Jus Corpus Law Journal
Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) - A detailed analysis of POSH Act, 2013

Aditi Shree Karra[a]

[a]ICFAI Law School, Hyderabad, India

Received 24 September 2022; *Accepted* 04 October 2022; *Published* 13 October 2022

In the current society, most women experience workplace sexual harassment, which can also be classified as a form of gender discrimination that violates a women's fundamental right to equality and right to life guaranteed under Art 14, Art 15, and Art 21. Workplace harassment not only creates an unsafe, insecure and hostile environment, but as well as interferes with their performance as well as it severely affects their social and economical growth, and causes mental and physical suffering. This paper deals with and includes but is not limited to all such issues involving workplace harassment. This paper also deals with all the major laws that were enforced and the reforms that took place, it also does a comparative study on how things panned out before and after the reforms and their effect on working women, as well as the society at large. It also includes a critical analysis of how this act is not gender-neutral and does not take into account the harassment issues faced by my men as well. It also briefly talks about how this legislation is not inclusive of the LGBTQ community and they have no relief or protection whatsoever.

Keywords: *harassment, workplace, sexual.*

INTRODUCTION

Globalization has brought a radical change in the workplace environment with the involvement of women in every field. However, with the major involvement of women in the mainstream workplace, sexual harassment has also become a major issue. This not only affects work efficiency but also affects the woman's well-being. This becomes a hindrance in the performance of other women employs of the organization as well and makes it an unsafe environment to be in. India in 2013 passed its first legislation specifically addressing workplace harassment issues; the Sexual Harassment of Women at workplace (prevention, prohibition, and redressal) Act, (POSH Act). POSH Act was enacted keeping in mind the issues faced by a woman in the workplace as well as with the objective of preventing sexual harassment in the workplace and protecting women from such behavior. It is also to provide the woman with a safe, secure, and dignified work environment and to be able to ensure effective redressal of complaints. This act not only is to give woman a safe environment but also gives guidelines to employers as well.

POSH Act was passed on the basis of the guidelines laid after the landmark judgment of Vishaka v State of Rajasthan, however, it has a much wider scope as it brings within its ambit domestic workers as well. The Vishaka guidelines are where the term "sexual harassment" was first defined. The Act will ensure that women are protected against sexual harassment **at all workplaces, be it public or private**, organised sector or **even the unorganised sector, regardless of their age and status of employment**. The act also covers students in schools and colleges, patients in the hospital as well as a women working in a dwelling place or a house. The Act creates a mechanism for the redressal of complaints and safeguards against false or malicious charges as well.

The act also guides that an Internal Committee[1] (IC) is to be constituted when an organization has more than 10 workers, and when there is no IC, a district officer is supposed to constitute a

[1] As per Repealing and Amending Act, 2016, the nomenclature of Internal Complaints Committee was changed to Internal Committee

Local Committee[2] (LC) to receive complaints against establishments or against the employer himself. The act also inclusively defines an *aggrieved woman*[3] as not just the employee of the organization but also a woman who is visiting the workplace, a student (intern), a regular employee, a temporary employee, an Adhoc, daily wager, a volunteer, employed directly or by an agent, contract worker, probationer, trainee, etc.

The act provides an inclusive definition of the term Sexual Harassment as under Section 2, as follows:

- "Physical contact and advances;
- A demand or request for sexual favours;
- Making sexually coloured remarks;
- Showing pornography; and
- Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature"

Here, clause 5 has a wide explanation and it may include but is not limited to

- Any verbal comment or sound which may be construed as sexual in nature;
- Sharing adult jokes may also be construed as sexual in nature;
- Staring, touching, or patting;
- Stalking a woman employee;
- Checking out a woman employee; and
- Other gestures, sounds, or comments may be construed as sexual in nature.

[2] As per Repealing and Amending Act, 2016, the nomenclature of Local Complaints Committee was changed to Local Committee

[3] Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013, s 2(a)

Any implicit or explicit promise of preferential treatment or detrimental treatment or creation of a hostile environment in her employment for gaining sexual favours would also be construed as sexual harassment.

The act also specifies the duty of an employer[4]. They are as follows:

- Provide a safe working environment;
- Display at a conspicuous place, penal consequences for sexual harassment;
- Organize workshops for employees and orientation programs for the Committee;
- Assist in securing the attendance of offender and witness;
- Provide assistance to aggrieved woman employees;
- Initiate action under the Indian Penal Code if the offence requires such action or the offender is not an employee.

EVOLUTION OF WORKPLACE HARASSMENT LAWS - VISHAKA JUDGMENT

Workplace sexual harassment in India was first recognized by the Supreme Court of India in the landmark judgment of *Vishaka v State of Rajasthan*[5] after which certain guidelines were laid more often known as the "Vishaka Guidelines" and directions were issued to the Union of India to enact adequate laws for sexual harassment in the workplace. However, POSH Act was enacted 16 years after this judgment was passed. The Supreme Court for the first time acknowledged the legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court had relied on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, are to be mandatorily followed by organizations, both in the private and government sector.

[4] Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013, s 19
[5] *Vishaka v State of Rajasthan* 1997 6 SCC 241

This landmark judgment brought about a lot of change in the working sector, and there were other judgments as well. This judgment had initiated a nationwide discourse on an issue that was always swept under the carpet, an issue that was never acknowledged let alone addressed or had a remedy.

The case immediately after the vishaka case was *Apparel Export Promotion Council v A.K Chopra*[6]. In this case, the superior officer of the Apparel Export Promotion Council was held guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the court widened the definition of sexual harassment stating that it is not necessary to have physical contact for it to amount to sexual harassment The supreme court held that "*sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favors and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.*"

There was another case after vishaka *Medha Kotwal Lele & Ors. v Union of India & Ors.*[7] In its judgment, the Supreme Court held that "*the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make the available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency, and due respect.*"

However, there is also a provision for false or malicious complaints and false evidence in order to protect the men as well and that is as follows

"*1. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved*

[6] *Apparel Export Promotion Council v AK Chopra* (1999) 1 SCC 759

[7] *Medha Kotwal Lele & Ors v Union of India & Ors* Writ Petition (Criminal) Nos 173-177 of 1999

woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (I) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed before any action IS recommended.

2. *Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed."*[8]

There have been several other cases such as *Dr. Kasturba A.K v National Institute of Technology*[9], *Professor Giridhar Madras v The Indian Institute of Science*[10]

IMPACT OF #METOO MOVEMENT ON THE IMPLEMENTATION OF THE POSH ACT

In 2006 civil rights activist Tarana Burke used the phrase "Me too" to raise awareness about sexual harassment. This movement picked up popularity in 2018 and a lot of people started speaking about their experiences of being harassed by their male co-workers. They were finally able to come out of the closet to get justice and to be heard. Most corporate got a lot more alert fearing reputational risks since many well known men were being accused of harassing their co-workers. This increased awareness and a lot of people filed complaints and this saw an increase in complaints by almost 14%-15% in 2018-19. There was a lot of change after this movement

[8] Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013, s 14
[9] *Dr Kasturba AK v National Institute of Technology* WP (C) No 26773 of 2014
[10] *Professor Giridhar Madras v The Indian Institute of Science* Writ Petition No 56994 of 2018 (S - DE)

since a lot of people started speaking about it. Hence, this movement definitely did impact the implementation of this act in workplaces.

LIMITATIONS AND CRITICISM

Although this law has brought justice to a lot of women against workplace harassment, this legislation is not gender-neutral and does not take into account harassment experienced by men. Sexual harassment in the workplace experienced by men goes unnoticed and if someone does try to talk about it, it is not acknowledged. There is no such provision that addresses this issue with respect to men, they can only find relief only if there is such a provision in the company policy. There is no support provided to men with respect to issues of this nature. Section 2(f)[11] of the act categorically defines an employee as just a woman but does not take into account that the tables have turned and that there have been many instances where men were the victim and were at the receiving end of such harassment. Their complaints are not taken seriously and their rights are not protected.

Although the legislation is not inclusive of men, there is another major aspect that people don't take into account when discussing the criticisms. It is that the legislation is also not inclusive of the LGBTQ community, more specifically the transgenders. Almost 2 years after homosexuality was decriminalized, equality is still a distant dream for the LGBTQ community. Almost all legislations are drafted in a way that they only recognize 'male' and 'female' and transgenders aren't included at all. Legislations are not gender neutral, let alone fact that they are not equal in such cases. Sexual crimes recognize only the male-female binary. Laws pertaining to many sexual offences are only in terms of the male-female binary and completely disregard LGBTQ relationships. Offences like Rape[12], Sexual harassment[13], assault, or use of criminal force on women with the intent to disrobe[14], voyeurism[15], stalking[16] , etc. all operate in the male-female binary and don't take into account the LGBTQ community as a whole at all. Even if gender

[11] Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act 2013, s 2(f)
[12] Indian Penal Code 1860, s 375
[13] Indian Penal Code 1860, s 354A
[14] Indian Penal Code 1860, s 354B
[15] Indian Penal Code 1860, s 354C
[16] Indian Penal Code 1860, s 354D

neutrality of legislation is discussed it again only takes into account men and women. Although the Supreme Court of India in the landmark judgment of *NALSA v UOI*[17]declared transgenders to be the third gender, legislation is still using the same male-female binary, and not being inclusive of all genders. It was essentially about how transgenders face a lot of discrimination in society and this was to stop that, and that they are entitled to all fundamental rights.

There is still a lot of discrimination faced by the LGBTQ community, more specifically the transgenders, on a daily basis. They face social persecution and are unfairly targeted. They are not given a fair job opportunities in the organized sectors. And on the off chance that they do get a job in the organized, corporate sector, they are given no protection against sexual harassment at the workplace in this legislation. As it was mentioned earlier as well, men sometimes do have a way to file a complaint through a company policy, however, transgenders are not given any such protection.

The number of cases of sexual harassment in the workplace against men and transgenders are still rather high, although there is a high possibility that there are still cases unknown to us. The ratio of cases against women to men may be very different, but that does not mean that these cases against men and transgenders should go unnoticed. There needs to be a due procedure for them as well. This legislation specifically only protects and takes into account harassment against women but does not do so for other genders.

There is also a fear that people have that if they do file a complaint, it will affect their job, their place in that organization, or any other organization if they choose to work elsewhere. They lose their sense of job security because of issues like this, which is why there should be proper, equal, and unbiased action taken against such an act by the internal committee. This will help people feel secure and come out to speak about their experience and file a complaint to get the justice that they deserve. It is helpful to women, however fails to be inclusive, this legislation is violating the fundamental rights that were guaranteed to men and the LGBTQ community as well.

[17] *NALSA v Union of India* AIR 2014 SC 1863

CONCLUSION

It can be concluded that there definitely has been a lot of change and reform because of the enactment of this law and other social movements that impacted this. This has to a great extent helped women, as well as empowering them. The act is very inclusive, it, however, is only limited to sexual harassment faced by women, while completely ignoring the fact that men and sections of the LGBTQ community do face the same issues, and just because their ratio is comparatively lesser does not mean their issues go neglected like the way they do now. There is no help or relief given to them under this act nor is there any other legislation that does, making this a gender-biased legislation, and when we seek equality in every platform, there should also be gender-neutral laws as well. Hence, not just women, but men and the LGBTQ community should also be included in the ambit of this legislation.