

CHAPTER-1

INTRODUCTION

The Law on The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, is a major step towards providing protection to women against sexual harassment at workplace and for the redressal of complaints in the matters connected therewith, in India.

The Preamble to the Indian Constitution declares as its aim, ‘to secure justice social, economic and to secure equality of status and opportunity in the field of education, public employment and participation in political field’. There is also specific constitutional protection which prohibits the state from discriminating against women on the ground of sex in such areas as education and public employment and also directs the state to take special care to promote women’s welfare, particularly by protecting their health as mothers and dignity as individuals.

The Constitution of India, in part III, deals with the Fundamental Rights and aims at ensuring equality before the law and equal protection of law; prohibiting discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guaranteeing equality of opportunity to all citizens in matters relating to employment. The provisions regarding the Fundamental Rights have been enshrined in Articles 12 to 35, which are applicable to all the citizens irrespective

of sex. However, certain provisions protect the rights of women. The fundamental rights are regarded as fundamental because they are the most essential for the attainment by the individual, of his or her full intellectual, moral and spiritual status.

These Fundamental Rights represent the basic values cherished by the people of India since the Vedic times, and are formulated to protect the dignity of the individual as well as to create conditions in which every human being can develop his/her personality to the fullest extent. The Constitution of India guarantees a dignified status to every woman. Fundamental Rights, to the maximum extent possible, encompass guarantee against all types of abuse, including the sexual harassment of women at workplace.

The endeavour of the Courts has been towards drawing a balance and harmony between the Fundamental Rights and the Directive Principles of state policy, because the directive principles are as important as the Fundamental Rights. The Directive Principles of State Policy provide the principles under Articles 38(2), 39(d) etc. for the protection of women from sexual harassment at the workplace Article 51-A of the Constitution of India provides for the Fundamental Duty 'To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the 'dignity of

women. So, the Constitution of India, 1950 protects the women from sexual harassment at workplace.

However, the Sexual harassment Act, 2013, has been legislated almost sixteen years after the Supreme Court in its landmark “Vishaka Judgment”, laid down guidelines which were mandatorily to be followed by every employer, in providing a mechanism to redress the complaints and grievances relating to the cases of sexual harassment at the workplace, so as to enforce the right to gender equality of working women. For the first time in the history of India, sexual harassment at the workplace was acknowledged as a matter of violation of human rights. Here the Supreme Court relied upon the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations Organization, in 1979. The same has been signed as well as ratified by India. These guidelines were to be compulsorily followed by organizations, in the public as well as the private sector, till such time as a law was enacted on the subject by our Parliament.

Three years after the enactment of this Act, the status regarding its implementation requires to be explored. It is a matter of interest as to how well the Act and its provisions are known to the people in general, and the subject of the law – the women, in particular. A lot of effort has gone into the making of the Act

but its purpose will be served only when the same is implemented well. The working women should be aware of its provisions and details so that they may be well aware as to what recourse they can take, and what options are available to them. The employer or the administration on the other hand, should be able to make available, an enabling environment for the proper implementation of the provisions of this Act, both in letter and spirit.

Statement of the Problem-

The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination Against Women defines sexual harassment of women to include: “such unwelcome sexually determined behavior as physical contact and advances, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.” Sexual Harassment at a workplace is a violation of women’s right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women’s participation in work, thereby adversely affecting their social and economic

empowerment and the goal of inclusive growth. With more and more women joining the workforce, both in the organized and unorganized sectors, ensuring a safe and comfortable working environment for women through legislation was felt imperative by the Government. Sexual harassment at the workplace as a phenomenon acquired its name only in the late seventies. A distinct pattern could be discerned in the women's descriptions of their experiences in the workplace (Farley, 1978). This phenomenon of male harassment and intimidation of female workers was not publicly recognised as a problem. Thus it can be understood that prior to the 1970s the term sexual harassment at the workplace did not exist. Also, it was identified as a part of daily work life, a problem without any name. The term 'sexual harassment' was understood to look at the world from the point of view of women. It was an endeavour to reflect and construct women's experience, and confirm that it was a behaviour that women will not endure passively; rather they can actively protest and resist.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of India, became a reality in 2013. The recently enacted Act, follows and builds upon the Supreme Court's Vishaka guidelines. The Act recognises that every woman has a right to work with dignity and sexual harassment is a violation of the fundamental rights of working women. Therefore, in accordance with it, organisations need to clearly articulate their position by

upholding their code of conduct and their respective service rules to prevent and address sexual harassment at the workplace. Consequently, a transparent system for redress of complaints of sexual harassment must be in place. Undoubtedly, the Vishaka judgment initiated a discourse in India on sexual harassment and benefited women by reconfirming their right to a safe working environment. It proposed to provide a safe and gender friendly atmosphere for women, proposing an in-house redress mechanism envisaging that it would resolve the issues related to sexual harassment within the organisation. How far it has been effective and successful in achieving its objectives and helping women feel safe and secure in their places of work, is to be assessed. According to the Nature-wise report of the complaints received by National Commission for Women during the year 2014-2015, the number of cases of harassment at the workplace was 535. The National Commission for Women received 414 complaints of sexual harassment, including those of sexual harassment at workplace.

The Objectives of this study are ---

- To assess the awareness regarding the Act among the employees of select public institutions in New Delhi.

- To examine whether the women feel more secure in working in their organization, after the implementation of the Act.

-To analyze the effectiveness of implementation of the Act in four selected institutions in New Delhi.

-To suggest future options and policy considerations based on the findings of the research.

Rationale-

The study is being undertaken to understand the extent of awareness among employees, especially women, regarding the provisions of the Act and the status of its implementation in these organizations. The effort is to get the version of both the sides – the employee and the employer- and the problems, if any, being faced by them in the context of sexual harassment of women and the implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. It, therefore, becomes imperative to study the salient features of the Act and the issues related to its implementation, which will be crucial to understand what improvements or changes are required for its smooth implementation and the achievement of its aim and objectives.

Research Questions-

1. What is the status of implementation of the Act in Directorate General of Foreign Trade (hqrs), the Central Licensing Authority (CLA), and two other institutions/ organizations in New Delhi?

2. What are the challenges being faced by these organizations/offices in implementing this Act?

3. How can these be overcome?

Scope/ Limitation-

This study covers the experience regarding the implementation of the Sexual Harassment of Women At Workplace (Prevention, Prohibition and Redressal) Act, 2013, and the level of awareness about the same, during the last three - four years in two offices of the Directorate General of Foreign Trade (DGFT) – the Central Licensing Authority (i.e. the CLA) and DGFT headquarters, the Post Graduate Institute of Medical Education & Research (Dr R M L Hospital) and the Indian Institute of Public Administration .These four institutions/ organizations are located in Delhi only. The inputs and responses have been collected only from employees, both male and female, working in these government organizations in Delhi. No private sector organizations have been included, as this study aims at assessing/ reviewing the role of the Government of India as an ideal employer in this regard. Hence, no inputs from the private sector have been taken or analyzed.

Research Methodology

Methods applied and data sources ---

Sexual harassment is a very complicated issue. More often than not, the victims do not come forward to share their experiences. Sometimes the harassment comes with the threat of losing the job and the victim tolerates it with sealed lips. At other times she may prefer to move on to another job and just forget about what had happened. It is important to have a good understanding of the topic as well as the sensitivities of the respondents while soliciting their inputs on a sensitive topic as the one undertaken here. Both primary and secondary data sources were used. The methods used for collecting information included the following:

1. Focus Group Discussions were held with some middle management level officers of the Government of India. Their views and opinions were mainly solicited regarding their awareness pertaining to their rights and duties or responsibilities in the light of this path breaking Act. Also, their suggestions as to how the provisions of this Act could be better implemented so as to make the workplace safer for the working women, were asked for.
2. Semi- structured Interviews with key stakeholders - among the staff and administration were held, which helped obtain individual experiences and ideas regarding this Act and the need for improvement, if any. Discussions were held

with the concerned officers / stakeholders of the Directorate General of Foreign Trade, the Central Licensing Authority, the Post Graduate Institute of Medical Education & Research (Dr R M L Hospital), as well as the Indian Institute of Public Administration in Delhi.

3. These discussions were used to frame the Questionnaires that were administered to collect inputs (information/ responses) from all the stakeholders- victims, accused and administrators.
4. Interviews were conducted to enable preparation of a few Case Studies. These were based on different situations (based on age or hierarchy), in which Sexual Harassment was suffered and/or reported.
5. Review of Government documents and reports related to this subject, as well as articles in academic journals, books and newspapers was also undertaken.

A topic of this nature has to be dealt with great sensitivity. This is an exploratory research, which uses a mix of qualitative and quantitative methods.

CHAPTERISATION – The dissertation is divided into the following chapters:

Chapter 1: Introduction.

Chapter 2: Literature Review.

Chapter 3: Evolution and details of the Act

Chapter 4 : Case-studies

Chapter 5: Findings and Analysis.

Chapter 6: Conclusion and Recommendations
