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THE SEXUAL HARASSMENT AT WORKPLACE ACT, 2013: A CALL FOR REFLECTION AND IMPROVEMENT

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Abstract

The concept of equality should exist in our society on every level and for that, our legislature and constitution protect and promote this concept of equality. But due to many socio-economic reasons, women in society face a lot of discrimination not only at their home but also at the workplace. It is easy to talk about equality but the question arises on the implementation of the concept of equality. The state must ensure and protect the rights and dignity of every citizen of their country. Due to the lack of proper implementation of the Act, there is a need to modify the act according to the present circumstances and proper authority must be established for quick redressal to the victim.

Keywords: Equality, Sexual Harassment, Discrimination, Rights, Redressal

Introduction

India is a diverse nation with various cultures, languages, and religions, and it is the responsibility of the government to safeguard the rights of every individual. The Indian Constitution grants the right to equality and prohibits discrimination based on gender, among other factors. In order to uphold these rights, numerous legislations have been enacted. Unfortunately, due to a traditional and male-dominated society, women face significant discrimination on a daily basis. To ensure women are treated equally in society, lawmakers have created laws to protect their rights and interests. Women encounter discrimination not only within their households but also in their workplaces, where they often experience mental and sexual harassment. Prior to 2013, women were unable to openly discuss their experiences in the workplace. However, after the implementation of the Vishaka Guidelines and the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, women gained the freedom to share their

experiences. This act was established to establish safe work environments for women, fostering a supportive atmosphere that respects their right to equality and opportunity. By effectively implementing this act, women's right to gender equality, life, liberty, and equal working conditions can be realized. Furthermore, providing a sense of security in the workplace will enhance women's participation in the workforce, leading to their economic empowerment and inclusive growth. The UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), approved by the UN General Assembly in 1979 and ratified by India, further supports this notion. Commonly referred to as a global women's bill of rights, it advocates for gender equality in various aspects such as human rights, fundamental freedoms, politics, economy, society, culture, and civil matters. It emphasizes that acts of discrimination and offenses against women's dignity contradict the principle of equal rights.

Analysis of the Act

The legislation acknowledges the entitlement of every woman to a workplace environment that is safe and protected, regardless of her age or employment status. Consequently, the Act safeguards the rights of all women, whether they are regular, temporary, adhoc, or daily wage workers, who are employed or visiting any workplace. The Act defines a workplace as any location visited by an employee during the course of their employment, including transportation provided by the employer for such journeys. This definition encompasses both organized and unorganized sectors.

The term "Sexual Harassment" encompasses various unwelcome acts or behaviors, whether expressed directly or indirectly. These acts include physical contact or advances, requests for sexual favors, making sexually suggestive remarks, displaying pornography, and any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

The Act establishes two complaint mechanisms: the Internal Complaints Committee (ICC) and the Local Complaints Committee (LCC). Both committees must have a 50 percent representation of women. The members of the ICC or LCC will hold their positions for a maximum of three years from the date of their nomination or appointment.

Genus of the Act

In 1992, Bhanwari Devi, who worked as a social worker for the Women's Development Project of the Rajasthan government, was subjected to a gang rape by five men when she attempted to prevent the marriage of a one-year-old girl. As various activist groups filed pleas against this crime, the Supreme Court (SC) observed that there was no existing law specifically addressing the enforcement of gender equality and protection against sexual harassment in workplaces. In response, the SC formulated a set of guidelines in 1997, known as the Vishakha Guidelines, to temporarily address this legal gap until a proper legislation could be enacted. These guidelines were to be strictly adhered to

in all workplaces and held legal authority. The Court derived its authority from different provisions of the Constitution, including Article 15, which prohibits discrimination based on religion, race, caste, sex, or place of birth. Additionally, the Court drew inspiration from relevant international conventions and norms such as the General Recommendations of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India ratified in 1993.

Present Scenario

Data on based on annual reports of 476 companies on BSE:

- 75% increase in the number of sexual harassment cases/complaints in the last 5 years.
- In the financial year, 2019, the no. of cases received is 1448, and the pending is 180 but in the year 2020, the no. of cases received is 1400 but the number of pending cases increase by 202. So the number of cases might decrease but the procedure of redressal is not efficient to deliver the proper grievances to the victim.

The Supreme Court of India provided certain recommendations regarding the Act, stating that sexual harassment not only damages a woman's self-esteem but also has negative effects on her emotional, mental, and physical well-being. It is often observed that women who experience harassment are hesitant to take action or report it, and many even choose to quit their jobs. This reluctance can be attributed to several reasons. Firstly, there is uncertainty about whom to approach for redressal and grievance under the Act. Secondly, there is a lack of confidence in the process and the outcomes it will yield. Therefore, it is necessary to amend or implement the act appropriately. In order to achieve better results, educating employees about the Act becomes crucial. There are several reasons why women hesitate to take action, including the fear of job loss, the absence of complaint mechanisms in their workplace, the fear of being stigmatized, and a lack of awareness and education.

There were serious lapses and uncertainties in the implementation of the PoSH Act, for example, only 16 out of 30 national sports federations had constituted Internal Complaints Committees (ICCs) as mandated. This reflects poorly on state functionaries, public authorities, private undertakings, organizations, and institutions responsible for implementing the PoSH Act.

Recently in the case of ***Aureliano Fernandes v. State of Goa, 2023***, the Court said that, "If the working environment continues to remain hostile, insensitive and unresponsive to the needs of women employees, then the Act will remain an empty formality. If the authorities/management/employers cannot assure them a safe and secure workplace, they will fear stepping out of their homes to make a dignified living and exploit their talent and skills to the hilt. It is, therefore, time for the Union Government and the State Governments to take affirmative action and make sure that the altruistic object behind enacting the PoSH Act is achieved in real terms. And the Court also states some directions for the effective implementation of the Act and following directions are:

- (i) The Union of India, all State Governments and Union Territories are directed to undertake a timebound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.
- (ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation/Institution/Body, as the case may

be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority (NALSA) and the State Legal Services Authorities (SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

(viii) It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

(ix) The Registry of the Supreme Court of India shall transmit a copy of the judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued. The Chairperson, Bar Council of India and the Apex Bodies shall transmit a copy of the judgment to all the State Bar Councils and the State Level Councils, as the case may be.

(x) Member-Secretary, NALSA is requested to transmit a copy of the judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of the judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective State.

The court requested that the authorities take prompt and efficient actions to acquaint committee members with their responsibilities and the appropriate procedures for conducting inquiries. It also instructed them to regularly arrange orientation programs, workshops, seminars, and awareness programs to enhance the skills of committee members and to educate female employees and women's groups about the Act. The bench directed the National Legal Services Authority and State Legal Services Authorities to create modules for conducting workshops and organizing awareness programs to sensitize employers, employees, and adolescent groups to the provisions of the Act.

Conclusion

The progress of every nation relies on the advancement of its citizens in all areas, and it is the responsibility of the State to ensure equal opportunities for every individual, without any discrimination. Moreover, the State should take appropriate actions to reduce social problems. Although numerous laws and reforms have been established to empower women, the crucial aspect is the effective enforcement of these laws. The executive branch plays a crucial role in implementation, and it is the obligation of every organization, company, factory, or office to safeguard the rights, dignity, and interests of their employees. In the event of any rights violation, they should provide appropriate remedies. The government also imposes restrictions on granting licenses to those establishments that lack a complaint committee or a department to address employee concerns. Additionally, an external committee is established to regularly monitor these internal committees and provide recommendations for the proper internal implementation of these laws.

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