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Interpreting the Provisions of Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

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As Indian society is growing and emerging, the change is experienced in the terms that a greater number of women employments are seen in the economy. As such, a key aspect of the problem affecting the entire human race is the sexual harassment of women at work, with no area of civilization being spared. With this, emerges an alarming need for legislation to safeguard the interests of working women. One such legislation that is worth recognition is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This article deals with the provisions of this legislation.

Keywords: *legislation, sexual harassment, workplace, working women, act, rights*

INTRODUCTION

Sexual harassment of women at work is a significant area of the issue concerned with the human existence world at large. It could not be interpreted in a restrictive way, as it may encompass sexual approaches and other forms of sexual harassment, both physical and verbal. Sexual harassment violates women's fundamental rights, specifically the Right to Equality¹,

¹ Constitution of India, 1950, art.14

the Right to life and personal liberty², and the right to practice any profession or to carry on any occupation, trade, or business³, which consists of freedom to a safer working atmosphere devoid of sexual harassment.

HISTORY

The Supreme Court of India acknowledged sexual harassment in the workplace for the very first time in its historic ruling of *Vishaka & Ors. v State of Rajasthan & Ors.*⁴, in which the Apex Court defined specific parameters and directed the legislative authorities to pass an adequate legal framework to address sexual harassment in the workplace. In this case, the Apex Court held that sexual harassment in the workplace is an infringement of the fundamental rights of women and is unfair. In the lack of legal protective measures, the Court decided that an efficient solution system was required to prohibit infringements of the respective fundamental rights of women at the work. To tackle the concerns the Supreme Court also issued regulations requiring every employer to furnish a system to resolve complaints corresponding to sexual harassment at work.

PROVISIONS OF THE ACT

- **DEFINITION OF SEXUAL HARASSMENT**

Sexual harassment is defined under Section 2(n) of the Act. Sexual harassment refers to unpleasant acts and behaviour patterns implied directly or indirectly which consists of physical contact and advances⁵, asking for sexual advances, uttering sexually provocative comments, displaying offensive pornographic material, or engaging in any other unwanted physical aggression, vocal, or behavioral sexual conduct.

The aforementioned situations, and others, could be considered sexual harassment provided they happen in connection with or are indicative of any conduct or pattern of sexual harassment-

- a) implicit or express assurance of favourable workplace treatment;

² Constitution of India, 1950, art.21

³ Constitution of India, 1950, art.19(1) (g)

⁴ *Vishaka & Ors. v State of Rajasthan & Ors.*, (1997) 7 SCC 323

⁵ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 2(n)

- b) implicit or expressive menace of adverse practices at work;
- c) implicit or express menace regarding her current and prospective position at work;
- d) intrusion in her work or creation of hostile, objectionable, or violent workplace surroundings around her;
- e) demeaning behaviour towards her is likely to harm her protection and wellbeing.

- **CONSTITUTION OF COMPLAINTS COMMITTEE**

A significant aspect of this Act is that it provides for the establishment of a grievance management body to address the accusations related to sexual harassment.

1. INTERNAL COMPLAINTS COMMITTEE

The Act under Section 4⁶ requires every employer to establish an Internal Complaints Committee at the workplace employing 10 or more employees.

1.1 Members of the Internal Complaints Committee

The following members would be appointed by the employer:

1. Presiding Officer- It shall be a female human working at a superior position in the working place from amongst the employees. The proviso of Section 4(2)(a)⁷ states that if a woman working at a senior position is unavailable, then a senior woman employee is to be elected from the other departments or organizational units at the workplace. If no employee is available at the other departments or organizational units at the workplace, then the Presiding Officer is to be appointed from a different place of work of the same employer or another institution.
2. Members- The committee must be constituted of not less than two members. Members who are primarily engaged in the issue of women, those having experience in social service, or have legislative expertise are preferred.

⁶ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 4

⁷ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 4(2) (a)

3. External member- "one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.

Provided that at least one-half of the total Members so nominated shall be women."⁸

1.2 Term of the Internal Committee members-

The term of office for the presiding officer and each member of the Internal Committee cannot exceed three years from the date of nomination.

2. LOCAL COMPLAINTS COMMITTEE

Section 6(1)⁹ of the Act requires every District Officer to form a committee known as the Local Committee in the district in conundrum to address sexual harassment complaints from organisations where the Internal Committee could not be established because there are fewer than ten employees or if the grievance would be related to the employer himself.

The Local Committee's authority would be circumscribed to the regions of the district in which it is formed.

2.1 Members of the Local Complaints Committee

The following members of the Local Committee would be appointed by the District Officer:

1. Chairperson- A competent woman who is dedicated to the cause of women and works in the area of social cause.
2. Member- Among the women employed in the district's block, taluka, tehsil, ward, or municipality, one member must be appointed from them.
3. External member- Two members must be appointed, one of them must be a female human representing an organisation or NGOs that promote women's rights, or someone with an understanding of sexual harassment issues.

The proviso of Section 7(c) of the Act states that "at least one of the nominees has a legal background or expertise and at least one of the candidates must be a woman from one

⁸ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 4(2) (c)

⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 6(1)

of the Scheduled Castes, Scheduled Tribes, Other Backward Classes, or minority communities."¹⁰

2.2 Term of the Local Committee members-

The term of office for the Chairperson and each Local Committee member cannot exceed three years from the date of their appointment.

- ***PROVISION FOR COMPLAINTS UNDER THE ACT***

Section 9 states the complaint of sexual harassment. A woman who has been victimized has 3 months from the date of the incidence to register a case with the Internal Committee or Local Committee; if the incident is part of a series, she has 3 months from the date of the final incident to register a complaint.

A relative, friend, co-worker, official of the National Commission for Women or State Commission for Women, or any other person, may file a complaint on behalf of the aggrieved woman if she is unable to do so because of physical or mental incapacity, death, or any other reason.

Before conducting an investigation, the Internal Committee or the Local Committee must attempt to settle with the parties upon the request of the aggrieved woman. However, conciliation cannot be based solely on monetary compensation. When conciliation is not possible, the complaint will be investigated by the Internal Committee or the Local Committee, who will give both parties a chance to be heard and will finish the investigation within 90 days.

The Internal Committee or Local Committee must create an inquiry report with recommendations on the issue within 10 days after the completion of the investigation and provide a copy to the employer and the parties involved. The organisation must act on the recommendations within 60 days. A victim has the right to file an appeal with a court or other tribunal if she disagrees with the recommendations of the Internal Committee.

¹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 7(c)

DUTIES OF THE EMPLOYER

The Act's Section 19¹¹ outlines the duties of the employer. These duties start when an employer is obligated to establish an Internal Complaints Committee to confirm that those who have been victimized can lodge a complaint and strive for justice, and end when the employer has given specific data in its annual report in accordance with applicable legal regarding sexual harassment. The duties are as follows:

- a) Duty to create a secure workplace environment, including safeguarding against those with whom one comes into direct contact while at work;
- b) Duty to display the order of the Internal Committee's constitution as well as the legal repercussions of sexual harassment;
- c) Duty to Conduct seminars and information campaigns frequently to familiarise employees with the Act and legal provisions, as well as authorised training sessions for Internal Committee members;
- d) Duty to provide the required services for the Internal Committee or the Local Committee to deal with the matters and launch an investigation;
- e) Duty to help in ensuring the respondents and witnesses' attendance before the Internal Committee or the Local Committee;
- f) "Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force"¹²;
- g) "Cause 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, in the workplace at which the incident of sexual harassment took place"¹³;

¹¹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 19

¹² Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 19(g)

¹³ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 19(h)

- h) Duty to identify sexual harassment as a violation of service policies and to take appropriate measures to stop it;
- i) Duty of monitoring the Internal Committee's timely submission of reports.

DUTIES AND POWERS OF DISTRICT OFFICER

The Act's Section 20¹⁴ outlines the District Officer's power and duties. The duties stated are as follows:

- a) Duty of monitoring the Local Committee's timely submission of reports;
- b) The duty to undertake certain steps seems to be essential to involve NGOs in promoting information about women's rights and sexual harassment.

CONCLUSION

The legal framework in India has improved from providing no legal recourse regarding sexual harassment in the workplace to establishing a powerful procedure. This Act is an essential milestone in achieving equal rights and safeguarding the rights of women. It is a great respite for employed women. What is needed is the efficient implementation of these policies as well as an increased understanding of these laws.

¹⁴ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, s 20