

Efficacy of the Sexual Harassment Act 2013 in India

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Abstract

Sexual harassment against women in workplace has become a major unresolved problem in every sector of the economy. It is considered violation of women's rights to equality, life and liberty. Sexual harassment may take distinct and varied forms encompassing a wide range of unwanted sexual advances including unnecessary physical contact, touching or patting; suggestive and unwelcome remarks, jokes comments about appearance and deliberate verbal abuse; learning and comprising invitations; use of pornographic pictures at workplace; demands for sexual favours; or physical assault. Sexual harassment at workplace creates an insecure and hostile work environment, which discourage women's participation in work, thereby negatively affecting social and economic empowerment. To provide a protective, preventive and redressal mechanism at workplace for women, The Indian legislature enacted 'The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act 2013'. This paper is based on the research conducted to assess the effectiveness of the Act after completing seven years of implementation of the Act in India.

Key words: Sexual advances, verbal abuse, pornography, unwelcome remarks, redressal mechanism

INTRODUCTION

The term sexual harassment came to be used from the year 1975 onwards. Till then no term existed to describe what is now universally called as sexual harassment, though it was experienced by women. The term sexual harassment in a legal sense' seems to have been first coined in the United States of America and subsequently exported from there to other industrialised countries including Australia, Canada, New Zealand, Japan and a number of

countries in Western Europe. These other countries had their first brush with the term sexual harassment in "a formal legal sense" only in the 1980s or at the beginning of the 1990s."¹ The term sexual harassment "as a legal concept" gained significant application in the United States only in the mid-1970s when the US courts held it to be a form of sex discrimination prohibited under the Title VII of the Civil Rights Act of 1964. The term sexual harassment was first legally used in India by the Supreme Court in 1997 in Vishaka vs. State of Rajasthan. Other terms used to describe the ailment are 'unwanted intimacy' in the Netherlands, 'sexual molestation' in Italy, 'sexual blackmail' in France and 'sexual solicitation' in some states of Canada like Ontario and Newfoundland."² 'Sexual harassment' may take distinct and varied forms. "It is not limited to demands for sexual favours made under threats of contrary job consequences should the recipient refuse to acquiesce with such demands. "Sexual harassment may be subtle and may even involve what would otherwise constitute normal sexual or social activity. Speaking generally, "sexual harassment is behaviour with a sexual connotation that is abusive, injurious and unwelcome."³

Research Problem

To assess the effectiveness of the "The Sexual Harassment of Women at Workplace" (Prevention, Prohibition and Redressal), Act 2013 in India.

Hypotheses

1. Lack of transparency of women rights are responsible for sexual harassment.
2. Lack of political will and absence of effective laws with delayed justice are responsible for sexual harassment.
3. There is no proper implementation of present enacted laws.
4. Sexual harassment is not only limited to workplace.

Objectives of the Study

1. To study the present situation and various reasons for increasing sexual crimes against women in India.

¹ Bashin Alok, "Sexual Harassment at Workplace", Eastern Book Company, Lucknow, 2007, p:3.

² Ibid, p: 3.

³ Ibid, p: 4.

2. To study the role of judiciary in prevention and control of sexual harassment at workplace
3. To study the role of anti-sexual harassment committee at workplace
4. To study the effectiveness of the Sexual harassment of women at workplace Act 2013

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

The Indian Legislature enacted "The Sexual Harassment of Women at Workplace" (Prevention, Prohibition and Redressal), Act in 2013 along with associated rules that reasonably spell out timelines and processes for implementation of protective, preventive and redressal mechanism at workplaces. In the Indian judicial history, the court for the first time recognized sexual harassment of women at their workplace. The 2013 Act received the President's assent on 22nd April, 2013 and the Act came into force in 9th December 2013. The Act not only symbolizes India's commitments under Convention for Eliminations of all forms of Discrimination against Women (CEDAW) but also reflects the culmination of the Apex court initiative, towards meaningful legislation and safer work environments for women. This Act is a positive step towards recognition of women's basic rights as human rights are included in the Vienna accord 1994 and the Beijing Women's conference. The issues of violence against women in India were brought to the forefront after the brutal gang rape of Nirbhaya, a 23 year old woman in Delhi on 16th December 2012. The incident led to a sudden outpouring of anger and frustration about the situation that allowed such attacks to take place. People came out in the streets calling for change. But the issues are very complex and difficult. The public life is increasing and laws have been amended, India still has a long way to go to make Indian women as equal citizens in their own country. Then the recommendation of Justice Verma Committee was constituted to make amendments for the Criminal Law to provide quicker and enhanced punishment for the criminals who committed sexual harassment towards women. In response to Justice J.S. Verma Committee, Parliament passed the Criminal Amendment Act 2013, which provides for amendment in the Indian Penal Code (IPC), Indian Evidence Act (IEA), and Code of Criminal Procedure (CrPC). In 2013 the Sexual Harassment Prevention Act was enacted.

OBJECTIVES OF THE ACT

There are many objectives of the Act. The Preamble of the Act incorporates the Aims and objectives as under:

- i. To prevent violation of the fundamental rights of the women to equality under Articles 14 and 15 and to live with dignity under Article 21 of the Constitution of India.
- ii. To protect the right of women to practice any profession or to carry on any occupation, trade or business,⁴ which includes a right to safe, secure and enabling environment to all the woman, without any discrimination of age or status.
- iii. To safeguard women from sexual harassment and to make sure that the right to work with dignity which is universally recognized Human Rights by the international conventions and instruments such as Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ratified by the government of India on 25th June, 1993.
- iv. To make provisions for giving effect to international conventions and instruments such as mention above for the protection of women against sexual harassment at workplaces.⁵
- v. It creates a mechanism for redressal of complaints of sexual harassment. It also provides safety towards wrong allegations.

THE MAIN FEATURES OF THE 2013 ACT

- i. The Act defines sexual harassment at the workplace and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- ii. The committee is required to complete the inquiry with a period of ninety days on completion of the inquiry, the report will be sent to the employer or the district officer, as the case may be, and they are mandated to take action on the report within sixty days.
- iii. The complaints committees have the powers of civil courts for gathering evidence.
- iv. The complaints committees are required to provide for conciliation before initiating an inquiry if requested by the complainant.

⁴See Article 19 (1) (g) of the Constitution of India.

⁵ <http://wcd.nic.in/wcdact/womenactsex.pdf>

Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine up to Rs. 50,000/-. Constant violations may result to higher penalties.

According to section 2(n) of the 2013 Act: Sexual Harassment includes any one or more of the following Acts of behavior (whether directly or by implication) namely:

1. Physical contact and advances; or
2. Requesting for sexual favors; or
3. Making sexually colored remarks; or
4. Showing pornography; or
5. Unwelcome physical conduct of sexual nature through verbal or non-verbal.

Section 3(2) encourages the following state, in addition to the other state, suppose it happens or existing in association to or tie with any Act or conduct of Sexual harassment may lead to sexual harassment:

- Expressed or state indirectly words of bias treatment in her employment; or
- The implied or explicit threat of detrimental treatment in her employment; or
- The implied or explicit threat about her present or future employment status; or
- Interfering in her job or creating an atmosphere of intimidating, offensive or either hostile environment at her workplace.
- Humiliating treatment is likely to affect her health and or safety

Sexual Harassment and Indian Judiciary

Justice means balancing of interests. The existence of democracy depends on justice which in turn depends on the independent judiciary. Thus the judiciary is identified as the last bulwark against the arbitrariness and all that can be broadly labeled as not only unjust but also immoral. A judge without judicial activism can perhaps be described as a flower without color and fragrance; and a vehicle without fuel and wheels. In protecting the principle of welfare the state judiciary should play an active role as a watching tower and their judgment should be socially oriented.

The majority of the women are either unaware or ignorant about their rights, which are provided to them by the law. Even if, they are made aware or well versed with the whole scenario, very few have the economic resources and the courage to obtain legal redress. No one can ignore the role played by the judiciary in this direction helping her to get what is due to her as a matter of right. It is a great achievement of not only one of the pillars of democracy but the democracy itself that the principle of equality between the sexes enshrined in the Constitution is being reinforced and safeguarded through a sound judicial process. After that in other pronouncements, the judiciary has shown its innate desire to help, this deprived and underprivileged section of the society facing the brunt of this form of sexual violence in silence while giving a whole new dimension to justice himself.⁶

BACKGROUND OF THE ACT

Vishaka vs the State of Rajasthan

The historic judgment was the outcome of a written petition filed by certain social activities and Non-Governmental Organizations (NGOs) to an incident of brutal gang rape of a government development worker in a village Rajasthan. Bhanwari Devi was appointed as a female village level social worker of a development program run by the Rajasthan government. This project was started for the empowerment of women. The main aim of the project was to fight against child marriages and multiple marriages in the villages, with the assistance of the local administration. In this area, during the festival of Akhatejj, as per the tradition in Rajasthan, thousands of infants and children are married every year. She tried to stop the marriage of the infant daughter in Bhateri, her village, as a part of her duty.

The marriage took place in an illicit manner but in this entire exercise what she earned was the ire of the Gujjar family (infant daughter family). As expected, the rétribution came quite early in the form of a social boycott. The Gujjars, an influential and majority community, resolved not to buy earthen pots from her and refused to sell milk to her. Not only this, she was threatened with dire consequences and harassed mentally as well as physically.

⁶ See Apparel Export Promotion Council v. A.K. Chopra, 1999, 625 and also see Medha Kotwal Lele v. Union of India, 2004 (5), SCALE 573 & 2013 (1) SCC 297.

In Sep 1992, five men belonging to an upper-caste community who wanted to teach her a lesson for challenging their authority, including Ramkaran Gujjar, gang-raped Bhanwari in front of her husband while both were working in their fields.

After the ruthless act, the only doctor who was a man at the primary health center refused to medically examine her and the doctors at Jaipur only confirmed her age without addressing the reference to rape the doctor's medical report. At the police station, she was verbally harassed and tortured by the policemen. The policeman told Bhanwari to leave her lehenga at the police station as evidence and return to her village. She had nothing to cover herself other than her husband's dhoti ⁷

The apathy of the system crossed all limits when their plea to let them sleep at the police station that night was turned down bluntly. She received no support or help of any sort from her employers, the Rajasthan government or any other corner despite repeated complaints to the authorities. Instead, the district administration along with the police not only tried to cover up but also shifted all burden upon her holding her responsible for the unpleasant experience.

In her quest for justice, she filed a case against the rapists in the trial court without losing confidence and her faith in the rule of law. It was only under pressure from various women's groups that the accused were arrested. The trial court acquitted the criminals in 1995. It is beyond comprehension that those who live in rural culture, said the court, would in this manner commit a rape. Particularly in collusion with someone who is 40 years of age and another who is 70 years of age and that too during broad daylight in the presence of other men. The court believes that Indian culture has not fallen to such low depths that someone who is brought up in it, an innocent, rustic man, will turn into a man who conducts himself in evil deeds that disregards caste and age differences and becomes animal enough to assault a woman. The judge also asserted that 52 hours delay in the medical examination meant it was possible that she was lying about the accusation.

Down but undeterred, Bhanwari Devi did not lose her heart. When reporters met her to record her struggle, she said, Print my name, I am not a criminal that I should be ashamed of. Take my photograph, I have nothing to hide. It's those men who should feel ashamed to come out in broad

⁷ AIR 1997 SC 3011

Ritu Gupta, Sexual Harassment at Workplace 47 (Universal Law Publishing 2014

daylight and have their photographs taken. However, by 1997, 15 years after the incident, the Rajasthan High court held an only single hearing of the case and two of the accused were dead.

Her inimitable fighting spirit inspired fellow sathis and women's groups countrywide and they launched a concerted campaign for justice for Bhanwari. By now, there was national outrage regarding this case. Relentless efforts of everyone associated with the movement brought fruit when in the appeal filed before it, the High Court held, it is a case of gang-rape which was committed out of vengeance. It was a serious lapse on the part of the employer (the state government of Rajasthan in this case), the Court pointed out, —not to provide a safe working environment to the Saathins.

As an immediate and instant response to the judgment of the High Court, the remaining three accused, who had until then been absconding, surrendered before the court.

Several women's groups filed a Public Interest Litigation (PIL) in the Supreme Court, based on which the Vishaka judgment was delivered in 1997. Rest is history, this can be said to be a significant legal victory of women organization heralding a new trend in the country.

The written petition was filed in the SC with three aims:

1. To assist in finding suitable methods for the realization of gender equality.
2. To prevent Sexual Harassment at workplace
3. To fill the vacuum in the existing legislation.

R.K Pachauri Case

TERI Nobel Laureate and former environment minister RK Pachauri's involvement in sexual harassment is one of the most shocking cases. On May 29, 2015, an internal investigation by The Energy and Resource Institute (TERI) discovered that its Director-General, R.K Pachauri was a liability of sexual harassment who filed a lawsuit against him by a female colleague. TERI committee also suggested a disciplinary action against Pachauri. The committee discovered that Pachauri's constant attempts to formulate a personal relationship with the woman which had lead to 'sexual harassment.' The report filed by the committee stated that Pachauri *'took away work from her after she resisted his advances.'* The complainant had told Delhi High Court that "Pachauri was trying to influence witnesses".

In March 2016, the Delhi Police formally accused the scientist with sexual harassment, assault or use of liable force to a woman with an intention to disrobe, stalking and indicating, or behaving to provoke the humility of a woman. TERI first appointed Pachauri as executive vice-chairman regardless of the allegations but eventually banished him from the institution.⁸

Assistant Director-General of AIR

In March 2015, it was reported that production assistant in Doordarshan had proclaimed that the Assistant Director-General of the channel was harassing her sexually for over a year. He was found liable of conducting physical advances, subjecting her to vulgar comments and calling her to his chambers at untimely hours. The complainant also proclaimed that a terrible environment was created for her instead. Ironically, she is a part of the organization in house sexual harassment committee. Nevertheless, instead of catering to her grievances, the authorities transferred her from DD's Mandi House to the Central Production Centre (CPC) office in Hauz Khas. Meanwhile, the DG ignored to respond to calls, the ADG said that the charges were fabricated. He said, a malicious attempt to malign my reputation and that of my family. The litigator was upset because we did not recommend a documentary she had contributed (on the Muzaffarnagar riots) for the national film awards.” She provided her complains to the internal complaints committee and was given a fair judicial proceeding later.⁹

Benefits of Sexual Harassment Act 2013

The Ministry of Women and Child Development in India had enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act or POSH Act in 2013 to prevent it from happening. The aim of this Act is to protect women at the workplace and provide them a safe environment to work in. This Act is of huge importance because it not only paves the way for proper redressal of complaints related to sexual harassment at the workplace, but it also talk about preventive measures where organizations can take up to avoid any such cases from happening. Under this Act, there is a provision for POSH training in corporate organizations. The Act states that every company with 10 or more employees must constitute an Internal Committee (IC).

⁸ <https://economictimes.indiatimes.com/news/politics-and-nation/r-k-pachauri-case-court-fixes-july-22-23-for-deposition-of-complainant/articleshow/70294214.cms?from=mdr>

⁹ <https://thewire.in/women/doordarshan-is-not-taking-action-against-sexual-harassers-allege-women>

POSH Training in India

POSH training is important for managers, directors, business owners, IC members, HR-heads, legal professionals and employees. The training helps in spreading awareness among working professionals teaching them not only about the law but also the punishments associated with such Acts.

The Basics Covered under POSH Training:

- a) Sexual harassment is defined as any unwelcoming sexual behavior which may be direct or implied. It includes physical contact, asking for sexual favors, showing pornography, making sexually colored remarks or any other unwelcoming conduct of sexual nature.
- b) In relation to a workplace, an aggrieved woman is someone who alleges to have faced sexual harassment. The woman may or may not be employed and can be of any age. In relation to a dwelling place, an aggrieved woman is someone who works at that dwelling place.
- c) A workplace can be any place that the employee visits as a result of her employment and this also includes the transportation that is provided by the employer for commutes between the place of employment and any other location.
- d) An employer is a person who is the head of the office or someone who is responsible for the supervision, management, and control of the workplace.

Internal Committee (IC) and Members

An IC or Internal Committee is required to be set up by the employer at the workplace. According to the law, an IC constitutes of a presiding officer (a senior level woman employee from the workplace), at least 2 members from among the employees who are somehow related to the cause of the women and an external member preferably from an NGO or association that is familiar with sexual harassment cases.

Problems in Reporting Sexual Harassment and Proper Understanding of Sexual Harassment:

The POSH training is important because it gives employers and employees an insight into what sexual harassment is and how to differentiate it from other non-sexual harassment cases. It prevents someone from being wrongly accused.

Several employees might hesitate in reporting such cases as they feel it would be ineffective and result in losing their jobs. Women often do not report the matter due to fear of losing their livelihoods, their personal and professional reputations and being stigmatized. But POSH teaches how these situations can be dealt with proper measures.

Complain Pre-Requisites and Investigation Process:

The complaint submitted should contain details including dates, timings and locations. The working relationship between the parties concerned also has to be mentioned. The POSH training also talks about how the entire investigation process should be conducted, starting from the receipt of the complaint to writing of the report.

Things that must and must not be Included in the Inquiry Report

The inquiry has to be completed within 90 days and the final report has to be placed at the Employer's desk or the District Officer within 10 days. It is important to learn what should be included in the report and what has to be omitted as this makes the basis for confidentiality and trustworthiness. The report should contain a complete analysis of the incident and all the background information should have to be included.

Concerning Malicious Complaints

It is often advised to set a deterrent that will help in preventing all malicious complaints. But at the same time, the employees should be encouraged to bring forward the genuine cases of sexual harassment.

Brand Protection

The sexual harassment cases lay a huge impact on the company's image. Not only are there legal costs associated with the case but the image of the brand is also affected. The POSH training will help you learn how you can deal with such scenarios.

Benefits of POSH Training in Corporates and Small Organizations in India

Some of the benefits of conducting a POSH training are as follows –

- There is a higher level of satisfaction among the employees and employee engagement increases way more than before.
- The retention rate of valuable employees will be increased by ten folds.
- It helps in improving the quality of workplace culture.
- Co-workers learn to respect each other.
- If found guilty, an employer has to pay up to Rs 50,000 as a penalty. When found guilty for the second time, the penalty or punishment is usually doubled.

The POSH Act is a step towards eliminating harassment towards women and emphasizing equal rights in the workplace. The process of redressal should be fair, user-friendly and every employer is charged with the role of ensuring that. It is a woman's legal right to have a safe workplace to work in. Effective implementation of the POSH Act is necessary to build a sense of security in the workplace and thus increase the participation of women in all sectors. And all of this is made possible through the POSH training.

Data Analysis and Interpretation

Data analysis is a process of inspecting, cleaning, transforming and modeling data with useful information, suggestion, conclusion and supporting decision making. Data analysis has multiple facts and approaches.

The primary data collection was done through questionnaire are classified, analyzed, tabulated and interpreted. The researcher administered the questionnaire to 50 respondents from hospitality sectors. The respondents were asked various questions regarding role sexual harassment at workplace Act 2013.

Findings

With the interpretation of the data analysis, it has been found that most of the respondents are well aware of Sexual Harassment at workplace Act 2013. The research findings reveal the effectiveness of the Sexual Harassment at workplace Act 2013 and its impact on women at workplace.

- It has been found that most respondents are aware of Acts present in India regarding sexual harassment at workplace.
- Most of the respondents are well aware of the 2013 Sexual Harassment Act of the Indian Constitution.
- About 82% of the respondents have experienced sexual harassment at work place.
- Majority of the respondents 86% did not report harassment to their employer.
- Nearly 56% of the respondents not agree that clothes play an important factor in sexual harassment.
- About 72% of the respondents are well aware of the Supreme Court guidelines that mandate the setting up of committee to inquire the complain of sexual harassment at workplace.
- 74% of the respondents did not agree that there are changes in the society since the act has been implemented in India.
- Most of the respondents did not agree that there has been any change in their workplace even after act has been implemented.
- The research reveals that 68% of the respondent that there was no Internal Complaint Committee (ICC) at their workplace.
- The research has been found that most of the workplace does not display the contact details of ICC members.
- From research it has been found that 72% of the respondents are not aware that it is not required to be your employee to make a complaint.
- From the research it has been found that most of the respondents are well aware that ICC can recommend action against the women as well in case of false/malicious complaint.

CONCLUSIONS AND SUGGESTIONS

No matter how much it may be denied, it is transparent that sexual harassment does exist in the workplace. In the changing social and economic environment, women have become more independent and are increasingly being exposed to non-traditional tasks. Sexual harassment has been a problem in the Indian society and the Indian women have undoubtedly been quite vulnerable to the same. The awareness on this issue, as well as the law pertaining to it, is very

minimal and such ignorance is no longer bliss. The social reality is that women are blatantly exploited and discriminated by the society. There was definitely a need of having a strong legislative measure to curb this evil and the adoption of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 is a welcome step. The legislature has to strike a proper balance between the compelling need of having a strong law with a vigilant eye upon women safety and dignity in the society

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, alone is not sufficient to curb the evil of sexual harassment at workplace. Along with this Act, there should be some other implementation of other related issues. Because law alone is not sufficient rather the thought of the society is also relevant. Though the 2013 Act deals with protection of women from sexual harassment at the workplace and providing a safe environment, it has been criticized by some jurists on many grounds. The 2013 Act is weighed down by several provisions which are becoming its downfall. In view of the above findings, the study forwards the followings suggestions for the consideration for prevention and redressal of sexual harassment of women at workplace.

- Gender equality should be seriously taken into consideration.
- The mention Acts should be strictly implemented and followed.
- Education and information about the sexual harassment should be provided to all the employees.
- Impart information about the policy to all the employees.
- Adopt anti-harassment policy along with the employees, managers and union members.
- All the supervisors and managers should be responsible in providing a harassment free work environment.
- All the harassment complaints should be investigated properly.
- Ensure that all the policy of sexual harassment should apply to everyone including the supervisors and managers.
- Necessary steps should be taken to eliminate discriminatory jokes, posters e-mails and photos at the work site.
- Proper protection and support should be provided to the victims of sexual harassment.
- The policy should be monitored and revised on regular basis.

- Employer should provide a mechanism for addressing sexual harassment in a confidential and sensitive manner after a grievance has been filed.

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2. ibid, p: 3.
3. Ibid, p: 4.
4. ¹See Article 19 (1) (g) of the Constitution of India.
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