

## **CHAPTER 3**

### **THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT (2013): EVOLUTION AND DETAILS**

Approximately fifty countries in the world have made laws in an attempt to control the menace of sexual harassment at workplace. India joined this group in 2013. In Australia, The Sex and Age Discrimination Legislation Amendment Act 201, amended the Sex Discrimination Act 1984, in May 2011, to expand the protections against sexual harassment. The victim can make a complaint to the Australian Human Rights Commission in case he/she has been sexually harassed. In case the matter is not resolved through reconciliation, the victim can approach the courts thereafter. In Denmark, Sexual harassment is defined as - when any verbal, non-verbal or physical action is used to change a victim's sexual status against the will of the victim and resulting in the victim feeling inferior or hurting the victim's dignity. Man and woman are looked upon as equal, and any action trying to change the balance in status with the differences in sex as a tool, is also sexual harassment. In the workplace, jokes, remarks etc., are only accepted to be discriminatory if the employer has stated it to be so in their written policy. The French Criminal Code describes sexual harassment as, the fact of harassing anyone using orders, threats or constraint, in order to obtain favors of

a sexual nature, by a person abusing the authority that functions confer on him. This means the harasser can only be someone with authority on the harassed (basically, there can't be sexual harassment between co-workers of the same rank). However, moral harassment occurs when an employee is subjected to repeated acts, the aim or effect of which may result in a degradation of his conditions of employment that might undermine his rights and his dignity, affect his physical or mental health or jeopardize his professional future. Sexual as well as moral harassment is recognized by the law. The laws that cover sexual harassment at work in Britain are the Sex Discrimination Act and the Employment Rights act. The former makes it unlawful for employers in Great Britain to subject their employees to sexual harassment. Trans-sexual persons are covered under the law. Also, the Employment Equality (Sex Discrimination) Regulations 2005 amended the Sex Discrimination Act in 2005. The new law extends the protection of sex discrimination rules to cover sexual harassment. In Singapore, the Protection from Harassment Act of 2014 clarifies the laws covering sexual harassment and includes sexual harassment within and outside the workplace. Japan amended its law, effective July 1, 2014, to include new sexual harassment guidelines proposing that employers establish measures to treat the employee who is a victim of the harassment, properly, such as by providing consultation with the supervisor or occupational health staff and/or mediation by

an independent institution. Various legal options exist for a complainant of sexual harassment in the workplace, both male and female, in the United States of America. These include mediation, filing a complaint with the Equal Employment Opportunity Commission (EEOC) or filing a claim under a state Fair Employment Practices law (both deal with sexual harassment at workplace). The EEOC is a federal agency that administers and enforces civil right laws against workplace discrimination. The EEOC investigates discrimination complaints based on an individual's race, color, national origin, religion, sex, age, disability, gender identity, genetic information, and retaliation for reporting, participating in, and/or opposing a discriminatory practice.

When India attained independence, in the name of the legal framework for protection of women from sexual harassment at work place, there existed only the provisions of the Indian Penal Code and the Fundamental Rights enshrined in the constitution, perhaps because the representation of women in the work place was so miniscule as to hardly draw the attention of the lawmakers to promulgate specific laws. These provisions were very general. Criminal proceedings had their own cumbersome procedure. In the face of low representation of women, in the work force, invoking these provisions was rare. However, something is better than nothing. As time passed by, India being signatory to various International conventions, along with the fact that the number of women joining the workforce

was increasing considerably, the working condition of women started gaining attention and commensurate awareness. While a journey through the provisions has been sketched over a period of time, it is seen that the momentum was exogenous rather than endogenous. Even in the judicial pronouncements, reliance was placed on International conventions.

- **Constitutional provisions and safeguards:** The Constitution provides equal rights and opportunities for women; but in practice the women employees face various problems like lack of safety, sexual harassment from superiors and colleagues etc. Theoretically, the range of legal redress available for sexual harassment covers constitutional, criminal, tort, and civil law.
- Article 14, 15(3), 16, 39(e) and 51 of the Indian Constitution give the guarantee of equality and special protection for the women in India.
- **Article 14** provides for Equality before law. It says that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- **Articles 15** Provides for the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public,

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

- **Article 16** gives the guarantee of equality of opportunity in matters of public employment. Article 16(1) & 16(2) have laid down a general rule that there shall be equal opportunity for all citizens and thus emphasizes on universality of Indian Citizenship.

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against, in respect of, any employment or office under the State

However, further section of Article 16 provides the exceptions. Article 16(3) reads as follows: Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

- **Article 39** of the Constitution of India, as part of the **Directive Principles of State Policy**, to be followed by the State, provides that the State shall, in particular, direct its policy towards securing

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

The **Fundamental Duties** were inserted into the Constitution of India by the 42th Constitutional Amendment Act, 1976 on the recommendations of the Swaran Singh Committee. Ten Fundamental Duties were included in Article 51-A under Part IV-A through this amendment. These ideals are the very cornerstone of the Constitution. The ten Fundamental Duties listed in Art 51-A of the Constitution, following enactment of the 42nd Amendment Act, call upon the citizens: -

a) "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem";

b) "to cherish and follow the noble ideals which inspired our national struggle for freedom";

- c) "to uphold and protect the sovereignty, unity and integrity of India";
- d) "to defend the country and render national service when called upon to do so";
- e) **"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"**;
- f) "to value and preserve the rich heritage of our composite culture";
- g) "to protect and improve the natural environment including forests, lakes, rivers, wild life and to have compassion for living creatures";
- h) "to develop the scientific temper, humanism and the spirit of enquiry and reform";
- i) "to safeguard public property and to abjure violence";
- j) "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

- **Provisions under Indian Penal Code:** Section 209, Section 354, Section 354 (A), Section 376, and Section 509 of the Indian Penal Code provided for the shelters for women facing harassment in general. Section 209 dealt with obscene



acts and songs, to the annoyance of others; Section 354 dealt with assault or use of criminal force on a woman with intent to outrage her modesty; Section 376 dealt with rape; Section 509 dealt with uttering any word or making any gesture intended to insult the modesty of a woman. After the enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Criminal Law (Amendment) Act, 2013, was enacted and Section 354 (A) was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine.

Besides the above, the Industrial Disputes Act also includes the unfair labour practices that could be used in cases of sexual harassment. Also, a victim can file a civil suit for damages or compensation under the Law of Torts.

**C111 - Discrimination (Employment and Occupation) Convention, 1958 (Entry into force: 15 Jun 1960):** Although not specifically related to the protection of women workforce, sex was mentioned as one of the bases prohibited to be used in any legislation for exclusion or discrimination. India had ratified the convention. It is an ILO fundamental convention which requires states to enable legislation which prohibits all discrimination and exclusion on any basis, including of race or colour, sex, religion, political opinion, national or social origin in employment and repeal legislation that is not based on equal opportunities. Even though it did not

directly deal with prohibition of sexual harassment in workplace, it was instrumental in charting and defining the course which generated sensitivities to related issues at least socially and politically, if not strictly legally.

- **The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW):** Adopted in 1979 by the UN General Assembly and ratified by the Government of India in June 1993, it is often described as an international bill of rights for women. It consists of a preamble and 30 articles, defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination. This has been specifically mentioned in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, as one of the Antecedents. In *Apparel Export Promotion Council vs A.K. Chopra* on 20 January, 1999, it was observed that “This Court has in numerous cases emphasised that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the International Conventions and Instruments and as far as possible give effect to the principles contained in those international instruments. The Courts are under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law”

- **The Indecent Representation of Women (prohibition) Act 1986:** Enacted in 1986, although this law does not specifically deal with the sexual harassment of women at workplace, it covered a very sensitive issue in view of the social customs and norms of India and thereby, was a major confidence booster for women at the workplace. It also gave momentum to the sensitivities of the issue.
- **Vishaka Vs State of Rajasthan (1997):** This Supreme Court judgement is a major development in the history of legislation and legal guidelines in India in respect of sexual harassment of women at the workplace. The Supreme Court issued comprehensive guidelines in the matter in this judgment, including detailed provisions relating to definition of sexual harassment, shifting accountability from individuals to institutions, prioritizing prevention, and provision of an innovative redressal mechanism. It went up to the extent of making employers responsible for ensuring that women did not face a hostile environment at the workplace. Thus, the bar of responsibility and accountability was raised to the international standards. Apart from punitive action, preventive mechanism also got importance through the guidelines
- **Apparel Export Promotion Council vs A.K. Chopra on 20 January, 1999,** is a landmark judgment which deals with varied dimensions of working conditions of women and brings out all international and national conventions and legislations in a consolidated perspective thereby paving the way forward for further

development in the legal history on the subject. The Supreme Court held that in any case involving the charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of the case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression 'molestation'. Also the statement of the victim must be appreciated in the background of the entire case.

Thus, as the representation of women grew in the workforce, Indian legislative developments always aligned with the requirements and International conventions and finally culminated in the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

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

In our society women have been subjected to various kinds of inequalities and have had to face discrimination at every stage in life. Women are a significant part of the work force. In order to ensure that they are provided with safe working conditions in their work places, the Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, in 2013.

This Act identifies three important elements, namely, prohibition prevention and redress in the matter of sexual harassment of women at workplace. The objective of the Act is to ensure women's Right to Equality at workplace. It provides for civil remedies in addition to other extant laws. This Act covers the following behaviours or circumstances under the ambit of sexual harassment: implied or explicit promise of preferential treatment in her employment, implied or explicit threat of detrimental treatment in her employment, implied or explicit threat about her present or future employment status, interference with her work or creating intimidating or offensive or hostile work environment for her, and humiliating treatment likely to affect her health or safety.

The definition of Sexual Harassment at Workplace in the Act is in consonance with the Vishaka Judgement and includes within its ambit - any unwelcome acts or behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography, or any other unwelcome physical, verbal or non verbal conduct of sexual nature. The main objective of this Act was to provide working women with a safe, secure and enabling environment to work in, irrespective of their age or employment status. The workplace should be free from all kinds of sexual harassment and the responsibility for providing the same has been placed on the employer.

**Chapter 1** of the Act provides the definition of employer, employee and workplace etc. It is the duty of every employer, to prevent the sexual harassment of women in his organisation. Also the Act provides that any promise of preferential treatment or any threat related to the employment of a woman employee by the employers, will also be considered as sexual harassment.

**Chapter 2** of the Act gives details regarding the formation of the Internal Complaints Committee and requires an employer to set up an Internal Complaints Committee at each office or branch of the organisation engaging at least 10 employees, to hear and redress grievances pertaining to sexual harassment.

**Chapter 3** of the Act touches upon the provisions of the constitution and jurisdiction of the Local Complaints Committee. For the redressal of complaints of sexual harassment at the workplace it is the duty of every district officer to constitute a Complaints Committee in the district, for dealing with the complaints in cases of sexual harassment of those organisations or establishments, where the Internal Complaints Committee has not been formed.

**Chapter 4** of the Act provides the procedure of the making of a complaint of sexual harassment by a victim. An aggrieved woman can make a complaint to the Internal Complaints Committee or the Local Complaints Committee, as the

situation maybe, along with the supporting documents as well as the details of the witnesses.

**Chapter 5** of the Act provides in detail how the inquiry is to be conducted. It gives powers to the Internal Complaints Committee or the Local Complaints Committee, during the pendency of the inquiry, to recommend to the employer, at the request of the aggrieved woman, interim measures for the prevention of any further harassment of the women. The Act also lays down certain basic issues to be taken into consideration at the time of deciding the quantum of compensation, which can although not restore the dignity of a woman but may be helpful in supporting her overcome her distress and depression.

Further, in order to ensure that the provisions of the Act are not misused or taken undue advantage of, the Act also provides for action against false or malicious complaints. In a situation where the Local Complaints Committee or the Internal Complaints Committee conclude that the complaint made was false, or malicious, or that the same was made knowing well to be false or forged, or that misleading evidence was presented before the committee during the enquiry, disciplinary action as per the service rules, may be recommended to be taken against the complainant.

**Chapter 6** of the Act provides the Duties and Obligations of the Employer in making the workplace safe and secure for the working women.

**Chapter 7** of the Act provides the duties and powers of District Officer to monitor the timely submission of reports furnished by the Local Complaints Committee; or to take such measures as may be necessary for engaging non- governmental organisations for creation of awareness on sexual harassment and the rights of women.

**Chapter 8** of the Act contains the miscellaneous provisions which provide that the Committee should prepare and submit the annual reports to the employer and the District Officer. It also provides that if an employer fails to constitute an Internal Complaint Committee or does not comply with the requirements prescribed under the Sexual Harassment Act, a monetary penalty of up to Rs. fifty thousand may be imposed on him. A repetition of the same offense could result in the punishment being doubled and/ or de-registration of the entity or revocation of any statutory business licenses. So it is mandatory to comply with the provisions of the Act. This Chapter also provides for the appropriate Government to monitor implementation and maintain data as well as to take measures to publicise the Act. It also gives Power to the Government to make rules as well as to remove any difficulty which may come in the way of giving effect to the provisions of this Act.