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Efficacy of Laws Relating to Sexual Harassment of Women at Workplace in India: Study

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ABSTRACT

India is expeditiously advancing in terms of its developmental goals. Those days are gone when only men used to step out of the house and go to their respective workplaces in order to earn a living, now presence of women can be seen in almost every sector of the workforce. However, societal evils like Sexual Harassment of women at workplace still exists. This is a clear violation of the fundamental rights guaranteed under the Constitution of India. In order to provide a safe working environment for women, the Ministry of Women and Child Development enacted and passed Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013(POSH) in the year 2013. This act has been implemented in order to prevent instances of Sexual Harassment, provide protection to the aggrieved women and also provide a proper redressal mechanism. This paper explains in detail the various provisions of the POSH Act, 2013.

I. INTRODUCTION

“You can tell the condition of a nation by looking at the status of it’s women.”

- *Padit Jawaharlal Nehru*

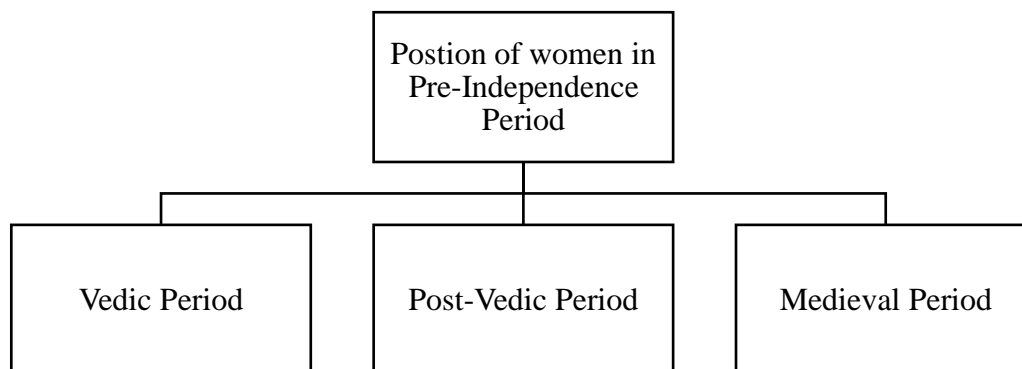
Sociologists have described women by propounding different notions. History of India suggests that women are considered as a divine force, however the multi-cultured Indian society place at distinctive positions. As a coin has two sides one positive and one negative, the Indian aesthetics pose women with dual character. On one hand she is considered benevolent, fertile and patient, whereas on the other hand she is considered as a representor of ‘shakti’ and as an aggressor.

According to historian Romilla Thaper, “within the Indian sub-continent there have been infinite variations on the status of women diverging according to the cultural malice, family structure, class, caste property rights and morals.”

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(A) Position of women in Pre- Independence Period ²

In order to discuss the position of women during the pre- independence period, it is very important to discuss the position of women during the Vedic period, post Vedic period and medieval period.



1. Vedic period

Position of women during this period was glorious in terms of the freedom given and the equality that prevailed in that period, women participated in every walk of life, they went to gurukuls for their education and enjoyed liberation in every sphere. Great women like Yamini, Ghosa, Gargi and Apala stole the show and became the torch bearers of the society. They acquired perfection in cultural and even warfare activities. There wasn't any repudiation in re-marriage of widow and along with that there didn't even exist the concept discrimination between a boy and girl, girls were allowed to undergo Upanayana Sanskar (thread ceremony), pardah system wasn't present and people had the freedom to select their life partners.

In Upanishad, wife has been regarded as the true companion of her husband. In addition, she has been blessed to live in her husband's house as a queen in the Rigveda. In Mahabharata, wife has been called as the base of dharma, enjoyment and prosperity. Man was not religiously eligible to perform sacred duties without his wife. The system of polygamy and dowry did exist but only in the ruling class.

All in all, women were considered to be of high status during the vedic period.

2. Post Vedic-period

As propounded by Manu, during the post vedic period women faced extreme hardships and restrictions. It was basically a male dominated society having an increased authority of man. Birth of a girl child was considered to be a disaster for the family. Girls weren't allowed to

²Law relating to Women & Children by Dr. S.C.Tripathi & Vibha Arora.

undergo Upanayana Sanskar (thread ceremony). During this phase marriageable age for girls was reduced to 9-10 years. Daughters were brought up under the vigilance of her father, as a wife of her husband, and as a mother of her son. However, females belonging to the ruling class were allowed to training and education in administration, fine arts and military science but only up till a certain extent.

However, what's completely opposite to entire situation was that during this phase, right to stridhan and women's right to property was recognised and even prevailed.

3. Medieval period

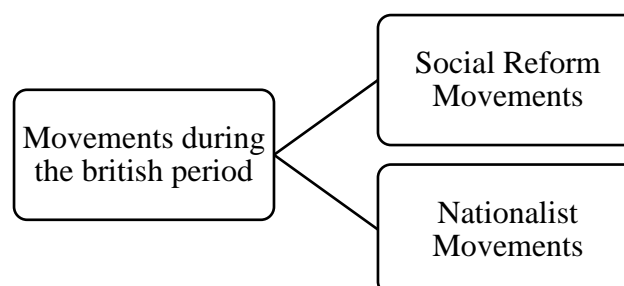
Women's position during this phase further degraded. Since society was facing invasion threats from the soldiers roaming countryside women were often put behind the veil. They were dispossessed with the educational facilities and they were not supposed to participate in community affairs. During this phase, social evils like *sati pratha*, female infanticide, child marriage flourished. In addition to that, the concept of dowry was an inevitable part of the society, specially in the state of Rajasthan. Also, not to exclude, the system of *devadasi* and polygamy was widely spread in the countryside.

All in all, women were tyrannized in every sphere during the medieval phase.

(B) Women's position during the Colonial Period

During the British period, mainly due to the western influence on the Indian socio-cultural pattern, the position of women underwent drastic changes. The concept of liberty, equality, individual secularism did come up but they were only limited to the ruling class.

Two major movements took place during the British period,



1. Social Reform Movements

This came up during the 19th century and raised the question of equal status of women in the society. Raja Rammohun Roy, the father of Indian Renaissance fought for issues like *sati pratha*, denial of right to property, prohibition on women re-marriage, child marriage and

education for women. Annie Besant, Dayanand Sarasvati, Swami Vivekanand propounded that pre-vedic period should be revived as that was optimal for women's position.

Mr. Mohandas Karamchand Gandhi strongly condemned the devadasi system, child marriage, *sati*, prohibition of widow re-marriage.

2. Nationalist Movements

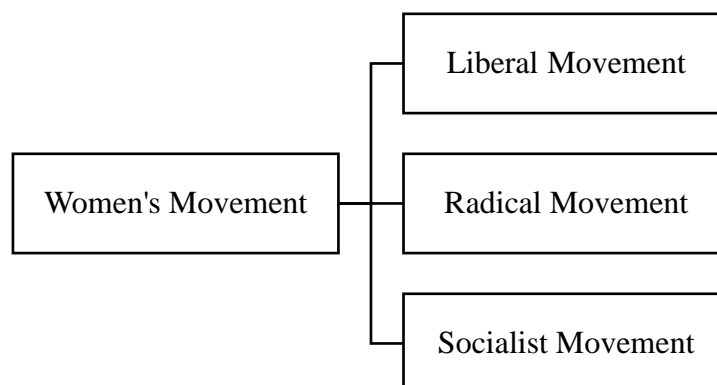
The nationalist movement motivated the women to raise their voice against the oppressive system. The year 1927 marked an important change as the All India Women's conference was formed and it proved to be a crucial movement in favour of right to equality of women.

Thereupon, a number of legislations were also enacted such as Child Marriage Act, Hindu Women's Right to Property, Widow's Remarriage Act, all these were enacted so as to eradicate the social evils that prevailed in the societies during those days. In addition, even the industrial laws were amended with a view to restore the status of women which existed in the pre-Vedic period. Under the banner of the nationalist movement, there was establishment of creches, reduction of working hours, restrictions to work in mines, dis-continuance on night working hours.

Basically, it can be understood that during the British regime, public awareness started to bloom and women's political and social participation gained strength.

(C) Women's Movement

It is true that women have had a rather lower status than men in the society. They are considered as subordinate of men in the field of education, politics and economics. To put an end to this, three major ideological movements of women emerged:



1. Liberal Movement

This occurred during the 18th century, by the virtue of western movement. During this movement it was accepted that husband earns for the family and wife looks after the

household affairs. It was propounded that women be given equal rights be it civil rights or right to education so that they work together for building a balanced society.

2. Radical Movement

This movement had an important link with liberal movement. This phase occurred around 1969-1970. Concepts like sexual division and sexual oppression were ignored by the liberal movement. It was realised that enactment of legislations would not simply solve all problems unless the attitude of the society is changed by education and proper participation in economics and politics. It is very much required to establish gender equality. Radical reformers propounded that the uprooting of male superiority can be achieved by a complete sexual revolution and traditional sexual prohibition can be attained by showing unanimity towards women's movement.

Ellen Frankfort, Germaine Greer and Kate Millett were prominent radical movement reformers.

3. Socialist Movement

Karl Max and Engels urged the socialist pattern of this movement. This basically propounded that the low status of females cannot be wiped out until and unless the concept of communist society is not removed. Factors like private property, confining women to production of children and existence of gender unfairness caused a great hurdle in socialist movement of women. Indian socialists did fight for the societal evils against women but couldn't agitate the issue of sexual freedom and sexual preference as that in western countries because it was simply opposed to the basic tenets of the Indian society.

Comparing to the present-day scenario, with development, industrialisation and globalisation in diverse fields. Today, women in India are showing advancement in all spheres be it art, economics, education, media, politics, science & technology, service culture, space & culture etc. The role of women has gradually shifted, which was previously restricted to doing household chores to commercial world. Those days have passed when only men used to go for work in order to earn a living, speaking of the current scenario, the term 'globalisation' has definitely changed the entire methodology of work and has reconsidered the role of females all spheres of life. The status and position of women has tremendously changed since ages. With improved access to education and a lot more facilities Indian women have started entering the country's workforce, organisations in the present day are working really hard so as to achieve cultural inclusiveness and gender diversity.

Not only that, there is an equal focus on improving the work conditions/ environment for women, however, sexual harassment at workplace remains a dark reality of this modern world. In simple words, as a coin has two sides one positive and one negative, in this case the positive side being the amount of rise in the status of women, the negative side is the struggle and the wrong acts suffered by them. Sexual Harassment at workplace being one such negative aspect and has assumed greater dimensions.

Sexual Harassment at Workplace is a type of gender inequality which violates Article 14 of the constitution which talks about the equality before law, Article 15 which is prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 16 which is equality of opportunity in matters of public employment and Article 21 which is right to life and personal liberty.

Workplace Sexual Harassment is not only an unacceptable behaviour but also reduces the opportunities for women and is also inimical for the economy, not only this but such a situation even creates an apprehensive environment for them. The mental agony that they go through can not be defined in words.

(D) Objective of the Study

Sexual Harassment of Women at workplace is one of the societal evils that still exists in the present case scenario. Gone are those days when only men used to step out of their houses to earn a living, now women have started entering the workforce. Presence women is visible in all sectors of workforce. However, that doesn't rule out the fact the women don't get to experience sexual harassment at workplace. This research paper provide a clear picture of the present day scenario with respect to the law dealing with cases of sexual harassment of women at workplace. Moreover, it provides an insight to the related matters and is aimed to be useful for future studies.

II. WHAT IS SEXUAL HARASSMENT AT WORKPLACE?³

Sexual Harassment of Women at Workplace is one of the evils prevailing in the modern society and in our country the bitter truth is that there isn't anyone to combat this evil the society.

Sexual Harassment and punishment for sexual harassment has been defined under section 354A of The Indian Penal Code 1860. It has been defined as – (1) A man committing any of the following acts-

³ S.354 A IPC. Assault or criminal force to woman with intent to outrage her modesty.

- i) physical contact and advances involving unwelcome and explicit sexual overtures; or
- ii) a demand or request for sexual favours; or
- iii) showing pornography against the will of a woman; or
- iv) making sexually coloured remarks,

shall be guilty of the offence of sexual harassment.

(2) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or both.

(3) Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Basically, in simple words, sexual harassment includes: -

- (a) physical contact and advances
- (b) a demand or request for sexual favours
- (c) sexually coloured remarks
- (d) showing pornography
- (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Initially, there were no laws for this specific issue, only three sections of IPC could be evoked, those were section 94⁴ which talks about the Act to which a person is compelled by threats, section 354⁵ which talks about Assault or criminal force to woman with intent to outrage her modesty and section 509⁶ which talks about Word, gesture or act intended to insult the modesty of a woman. However, the dark reality of women facing sexual harassment at workplace since ages cannot be denied. In the society, people have this mentality that by harassing a woman, it makes them feel powerful.

Due to the growing importance of this matter, section 354A was inserted in the Indian Penal Code through the Criminal Law (Amendment) Act, 2013, which constitutes the offence of sexual harassment.

(A) The Vishaka Judgment

⁴ S. 94 IPC. Act to which a person is compelled by threats.

⁵ S. 354 IPC. Assault or criminal to woman with intent to outrage her modesty.

⁶ S. 509 IPC. Word, gesture or act intended to insult the modesty of a woman.

*Vishakha and others vs State of Rajasthan (1997)*⁷ is a landmark judgment which dealt with the issue of sexual harassment at workplace. Here Vishakha & others were the petitioners and State of Rajasthan & others were the respondents.

Background

Bhanwari Devi, employed as a village level social worker under Women's Development Programme (WDP) used to work for putting a stop to the practice of child marriage.

As a part of her job, Bhanwari Devi tried to stop a child marriage which was taking place in the family of Ramakant Gujjar. Even after the widespread protest efforts went futile, and the marriage was successful.

In 1992, Ramakant Gujjar along with his five men, in order to seek revenge from Bhanwari Devi, gangraped her in front of her husband⁸. Initially the police diverted from filing her complaint, however, Bhanwari Devi was diverted and filed a complaint against the accused.

The trial court acquitted the accused. Bhanwari Devi along with the support of fellow social workers, filed a writ petition in the Supreme Court under the name '*Vishakha*'.

The filed petition was concerned with 'gender equality' and prevention of sexual harassment of working women at workplace. The episode of brutal gangrape of the social worker was considered to be a subject matter of a separate criminal action.

Demands of the Petitioner

Enforcement of fundamental rights of working women under Article 14, 19 & 21 of the Constitution of India. The main idea of the petition was to give the responsibility to the employers as to how to deal with incidents of sexual harassment of women at workplace.

Judgment

The Supreme Court held that Sexual Harassment results in violation of fundamental rights of 'Gender Equality' and the 'Right to life and Liberty'. It is a clear violation of Article 14, 15 and 21 of the Constitution of India. Along with that it even violates Article 19(1)(g) of the constitution which talks about the freedom to practice any trade or profession or to carry out any occupation, trade or business. Such violations attract the remedy under Article 32 for enforcement of fundamental rights of women. Supreme Court observed that the fundamental right enlisted under Article 19(1)(g) which talks about the *right to practice any profession, or*

⁷ AIR 1997 SC.3011.

⁸ Indira Jaisingh, Law relating to Sexual Harassment at the workplace (2014).

carry on any occupation, trade or business, depends on the availability of a safe working environment.

Right to life means living a life with dignity. Thus, it is the first and foremost responsibility of the Legislature and the Executive to ensure that amount of safety and dignity through suitable legislation and an appropriate mechanism for its enforcement.

In addition, the court observed that in the fundamental rights guaranteed under the Constitution of India sufficiently covers all the angles of gender equality, including prevention of abuse or sexual harassment.

(B) Need for effective legislation

The need for an effective legislation in order to curb the sexual harassment at workplace was brought up before the supreme court in a Public Interest Litigation (PIL).

In the absence of a specific law in India, the Supreme Court in the Vishaka Judgment, laid down certain guidelines and norms thereby making it mandatory for every employer to setup a redressal mechanism for matters pertaining to sexual harassment at workplace, these guidelines came to be known as 'Vishaka Guidelines' which were followed by the employers until POSH Act⁹ was enacted. The guidelines were setup on the basis of right to equality and dignity as mentioned under the Indian Constitution and the United Nations Convention on Elimination of All Forms of Discrimination against Women (CEDAW).

The vishkha guidelines were:

1. It shall be the duty of the employer or other responsible persons in workplace or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.
2. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:
 - a) Physical contact and advances;
 - b) A demand or request for sexual favours;
 - c) Sexually coloured remarks;
 - d) Showing pornography;
 - e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

⁹ Sexual Harassment of Woman at workplace (Prevention, Prohibition and Redressal) Act, 2013.

3. All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment.
4. If any conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate proper action in accordance with law by making a complaint with the appropriate authority. It should be ensured that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment.
5. If the conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.
6. An appropriate complaint mechanism should be created in the employer's organisation for redressal of the complaint made by the victim. A complaints committee – headed by a woman and at least half of its members are woman- should be set up. The Complaints Committee should be headed by a lady and more than half of its members should be ladies.

In order to avoid any undue influence or pressure from senior levels, the complaints committee should involve a third party, which can either be an NGO (Non-Governmental Organisation) or any other body which shall be familiar as to how to deal with the issue of sexual harassment.

The Complaints Committee is supposed to make an annual report of the complaints registered and the action taken in regard to those complaints.

The employer or the person in charge is also supposed to inform the government department regarding the incident and the report that has been filed.

7. Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer – Employee Meeting.
8. Awareness of rights of female employees in this regard should be created in particular by prominently notifying the guidelines.
9. In case Sexual Harassment occurs as a result of an act by an outsider or any third party, the person in charge or the employer will take all steps required to assist the victim in terms of the support and preventive action which needs to be taken at that time.

The Supreme Court observed that these guidelines should be strictly followed at all workplaces so as to ensure that there exists the concept of right to gender equality of working women.

(C) Impact

Based on the Vishakha Guidelines, the parliament passed the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which seeks to safeguard women at their workplace from instances of sexual harassment.

(D) Post Vishakha Judgment Scenario

In accordance with the Vishakha Judgment, the *Central Civil Services (Conduct) Rules 1964*, was amended in 1998 so as to add Rule 3C¹⁰ which talks about prohibition of sexual harassment of working women at work place.

The first case presented before the Honourable Supreme Court after Vishakha case, in this context was *Apparel Export Promotion Council vs. A. K. Chopra*¹¹. In this case, the supreme court restated the in the Vishakha case and validated the dismissal of a superior officer of the Apparel Export Promotion Council which was based in Delhi. The officer was found guilty of sexually harassing a female employee, who was subordinate to him, at the workplace. In this judgment the Supreme Court broadened the meaning of sexual harassment. It was held that physical contact was not sufficient to constitute the offence of sexual harassment.

Supreme Court held that “sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical behaviour with sexual overtones, whether directly or by implication specifically when rejection to such a situation would be affecting her employment or would create a hostile work environment for that lady”.

Another case presented before the Supreme Court of India was *Medha Kotwal Lele and Ors. vs. Union of India & Ors*¹². In this case a letter was written by Medha Kotwal, a lady who used to work for an NGO named Aalochana, highlighting a number of instances of sexual harassment. The latter stated that the Vishakha guidelines were not being followed properly. The apex court converted the letter into writ petition so as to take cognizance of the matter. It also monitored the implementation of Vishakha guidelines and directed the State Governments

¹⁰ It states that:

- (1) No government servant shall indulge in any act of sexual harassment of any woman at any workplace.
- (2) Every government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.

¹¹ AIR 199 SC 625.

¹² (2013) 1 SCC 297.

to file affidavits putting focus on the implementation of those guidelines. The Supreme Court in its judgment observed “the implementation of the Vishakha guidelines has to be not only in form but also in true spirit and substance so as to make a safe and secure environment available for women at workplace in every aspect thereby enabling women to work with due respect, decency and dignity. It also entrusted the states with the responsibility that if they were not satisfied with the implementation of the guidelines, it can put in place sufficient mechanisms which would make sure that the guidelines have been implemented properly. Supreme Court also mentioned that if there still is not due and proper implementation of the guidelines, the aggrieved shall file a case in the respective High Courts.

However, it would not be less than an irony to say that it was after 16(sixteen) years that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act and Rules were implemented.

III. SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT

(A) Timeline of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

2007	Draft of POSH (Bill) approved by the Union Cabinet.
2010	Bill introduced in Lok Sabha.
2012	The Bill was amended and re-introduced in Lok Sabha.
3 rd September, 2012	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill passed by Lok Sabha.
26 th February, 2013	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill passed by Rajya Sabha.
23 rd April, 2013	The Act received the President’s assent and was published in the official gazette of India. It was published in the official gazette as Act no. 14 of 2013.
9 th December, 2013	December 9, 2013 has been notified by The Indian Ministry of Women and Child Development as the effective date for POSH Act and POSH Rules.

(B) Key provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

1. It is the duty of every employer under whom there are 10 or more employees working, to set up an internal complaint committee in order to deal with the complaints of sexual harassment at workplace.
2. Every employer or the person in charge is under the duty to provide a safe working environment which takes into account safety factor of the persons coming in contact with the workplace.
3. It is the duty of every employer or the person in charge to deal with sexual harassment instances as an unacceptable or improper behaviour under the service rules of the company.
4. Sexual harassment is not only merely physical or verbal conduct, it could non-verbal gestures of sexual nature as well, such as forwarding or displaying improper messages via Whatsapp or any other form of social media.
5. The definition of 'Workplace' as per the act is as follows, any place visited by the employee during the course of employment be it office, or the mode of transportation which is to be used for travelling to and from the place of employment. Basically the term 'workplace' includes mode of transportation for commutation, office worksites, work conferences/meetings, office parties attended by employees.
6. The term 'aggrieved women' refers to a woman working, or visiting a particular workplace, a female student, a domestic worker, regular/temporary/adhoc/daily wage worker, for remuneration or on voluntary basis or employed directly/through an agent, somebody working as a probationary or an apprentice or a trainee.
7. The safeguards under the act are available only to the female employees or visitors to the workplace.
8. One of the main focus of the act is on providing maximum support to the aggrieved women.

(C) Who all fall under the purview of an aggrieved women

1. An Employee
 - a. A Domestic Worker
 - b. A daily wage worker/ regular/temporary or adhoc
 - c. An apprentice/ Trainee/Contract Worker
2. A Visitor
3. A Student

(D) Salient Features of the POSH Act¹³

Coming into effect from 23rd April, 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act is applicable to the whole of India. It is applicable to both the organised as well as the unorganised sector of the country, along with that it also covers the public and the private sector of the country, government bodies and non- governmental organisations, vocational and educational institutions, entertainment field, industrial and financial activities, hospitals and nursing homes, sports and training centres used for the purpose of training.

1. Chapter II of the Sexual Harassment of Women at Workplace(Prevention, Prohibition and Redressal) act provides for the constitution of Internal Complaints Committee (ICC).
2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act mentions about the setting up of Local Complaints Committee (LCC).
3. The Act speaks about the complaint mechanism, the conciliation and the inquiry into the complaints related to sexual harassment.
4. Moreover, the act mentions about how to do the inquiry into the complaint, what will be the action in case of the pendency of the inquiry, filing of the inquiry report, what would be the punishment for a false or a malicious complaint and false evidence, determination of compensation and deal with instances of appeal.
5. Chapter VI of the act talks about the Duties of the Employer.
6. In addition, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act also mentions about the duties and powers of the district officer.
7. the act also mentions about the submission of the annual report, the information to be included in the report, inspection of records, cognizance of offence by courts, how to deal with instances of non- compliance of the provisions the act and what shall be the penalty in that case.

IV. COMPLAINTS COMMITTEE**(A) Internal Complaints Committee (ICC)¹⁴**

Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act mentions about the constitution of the Internal Complaints Committee. As per

¹³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

¹⁴ S.4. POSH Act. Constitution of Internal Complaints Committee.

this, it is the duty of every employer or the person in charge to set up an internal complaints committee. The employer shall, by an order in writing constitute a committee, which is to be known as the 'Internal Complaints Committee'. Failure to setup such a committee has even resulted in imposition of fine under the POSH Act.

The Internal Complaints Committee (ICC) shall consist of a '*Presiding Officer*' who shall be women employed from the same workplace amongst the employees. In case, the senior level women employee is not available, the presiding officer shall be nominated from the other office or administrative units of the same workplace.

Also there is another possibility that there might not be a women employee at that branch, in that case the presiding officer can be nominated from the other workplace of the same employer or some other department.

Subordinate to the presiding officer, there shall be not less than two (2) employees who shall be from the same workplace, who have had experience in dealing with such cases or who have had experience in social work, preferably committed to the cause of women. Along with all these factors it is very much important that these members should have legal knowledge.

Along with these two members there shall be one member from a non-governmental organisation committed to the cause of women or a person familiar with cases related to sexual harassment. In addition, appointing a person who is basically an outsider to the firm, to committee is because that can help in taking decisions which shall not be biased, since the third party member has nothing to do the affairs of the workplace.

Another very important aspect of the Internal Complaints Committee is that at least one-half of total members nominated should be women.

The tenure of the presiding officer and every other member of Internal Complaints Committee shall not be more than 3 years from the date of nomination as specified by the employer.

The so-called third party members or the members appointed from the non-governmental organisations or associations shall be entitled to receive a prescribed fee for holding the proceedings of the internal complaints committee as specified by the employer.

In case the presiding officer or any other officer of the internal complaints committee contravenes with the provisions of the act, or has been found guilty of an offence or an inquiry under any offence for the time being in force is pending against him/her; or has been found guilty in any of the disciplinary proceedings or a disciplinary proceeding is pending

against him/her; or has misused his position so as to render his continuance in office prejudicial to the public interest, such presiding officer or member as the case maybe shall be removed from the post of the complaint committee and the vacancy so created shall be filled by a fresh nomination.

(B) Local Complaints Committee (LCC)

At the district level, the government is required to set up a 'local complaints committee' in order to investigate and redress the complainats of sexual harassment from the unorganised sector or from workplaces where the internal complaints committee has not been set up simply because the number of employees was less than 10 or the complaint was against the employer himself.

Every District Officer shall constitute in the district so concerned a Local Complaints Committee in order to reciev complaints of instances of sexual harassment at workplace where the internal compliants committee has not set up or the if complaint is against the employer himself.

The District Officer shall appoint a nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, so as to receive complaints and forward them to respective Local Complaints Committee set up in that particular district.

The members of the Local Complaints Committee shall be nominated by the District Officer.

The members of the Local Complaiant Committee shall consist of a '*Chairperson*', who shall be nominated from the field of social work and working towards the cause of women. One member, who shall be subordinate to the chairperson, shall be nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district. Apart from tyhis there shall be two (2) members out of which one shall be a lady who shall be nominated from a non-governmental organisation or associations committed to the cause of women or should familiar with cases relating to sexual harassment.

It is very much required that out of the nominated members one of them must have the background of law or legal knowledge, also, at least one of the nominated women should belong the Scheduled Castes or the Scheduled Tribes or Other Backward Classes or any minority community, as may be specified by the Central Government.

The tenure for each of the member of the Local Complaints Committee shall not be more than a period of three (3) years from the date of appointmet as specified by the District Officer.

In case the Chairperson or any member of the Local Complaints Committee contravenes with the provisions of the act; or has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or has abused his position so as to render his continuance in the office prejudicial to the public interest, such chairperson or member, whatever the case maybe, shall be removed from the Local Complaint Committee and the vacancy so created shall be filled by fresh nominatin as per the provisions of the act.

The members of the Local Complaints Committee shall be entitled to receive the fees or allowance for holding the proceedings of the committee as prescribed.

The Central Government is empowered to make grants of sums of money to State Government, as prescribed by the Parliament, which shall be further utilised by State Government for payment of fees or allowances of the members of the Local Compliants Committee.

The state government may set up an agency and transfer the grants received from the central government to that agency, which shall further pay to the District Officer the sum required for paument of fees or allowances to the chairperson and members of the Local Complaints Committee.

The accounts of the agency shall be maintained and audited in a consultation as prescribed by the Accountant General of the state. The person holding the custody of these accounts shall furnish to the State Government the audited copy of the accounts along with the auditors report before a specified date.

V. PROCEDURE OF COMPLAINT

(A) Complaint¹⁵

Any aggrieved women can a file a complaint of sexual harassment at workplace, in writing to the Internal Complaints Committee or the Local Complaints Committee, whichever is constituted, within a period of three (3) months from the date of the incident and in case of a series of incidents, then in that case the wriiten complaint should be filed within three months of the last incident.

In case the complaint cannot be made in writing, then it is the duty of the Presiding Officer or any other member the Internal Complaints Committee or the Chairperson or any other member of the Local Complaints Committee, to provide due assistance to the aggrieved women in order to file the complaint in writing.

¹⁵ Complaint of sexual harassment and its conciliation.

In case there has been a delay on part of the aggrieved women in filing the complaint, still the complaint can be filed within the respective Internal Complaints Committee or the Local Complaints Committee, whichever the case maybe, if the committee is satisfied with reason provided for the delay which prevented the women from filing the complaint within the stipulated period of time.

If an aggrieved women is unable to file a complaint due to her physical or mental incapacity or death or due to any other reason, then in such a case, her legal heir or any other person as prescribed can file a complaint on her behalf.

Before initiating an inquiry, it is duty of the Internal Complaints Committee or the Local Complaints Committee, at the request of the aggrieved women to take steps to settle the matter between her and the respondent through conciliation. If there has been a settlement arrived at, then the respective committee shall record the settlement so arrived at and shall forward the same to the employer or the district officer so that proper action can be taken. If a settlement is arrived at, there is no further requirement to conducting an inquiry by the Internal Complaint Committee or the Local Complaint Committee, whichever the case maybe.

Moreover, the Internal Committee or the Local Committee shall provide copies of the settlement as recorded to the aggrieved women and the respondent.

However, if the Internal Complaints Committee or the Local Complaints Committee proceed further to make an inquiry into the complaint as per the rules and regulations so prescribed and in that case if prima facie case exists then they shall forward the complaint to the police within a time period seven (7) days of registering the complaint within the purview of section 509 of the Indian Penal Code.

Also if the aggrieved women informs the Internal Complaint Committee or the Local Complaint Committee that any term or condition of the settlement arrived at has not been duly complied with by the respondent, then in such a case, the committee shall proceed to make an inquiry into the complaint or can even forward the complaint to the police.

If the respondent is convicted by the court for the offence, then the court may order payment of a sum of money as it may deem fit, to the aggrieved woman.

In order to conduct an inquiry, the Internal Complaints Committee or the Local Complaints Committee, whatever the case may be, shall be vested with the same powers as that of the civil court under the Code of Civil Procedure. Its powers shall include the following, summoning and enforcing the attendance of any person and examining him on oath; requiring

the discovery and production of documents; any other matter as prescribed; the inquiry shall be completed within a period of ninety (90) days.

(B) Inquiry into Complaint

During the pendency of an inquiry, if a written request filed by the aggrieved women, the Internal Complaints Committee or the Local Complaint Committee has the power to recommend the employer to transfer the aggrieved women or respondent to any other workplace; or grant leave to the aggrieved party up to a period of three (3) months; or grant any other type of relief to the aggrieved woman as prescribed.

The leave granted in this case shall be in addition to the leave she would actually be entitled to receive.

Once the inquiry is complete, the Internal Complaints Committee or the Local Complaints Committee whatever the case maybe, shall provide a report to the employer or the District Officer, as the case maybe, within a period of ten (10) days from the completion of the inquiry. Also this report shall be made available to the concerned parties.

In case where the Complaints Committee arrives at the conclusion that the allegation against the respondent has not been proved, it is empowered to recommend the employer or the District Officer that action need not be taken in the matter.

However, if the Internal Complaints Committee or the Local Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend the employer or the District Officer, as the case may be, to take appropriate action as mentioned in the service rules of the company applicable to the respondent; or deduct from the salary or wages of the respondent such sum as it may consider fit to be paid to the aggrieved woman or to her legal heirs. If the employer is unable to deduct such sum of money from the salary or wage of the employee due to absence from duty or cessation of employment, it is empowered to direct to the respondent to pay such sum of compensation to the aggrieved woman.

In addition, if the respondent fails to pay such sum of money as instructed by the Internal Complaints Committee or the Local Complaints Committee, whatever the case may be, in that case the Complaints Committee is empowered to forward the order for recovery of that amount of compensation as an arrear of land revenue from the concerned District Officer.

It is the duty of the employer or the District Officer to act upon the recommendation within sixty (60) days of receipt by him.

It is even possible that complaint filed against the respondent is false. In such a case if the Internal Complaints Committee or the Local Complaints Committee, as the case maybe, upon investigation finds out that the allegation against the respondent is false or malicious or the aggrieved woman or the person making the complaint is aware of the fact of the complaint being false, or for that reason the aggrieved woman or the person making the complaint has produced any forged or misleading document, then in that kind of a scenario, the complaints committee may recommend the employer or the District officer to take due action against the aggrieved woman or the person making the complaint in accordance to the service rules applicable to him or her.

Moreover, mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant. Also this malicious intent on part of the complainant shall only be established after a proper inquiry which shall be as per the procedure prescribed.

In case the Internal Complaints Committee or the Local Complaints Committee during investigation finds out that any witness has given a false evidence or has produced a forged or a misleading document, it may instruct the employer or the District Officer as the case may be, to take action, within the purview of the service rules applicable to the witness.

In order to decide the amount of compensation or the sum to be paid to the aggrieved women the Internal Complaints Committee or the Local Complaints Committee, as the case may be, shall consider certain factors such as, the mental trauma, agony, suffering and emotional distress cause to the aggrieved woman; loss in the career opportunity due to the incident of sexual harassment; the medical expenses incurred by the victim for physical or psychiatric treatment; the income and financial status of the respondent; feasibility i.e. such a sum can be paid in lump sum or in instalments.

Irrespective of what is mentioned in the Right to Information Act, 2005, the contents of the complaint, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to the conciliation and inquiry proceedings, recommendations of the Internal Complaints Committee and the Local Complaints Committee as the case may be and the action taken by the employer or the District Officer as per the provisions of the act shall not be published, communicated or made known to the public, press or media in any manner.

However, the information may be disseminated regarding the justice secured to the victim without disclosing the name, address, identity or any other details calculated to lead to the identification of the aggrieved woman and witnesses.

Now, many a times it can even happen that the person entrusted with the duty to handle or

deal with the complaint, inquiry or any recommendations or action which is to be taken as per the provisions of the act, contravenes with the provisions of the act, he shall be liable for penalty in accordance with the service rules applicable to the said person or in case no service rules exist then in that case it shall be in the manner as prescribed.

Any person aggrieved with recommendations made or non-implementation of such recommendations may prefer an appeal to the court or tribunal in the manner prescribed. The appeal should be filed within a period of ninety (90) days of the recommendations.

VI. POWER & DUTIRS

(A) Duties of Employer

1. It shall be the duty of the employer to provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
2. The employer has to display at any conspicuous place in th workplace, the penal consequences of sexual harassment and the order constituting an Internal Complaints Committee.
3. Every employer shall organise workshops and awareness programmes at regular intervals in order to sensitize the employees with the provisions of the act and orientation programme for the members of the Internal Complaints Committee
4. The employer has to provide necessary facilities to the Internal Complaints Committee or the Local Complaints Committee, as the case may be for dealing with the complaint and conducting an enquiry.
5. The employer shall assist in securing the attendance of the respondent and witnesses before the Internal Complaints Committee or the Local Complaints Committee, as the case maybe.
6. It is the duty of the employer to assist the Internal Complaints Committee or the Local Complaints Committee, as the case maybe, by providing the necessary information as required.
7. it shall be the duty of the Employer to provide due assistance to the aggrieved woman if she chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.
8. it is the duty of the employer to initiate action under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved

woman so desires, where the perpetrator is not an employee at the workplace, where the incident of sexual harassment with the aggrieved woman took place.

9. It shall be the duty of the employer to treat sexual harassment as a misconduct under the service rules of the workplace and initiate action for such misconduct.
10. It shall be the duty of the employer to monitor the timely submission of reports by the Internal Complaints Committee.

(B) Duties and Powers of the District Officer

It is the the duty and power of the District Officer to monitor the timely submission of report furnished by the Local Complaints Committee. Moreover, the District Officer is under the duty and is empowered to take such measures which may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of a woman.

(C) Duty of the Internal and Local Complaints Committees

It is the duty of the Internal Complaints Committee or the Local Complaints Committee, as the case may be, to prepare a calendar report in each calendar year, in the form and at such a time as prescribed and then submit the same to the employer or the District Officer as the case may be.

After this the District Officer shall submit or forward a brief report on the annual reports received during the calendar year, to the respective State Government.

The employer shall also prepare a report on the number of cases, if any, and how they were disposed as per the act or if no such report is required to be prepared, then in such case the employer has to inform about the number of cases, if any to the District Officer.

The Appropriate government shall monitor the implementation of the act and also it has to maintain a proper data of the number of cases filed and disposed of in respect of all the cases of sexual harassment at workplace.

The Appropriate government, considering the availability of financial and other resources, may develop relevant information, education, communication and training materials and organise awareness programmes, so as to increase the understanding of people regarding the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, (POSH Act)

Along with this, the Appropriate Government is empowered to conduct or formulate orientation and training programmes for the members of the Local Complaints Committee.

In addition, the appropriate government is empowered to give an order in writing to call upon any employer or district officer to give in writing the information relating to sexual harassment which is required or can even authorize any officer to make inspection of the records and the workplace in relation to the sexual harassment incident, who shall then submit a report of the inspection conducted to the appropriate government, within the time period as specified in the order.

VII. PENALTY

(A) Penalty in case of non-compliance with the provisions of the Act

If an employer fails to constitute an Internal Complaints Committee, or take proper action as mentioned in the act; or contravenes or attempts to contravene or abets contravention of the other provisions of the act, in such a case he shall be punishable with a fine of up to fifty thousand rupees.

In addition, if any employer, who was previously convicted of an offence which was punishable under the act, subsequently commits and is convicted of the same offence, then in that case, he shall be liable to twice the punishment which was imposed upon him on the first conviction, subject to the fact that the punishment being provided is maximum for the same offence.

If a higher magnitude of punishment is prescribed under any other law for the time being in force, for the offence for which the accused is prosecuted, the court shall take into consideration the same while awarding the punishment.

Moreover, the appropriate government is empowered to cancel the employer's license or withdrawal, or non-renewal or approval or cancellation of the registration, as the case may be, for carrying on his business or activity.

(B) Cognizance of offence by courts.

Every offence under this act shall be non-cognizable and no court subordinate to that of the Metropolitan Magistrate or a Judicial Magistrate shall try an offence punishable under this act.

(C) Power of Central Government to remove difficulties

If there arises any difficulty in acting according to the provisions of this Act, in such a case, the Central Government may by order published in the official gazette, make provisions which are not inconsistent with the provisions of the Act, which shall appear to be necessary in order to remove the difficulty. Also, every order made by the Central Government under

this provision of the act, shall be laid, as soon as it may be after it is made, before each house of the parliament.

VIII. CONCLUSION AND SUGGESTIONS

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) act, 2013, is undeniably a positive step towards not only achieving equality on the professional front but also in terms of modernization of the country. It has not only empowered working women on the professional front but has also made an attempt of spreading awareness and bringing it to people's knowledge about a problem which exists in the society and is so easily ignored.

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