

**Chapter VII** provides for duties and powers of District officer. The District Officer shall—(i) monitor the timely submission of reports furnished by the Local Committee,(ii) take necessary measures for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the woman.<sup>6</sup>

Every District Officer has to constitute a committee known as 'Local Complaint Committee' to receive complaints relating to sexual harassment from establishment or if no internal complaint committee has been constituted or if the complaint is against the employer. There shall be one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, designated by the District officer. On receiving a complaint, nodal officer has to forward the same to the concerned Local Complaints Committee within seven days. The said committee shall exercise jurisdiction over a district for which it is constituted.<sup>7</sup>

The Local Complaint Committee shall consist of following members nominated by the District Officer, namely: (a) Chairperson-Eminent women social worker (b) one member-amongst the women working in block, taluka or tehsil or ward or municipality in district.

(c) Two members, one shall be women from NGO or associations committed to the cause of women or familiar with issues relating to sexual harassment and one should have law background or legal knowledge.

(d) One officer dealing with social welfare or women and child development in the district, shall be ex-officio.

At least one of the nominees shall be women belong to SC or ST or other Backward classes or Minority community notified by Central Government.

All the members of the committee shall hold the office for a period of 3 years from the date of their appointment by the District Officer.

The members of the Local Complaint Committee including Chairperson shall be disqualified if (a) contravenes the provisions of section 16 or

(b) convicted for an offence or inquiry into an offence under any law for time being in force is pending or (c) found guilty in any disciplinary proceedings or disciplinary proceeding is pending against him or (d) abused his position as to render his continuance in office prejudicial to the public interest.

A chairperson or member is removed from office and if vacancy is created such vacancy shall be filled by fresh nomination.

<sup>5</sup> Section 5 Notification of District Officer

<sup>6</sup> Section 20 Duties and powers of District Officer

<sup>7</sup> Section 6 Constitution and jurisdiction of Local Complaints Committee

The chairperson or member of Local Committee shall entitle for fees or allowances for holding proceedings barring section 7(b) and (d).<sup>8</sup>

The Central Government provides grants to the State Government. It is utilize for payment of fees or allowances as per section 7. For proper utilization of grant agency is constituted. Through agency the District Officer shall receive payment of fees or allowances referred in section7 (4).The accounts of agency shall be maintained and audited by consulting with Accountant General of the State in prescribed manner and the person holding custody of the accounts of agency has to submit audited copy of accounts together with audited report.<sup>9</sup>

**Chapter IV** provides for manner of filing complaints. An aggrieved woman is entitled to file a complaint of sexual harassment in express form to Internal Complaint Committee or Local Complaint Committee, if Internal Complaint Committee is not constituted. Such complaint shall be file within a period of three months from date of incident and in case of series of incident within three months from the date of last incident.

All assistance shall be givenfor writing complaint by the Presiding Officer or any Member of Internal Committee or Chairperson or any Member of the Local Committee.

The Internal Committee or Local Committee may extend the time limit for filing complaint by three months if the circumstances prevented the woman from filing a complaint within the said period.The legal representatives of the aggrieved woman are entitled to make a complaint due to her physical or mental incapacity or death or otherwise.<sup>10</sup>

After receiving a complaint, on request of aggrieved woman the Internal committee or the Local Committee before initiating an inquiry, try to settle the matter between her and respondent through conciliation but no monetary settlement shall be made as a basis of conciliation. If the matter is settled the Internal Committee or the Local Committee shall provide the copies of the recorded settlement to the aggrieved woman and the respondent. No further inquiry shall be conducted by the Internal Committee or the Local Committee on settlement of matter.<sup>11</sup>

If the respondent is an employee, the Internal Committee or the Local Committee shall proceed inquiry into complaint in accordance with the provisions of the service rules applicable to the respondent and in case of domestic worker, the Local Committee shall forward the complaint to the police, within a period of seven days for registering the case under section 509 of Indian Penal Code and any other relevant provisions of the said code.

---

<sup>8</sup> Section 7 Composition ,tenure and other terms and conditions of Local Complaint Committee

<sup>9</sup> Section 8 Grants and audit

<sup>10</sup> Section 9 Complaint of sexual harassment

<sup>11</sup> Section 10 Conciliation

If the aggrieved woman informs the Internal/Local Committee that term of settlement has not been complied by the respondent, the Internal/Local Committee shall proceed to make an inquiry into complaint or forward the complaint to the police.

If both the parties are employees, an opportunity of being heard shall be given and copy of the findings shall be made available to both the parties to make representation against the findings before the Committee.

If the respondent is convicted of the offence, the court may, passed order for payment of appropriate sums to the aggrieved woman as per section 15.

While trying suit the Internal/Local Committee shall vested with the power of civil court under Code of Civil Procedure 1908 namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath,
- (b) requiring the discovery and production of documents, and
- (c) any other matter which may be prescribed.

The inquiry shall be completed within a period of ninety days.<sup>12</sup>

**Chapter V** provides for inquiry into complaint. On receiving a written request made by aggrieved woman the Internal/Local Committee shall recommend to the employer to –

- (a) transfer the aggrieved woman or the respondent to any other work place, or
- (b) to grant leave to the aggrieved woman for a term of three months, and
- (c) grant such other relief .

The leave granted by way of relief shall be in addition to the leave she entitled.

On the recommendation of the Internal/Local Committee, the employer shall implement the recommendations and send the report of such implementation to the respective committee.<sup>13</sup>

Within a period of ten days from the date of completion of the inquiry, the Internal/Local Committee shall provide a report of its findings to the employer/District officer and such report shall be available to concerned parties.

No action shall be taken if Internal/Local Committee arrived at the conclusion that the allegation against the respondent has not been proved.

If the allegation against the respondent has been proved the Internal/Local Committee shall recommend to the employer or District Officer: - (i) to take action for

<sup>12</sup> Section 11 Inquiry into complaint

<sup>13</sup> Section 12 Action during pendency of inquiry

sexual harassment as misconduct according to the provisions of the applicable service rules,

(ii) to deduct from the salary or wages of the respondent a sum paid to the aggrieved woman or her legal heirs as per the provisions of section 15.

If the employer is unable to deduct from the salary of the respondent a sum payable to the aggrieved woman due to his absence or cessation of employment, the Internal/Local Committee may direct the respondent to pay such sum to the aggrieved woman.

If the respondent fails to pay the sum, the Internal /Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer has to comply recommendation within sixty days from its receipt.<sup>14</sup>

If the Internal/Local Committee arrives at a conclusion that the allegation against the respondent is malicious or complaint is false or the aggrieved woman or other person making complaint has produced any forged or misleading document, the Committee may recommend the employer or the District Officer to take action against woman according to the provisions of the service rules applicable to her or if no service rules exist, in such manner as may be prescribed.

During the inquiry, the Internal/Local Committee arrives at a conclusion that any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer to take action in accordance with the provisions of the service rules applicable to witness or if no service rules exist, in such manner as may be prescribed.<sup>15</sup>

In order to determine the sum payable to aggrieved woman the Internal/Local Committee shall take into consideration – (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman,(b) the loss in the career opportunity due to the incident of sexual harassment,(c) medical expenses incurred by the victim for physical or psychiatric treatment,(d) the income and financial status of the respondent, feasibility of such payment in lump sum or in instalments.<sup>16</sup>

The content of the complaint made under section 9 (complaint of sexual harassment), the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal /Local Committee and action taken by the employer or the District Officer shall not be published,communicated or made known to the public, pressand media.

---

<sup>14</sup> Section 13 Inquiry report

<sup>15</sup> Section 14 Punishment for false or malicious complaint and false evidence

<sup>16</sup> Section 15 Determination of compensation

Without disclosing the name, address, identity or any other particulars the information regarding the justice secured to any victim of sexual harassment shall be disseminated.<sup>17</sup>

If any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action contravenes the provisions of section 16 shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or if there is no service rules exist, in prescribed manner.<sup>18</sup>

If any person aggrieved from the recommendations made under section 13 (2) or section 13(3) (i) or (ii) or section 14 (1) or (2) or section 17 or non-implementation of such recommendations entitled to prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to said person or if no such rules exist then, as per the law time being in force.

An appeal shall be filed within a period of ninety days of the recommendations.<sup>19</sup>

Chapter VI, section 19 provides for duties of employer. It is a duty of every employer:-

- (a) to provide safe working environment at the workplace.
- (b) display at any conspicuous place in the workplace ,the penal consequence of sexual harassment.
- (c) organize workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act.
- (d) to provide necessary facilities to the Internal Committee or the Local Committee for dealing with the complaint and conducting inquiry.
- (e) to assist in securing the attendance of respondent and witnesses before the Internal /Local Committee.
- (f) to make available such information to the Internal/Local Committee regarding the complaint made under section 9 .
- (g) to provide assistance to the woman if she chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for time being in force.
- (h) cause to initiate action ,under the Indian Penal Code or any other law for time being in force ,against the perpetrator, or if the aggrieved woman so desires, if the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place.
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.

<sup>17</sup> Section 16 Prohibition of publication or making known content of complaint and inquiry proceedings

<sup>18</sup> Section 17 Penalty for publication or making known contents of complaint and inquiry proceedings

<sup>19</sup> Section 18 Appeal

(j) monitor the timely submission of reports by the Internal Committee.<sup>20</sup>

Chapter VIII provides for miscellaneous. The Internal/Local Committee has to prepare annual report and submit the same to the employer and District Officer in each calendar year. The District Officer shall forward a received report to the State Government.<sup>21</sup>

The employer has to include in its report number of cases filed and disposed under the Act in the annual report of his organisation or if no report is required to be prepared, intimate such number of cases, to the District Officer.<sup>22</sup>

Relating to number of cases filed and disposed of in respect of all cases of sexual harassment at workplace, the appropriate Government shall monitor the implementation of this Act and maintain data.<sup>23</sup>

On availability of financial and other resources, the appropriate Government may – (a) develop relevant information, education, communication and training materials, organize awareness programs, to advance the understanding of the public of the provisions of this Act providing protection against sexual harassment of woman at workplace, (b) formulate orientation and training programs for the members of the Local Complaints Committee.<sup>24</sup>

In the public interest or in the interest of women employees at a workplace, the appropriate Government by order in writing-

(a) call upon any employer or District Officer to furnish in writing information relating to sexual harassment as required,

(b) authorize any officer to make inspection of the records and workplace in relation to sexual harassment and shall submit a report of such inspection to it within such period specified in order.

On demand every employer and District Officer has to produce before officer making the inspection all information, records and other documents in his custody relating to subject for inspection.<sup>25</sup>

If the employer fails to – (a) constitute an Internal Committee U/s 4 (1), (b) take action under section 13, 14, and 22 and (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, shall be punishable with fine extending fifty thousand rupees.

If the employer has been convicted of an offence and is punishable and subsequently has committed the offence and is convicted he shall be liable to –

<sup>20</sup> Section 19 Duties of Employer

<sup>21</sup> Section 21 Committee to submit annual report

<sup>22</sup> Section 22 Employer to include information in annual report

<sup>23</sup> Section 23 Appropriate Government to monitor implementation and maintain data

<sup>24</sup> Section 24 Appropriate Government to take measures to publicise the Act

<sup>25</sup> Section 25 Power to call for information and inspection of records

- (i) twice the punishment imposed on a first conviction, subject to maximum punishment for same offence,
- (ii) cancellation of his license or withdrawal or non-renewal or approval or cancellation of the registration by the Government or local authority required for his business or activity.<sup>26</sup>

The court shall take cognizance of any offence punishable under this Act or any rules made under this Act on a complaint made by the aggrieved woman or any person authorized by the Internal Committee or Local Committee.

The offence punishable under this shall be tried by a Metropolitan Magistrate or a Judicial Magistrate of the first class.

The offence under this Act is non-cognizable.<sup>27</sup>

The provisions of this Act shall be in addition. It does not take away the provisions of any other law time being in force.<sup>28</sup>

The Central Government is empowered to make rules for this Act and issue notification to that effect. These are:-

- (a) the fees or allowances paid to the members under section 4(4),
- (b) nomination of members under section 7 (1)(c),
- (c) the fees or allowances paid to the Chairperson, and Members under section 7 (4),
- (d) the person who may make complaint under section 9 (2),
- (e) the manner of inquiry under section 11(1),
- (f) the powers for making an inquiry under section 11(2)(c),
- (g) the relief recommended under section 12 (1)(c),
- (h) the manner of action to be taken under section 13 (3)(i),
- (i) the manner of action to be taken under section 14(1)(2),
- (j) the manner of action taken under section 17,
- (k) the manner of appeal under section 18(1),
- (l) the manner of organizing workshops, awareness programs for sensitizing the employees and orientation programs for the members of the Internal Committee under section 19 (c),

<sup>26</sup> Section 26 Penalty for noncompliance with provisions of Act

<sup>27</sup> Section 27 Cognizance of offence by courts

<sup>28</sup> Section 28 Act not in derogation of any other law

(m) the form and time for preparation of annual report by Internal Committee and the Local Committee under section 21 (1).

Every rule made by the Central Government under this Act shall be laid before the each House of Parliament, while it is in session, for a total period of thirty days comprised in one session or in two or more successive session and if ,before the expiry of the session immediately following the session or the successive session, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, such modification or annulment shall be valid.

Any rule made under section 8(4) by the State Government shall be laid before each House of State Legislature if it consists of two Houses, or if Legislature consists of one House, before that House.<sup>29</sup>

If any difficulty arises in giving effect to the provisions of this Act the Central Government shall published in the Official Gazette provisions consistent, by removing the difficulty. Such order shall be made within a period of two years from the commencement of this Act. Every order under this Act shall be laid before each House of Parliament.<sup>30</sup>

On analysis of the provisions of the Act, it appears that Parliament has taken drastic step to frame such powerful legislation. This act is the welcome change relating to woman legislation. For its effective implementation in providing redressal there is need to make the People aware about it. Awareness must be spread in every strata of the society to make it more effective.

---

<sup>29</sup> Section 29 Power of appropriate Government to make rules

<sup>30</sup> Section 30 Power to remove difficulties