

LAWS AGAINST SEXUAL HARASSMENT

Written by **Aprajita Bharagava**

Research Scholar, DAVV Indore (M.P)

Abstract

Women were sexually harassed long before there was a term for it. Since industrialization, women working in factories and offices have had to endure sexual comments and demands by bosses and co-workers as the price for economic survival. In the absence of civil and penal laws in India, for providing adequately and specific protection to women from sexual harassment in the work places, in 1997, the Supreme Court passed a landmark judgment in *Vishaka v/s State of Rajasthan AIR 1997 SC 3011*, laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. After almost two decades, the specific Act against sexual harassment has been formulated by the Indian Legislature. Although the Act was welcomed and expected to meet the needs of the present day, the problematic provisions and unanswered questions present a conundrum for application of the Act, and should to be clarified for effective implementation of the Act.

Key words

Women, sexual harassment, workplace, redressal, prevention, protection etc.

Introduction

A safe workplace is a woman's legal right. Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Any act of sexual harassment to a woman at workplace is not only the violation of her constitutional rights but also violation of her human rights. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their economic empowerment and the goal of inclusive growth.. It is offensive at a very personal level and in a way undermines the right to equal opportunity and equal treatment of women at the workplace.

The laws in India have strived to provide for the protection to women against sexual harassment. Criminal and civil remedies have been made available by such laws. The researcher has studied the different legislations that have been enacted throughout the years. The Vishakha guidelines have also been discussed in relation to such offences. These guidelines provided for protection when there did not exist any specific legislation against sexual harassment. The researcher has given a critical analysis of the laws in order to understand the requirements based on which the available laws need to be rectified. Secondary sources of data have been used as the researcher has used books from the library and various articles from journals available in the library as well as online sources.

Sexual Harassment at Workplace

Sexual harassment is considered as a violation of a woman's fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women's participation in work and adversely affecting their social and economic growth. Sexual harassment is not only viewed as a discrimination problem related to safety and health, but also as a violation of fundamental rights and human rights. It is offensive at a very personal level and in a way undermines the right to equal opportunity and equal treatment of women at the workplace. Workplace bullying often goes on to take the form of sexual harassment. Power dynamics play a major role in the advancement of actions that amount to sexual harassment. The Supreme Court of India through its landmark judgment in **Vishakha v/s State of Rajasthan AIR 1997 SC 3011** has deemed sexual harassment to be a violation of human rights standards as it threatens the dignity of the person facing such harassment. The results of a global survey asking women journalists to recount the abuse experienced at work, show that nearly 65% of the respondents said they had encountered "intimidation, threats, or abuse" in relation to their work, according to the online survey by the International News Safety Institute (INSI) and International Women's Media Foundation.

Meaning of Sexual Harassment

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature in the workplace or learning environment, according to the Equal Employment Opportunity Commission. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For

example, it is illegal to harass a woman by making offensive comments about women in general. The victim and perpetrator can be a male or a female. The law in India, however, recognizes and penalizes sexual harassment only against women. Sexual harassment does not always have to be specifically about sexual behavior or directed at a specific person. It can be a general comment that is 'unwelcome'. The Merriam Webster Dictionary defines sexual harassment as "uninvited and unwelcome verbal or physical behavior of a sexual nature especially by a person in authority toward a subordinate (such as an employee or student)" The term "unwelcome" implies that, such conduct has not been solicited or initiated by the employee and, she takes it as undesirable and offensive. Sexual harassment thus includes an extensive range of acts, gestures and expressions having sexual connotations. Perceptions differ about what behaviors constitute sexual harassment. However, typical examples of sexual harassment include sexually oriented gestures, jokes, or remarks that are unwelcome; repeated and unwanted sexual advances; touching or other unwelcome bodily contact; and physical intimidation. Sexual harassment can occur when one person has power over another and uses it to coerce the person to accept unwanted sexual attention. It can also occur among peers—for example, if coworkers repeatedly tell sexual jokes, post pornographic photos, or make unwelcome sexual innuendos to another co-worker. Therefore, verbal harassment of a sexual nature and in pursuance of sexual favours can also come within the ambit of the term sexual harassment. Sexual harassment can occur in the workplace or learning environment, like a school or university. It can happen in many different scenarios, including after-hours conversations, exchanges in the hallways, and non-office settings of employees or peers. Sexual harassment should not be tolerated in any circumstances and should be reported at the first instance so that actions can be taken immediately against the perpetrator. The act of sexual harassment can be of two forms:

Quid Pro Quo (literally 'this for that')

- ❖ Implied or explicit promise of preferential/detrimental treatment in employment
- ❖ Implied or express threat about her present or future employment status

Hostile Work Environment

- ❖ Creating a hostile, intimidating or an offensive work environment
- ❖ Humiliating treatment likely to affect her health or safety

International Conventions on laws against sexual harassment

At an international level, sexual harassment has been identified to be a human rights violation as it causes harm to the dignity of the person harassed and can lead to hamper the emotional as well as mental well-being of the person. As sexual harassment in most cases is seen to be advanced towards a woman it is also perceived to be an outcome of the perpetual discrimination faced by women. As such international conventions like the UN Charter and CEDAW discusses the elimination of all forms of discrimination faced by women in all fronts. Incidents of sexual harassment are increasing exponentially—especially in Asian countries, where over half the world population resides. In India, a woman is sexually harassed every 12 minutes. Workplace bullying is a globally recognised problem reflected in the recent agendas of international organisations such as the International Labour Office (ILO) and the World Health Organization (WHO). The ILO also conducts widespread awareness of the issue of sexual harassment as it is discrimination on the ground of sex in employment and occupation. As a consequence, the Committee of Experts on the Application of Conventions and Recommendations conducted a special survey in 1996 and confirmed that sexual harassment is a form of sex discrimination against women in employment as it undermines equality, damages working relationships and impairs productivity.

Universal Declaration of Human Rights (UDHR)

In 1948, the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly. Although this document was not originally binding on member states, it has received such wide acceptance as an outline of foundational human rights principles that it has been recognized as a binding expression of customary law and an authoritative interpretation of the UN Charter itself. Article 3 of the UDHR states, “Everyone has the right to life, liberty and security of person.” This right was reaffirmed in by the International Covenant on Civil and Political Rights(1966), which protects the right to life (Article 6) and the right to liberty and security of person (Article 9).These rights, as well as others in the UDHR, ICCPR, and the International Covenant on Social, Economic, and Cultural Rights (ICESCR), such as the right to equal protection under the law and the right to the highest standard of physical and mental health, are implicated in violence against women cases. Therefore, States that are parties to these instruments have an implicit obligation to protect women from violence as part of their obligations.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

It was adopted in 1979 when awareness of sexual harassment at workplace was only beginning to emerge. As such there is no specific prohibition of sexual harassment against women. It was rather seen to be a form of violence against women and its prevention was interpreted to be covered under the prevention of all forms of violence under the Convention. The State parties to the present Convention expressed the concern that despite international conventions concluded under the auspices of the United Nations and the specialized agencies and the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women, extensive discrimination against women continues to exist. The Convention has twin objectives: to prohibit discrimination and to ensure equality. The most important development is that for the first time, the Convention provides an extensive definition of the term “discrimination against women” as any distinction, exclusion or restriction made on the basis of sex. The Recommendation notes that —equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. The Recommendation also states that all parties should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence, sexual assault and sexual harassment in the workplace. Although has ratified the CEDAW in 1993, yet it took two decades for formulate a legislation for protection and redressal against sexual harassment of women at workplace.

The United Nations Fourth World Conference on Women

The United Nations Fourth World Conference on Women, held in Beijing in 1995, adopted a Platform for Action, includes provisions on sexual harassment in the workplace. It calls on governments, trade unions, employers, community and youth organizations, and NGOs to eliminate sexual harassment. More specifically, governments are urged to enact and enforce laws and administrative measures on sexual and other forms of harassment in the workplace.

Indigenous and Tribal Peoples Convention

This Convention of 1989 is the only convention that specifically refers to the offence of sexual harassment at workplace. It provides that governments shall do everything possible to prevent

any discrimination between workers belonging to the peoples to whom the Convention applies and other workers, including taking measures to ensure that they enjoy protection from sexual harassment.

In consonance with the various international standards set through these conventions different countries have implemented laws at the national level in different ways. In many countries, specific acts of harassment have been categorized as a form of some other kind of prohibited conduct, such as sexual assault or defamation, without explicitly referring to —sexual harassment. It may also be addressed under more than one legal branch in the same jurisdiction. Such as in Singapore, it can be under tort law as well as criminal law. In India, there is a specific legislation against sexual harassment at workplace as well as provisions in its Penal Code. In a number of countries, sexual harassment has been explicitly referred and recognized by their courts and tribunals as a distinct form of some broader type of prohibited behavior. Most commonly, it has been recognized as a form of sexual discrimination and prohibited under equality or anti-discrimination laws. In many other countries, legislatures have enacted legislation, or amended existing provisions, to specifically prohibit workplace sexual harassment. In many countries sexual harassment against workplace is included under their labour law codes.

Guidelines formulated in **Vishakha v. State of Rajasthan & Ors.**, AIR 1997 SC 3011 During the 1990s, Rajasthan state government employee Bhanwari Devi who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme was raped by the landlords of the community. The trial court acquitted the offenders and this inspired several women's groups to file a writ petition in the Supreme Court of India.

The Supreme Court through this landmark judgment stated that every instance of sexual harassment is a violation of fundamental rights guaranteed under Articles 14, 15 and 21 of the Constitution of India. It also amounts to violation of the "Right to freedom" under Article 19.

In this case, the Supreme Court took note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time. As such it was thought to be necessary and expedient for employers in work places as well as other responsible

persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women. The guidelines specifically provide that the employer should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

The guidelines laid down were in regards to the following:

- 1. Duty of employer** - It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.
- 2. Preventive steps** - All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. These steps should ensure that appropriate work conditions are provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender. Express prohibition of sexual harassment as discussed in this case must be notified, published and circulated in appropriate ways.
- 3. Criminal Proceedings** - Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. As such the liability is put on the employer to ensure that appropriate steps are taken when such cases of sexual harassment are reported. Disciplinary actions are also to be initiated against any such perpetrator.
- 4. Complaint Mechanism** - Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee, a special counselor or other support service, including the maintenance of

confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Moreover, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either a member of an NGO or other body who is familiar with the issue of sexual harassment.

- 5. Third Party Harassment** - Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The Central Government and State Governments were also requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector. Amidst various other developments, controversies and delays, the Indian legislature finally enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013), with an objective to protect women against sexual harassment at workplace and to put in place a redressal mechanism to handle complaints.

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

In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act. Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the elements of Prohibition, Prevention and Redressal.

Scope and Ambit of the Act

The Prevention of Workplace Sexual Harassment Act extends to the 'whole of India' and stipulates that a woman shall not be subjected to sexual harassment at her workplace. Further, the Prevention of Workplace Sexual Harassment Act applies to both the organized and unorganized sectors in India. The statute, inter alia, applies to government bodies, private and public sector organisations, non-governmental organisations, organisations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals

and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house.

Section 3(1) of the Act specifically prohibits the sexual harassment of any woman at a workplace.

The complaint of sexual harassment at workplace may be made in writing to the internal committee if it is constituted or the local committee, in case it is not so constituted within a period of three months from the date of incident and in case of a series of incidents within a period of three months from the date of last incident. The committee is also empowered to extend this time limit of three months if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. If woman cannot file complaint in writing then the committee shall render all reasonable assistance to the woman for making the complaint in writing. The complainant shall submit to the complaints committee six copies of the complaint along with supporting documents and the names and addresses of the witnesses. If aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Complaints Committee

Complaints committee under the Act means Internal Committee or the Local Committee as the case may be. The Act provides for the constitution of internal complaints committee. Every employer of workplace is bound to constitute in writing the internal complaints committee. Where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the internal committee shall be constituted at all administrative units or offices. The Local Committee is set up where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

The committee shall consist of the following:

- (i) A presiding officer and other members. The presiding officer and every member of the committee shall hold office for such period not exceeding three years from the date of their nomination.³⁷ Presiding officer of the committee shall be a woman

employed at a senior level at the workplace from amongst the employees. If senior level woman employee is not available, the presiding officer shall be nominated from other offices or administrative units of the workplace. Further, in case, other offices or administrative units of the workplace do not have a senior level woman employee, the presiding officer shall be nominated from any other workplace of the same employer or other department or organization.

- (ii) Minimum two members, male or female from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
- (iii) One member shall be from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. At least one-half of the total members so nominated shall be women.

Procedure followed by the Complaints Committee:

Before initiating the inquiry, Complaints Committee on the request of the aggrieved woman may try to settle the dispute with the respondent through conciliation. In case there is no settlement and the respondent is an employee, the complaint committee shall proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exists, in such manner as may be prescribed or in case of domestic worker, the complaint committee shall, if prima facie case exists, forward the complaint to the police within a period of seven days for registering the case under section 509 of the Indian Penal Code and any other relevant provisions of the said Code. Further, where the aggrieved woman informs the complaints committee that the respondent is not complying with any term or condition of the settlement arrived through conciliation, the complaints committee shall proceed to make an inquiry into the complaint or forward the complaint to the police. In case, both the parties are employees, the parties shall during the course of inquiry be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the committee. The complaints committee shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days. The respondent shall file his reply to the complaint along with his list of documents and names and addresses of witnesses within a period not exceeding ten working days from the date of receipt of the documents.

Powers of Complaints Committee:

The Internal Complaints Committee and the Local Committee have been vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, which are:

- (i) Summoning and enforcing the attendance of any person and examining him on oath;
- (ii) Requiring the discovery and production of documents.
- (iii) Any other matter which may be prescribed.

The Committee on the written request of the aggrieved woman has the power to recommend to the employer during the pendency of the inquiry the following and the employer shall implement the recommendations:

- (i) To transfer the aggrieved woman or the respondent to any other workplace;
- (ii) To grant leave to the aggrieved woman up to a period of three months and this leave shall be in addition to the leave she would be otherwise entitled;
- (iii) To grant such other relief to the aggrieved woman as may be prescribed.
- (iv) In case, the complaints committee arrives at a conclusion that the allegation against the respondent has not been proved, it can recommend to the employer that no action is required to be taken in the matter.
- (v) In case, the complaints committee arrives at a conclusion that the allegation against the respondent has been proved, it can recommend to the employer the following:
 - (a) to take action for sexual harassment as a misconduct under the service rules or if no service rules have been made, in such manner as may be prescribed
 - (b) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs. If employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment, it may direct to the respondent to pay such sum to the aggrieved woman. If respondent fails to pay the sum, the complaints committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

Compensation to the Complainant

The complaints committee is empowered to determine the sum to be paid to the aggrieved woman. The complaints committee at the time of determining the sum shall have regard to:

- (i) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (ii) the loss in the career opportunity due to the incident of sexual harassment;
- (iii) medical expenses incurred by the victim for physical or psychiatric treatment;
- (iv) the income and financial status of the respondent;
- (v) feasibility of such payment in lump sum or in instalments.

The Complaints Committee may recommend to the employer on the written request of aggrieved woman to:

- (i) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report and assign the same to another officer
- (ii) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

Duties of the Employer

The Act also provides for the duties of the employer in case of sexual harassment. It provides that every employer shall:

- (i) Provide safe working environment at the workplace. It also includes the safety from the persons coming into contact at the workplace.
- (ii) Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the Internal Committee.
- (iii) Organise workshops and awareness programs at regular intervals for sensitizing the employees with the provisions of the Act. Organise orientation programs for the members of the Internal Committee.
- (iv) Provide necessary facilities to the internal committee or the local committee for dealing with the complaint and conducting an inquiry.

- (v) Assist in securing the attendance of respondent and witnesses before the internal committee or the local committee.
- (vi) Make available information having regard to the complaint to the internal committee or the local committee.
- (vii) Provide assistance to the aggrieved woman if she chooses to file a complaint under IPC or any other law for the time being in force.
- (viii) Cause to initiate action against the perpetrator under IPC or any other law for the time being in force 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.
- (ix) Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.
- (x) Monitor the timely submission of reports by the Internal Committee.
- (xi) The employer shall include in the annual report of his organization, the number of cases filed and disposed under this Act or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Punishment for the Employer

If the employer fails to constitute an internal committee or contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder shall be punishable with fine which may extend to fifty thousand rupees. If any employer who is convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to:

- (i) Twice the punishment which might have been imposed on a first conviction subject to the maximum punishment provided for the same offence. And in case a higher punishment is provided under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding punishment;
- (ii) The government or the local authority can cancel his license or consider withdrawal or non-renewal or approval of his license which is required for carrying on his business or activity.

Complaints committee has the power to recommend to the employer to take action against the complainant, in case, complaints committee arrives at a conclusion that the complaint has been

made maliciously and knowing it to be false or the complainant has produced any forged or misleading document. But mere inability to substantiate the complaint or provide adequate proof in support of the complaint need not attract action against the complainant. Moreover, the malicious intent on the part of the complainant shall be established by the complaints committee before recommending the action against the complainant.

Other laws in relation to sexual harassment at workplace

Apart from the specific Act on Sexual Harassment against Women at Workplace there are other legislative protections available against sexual harassment in India.

These are:

1. Industrial Employment (Standing Orders) Act, 1946

It is a central enactment which, inter alia, requires an employer to define and publish uniform conditions of employment in the form of standing orders. The standing orders should contain terms of employment including, hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays and termination or suspension/dismissal of employees. It applies to every industrial establishment wherein one hundred or more workmen are employed, or were employed on any day of the preceding twelve months. This Act extends to the whole of India. The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable. The Model Standing Orders not only define 'sexual harassment' in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that 'sexual harassment' is not limited to women under the Standing Orders Rules.

2. Indian Penal Code, 1860

Conduct that may be construed as sexual harassment, can also constitute an offence and can be penalized under the IPC. Prior to the Criminal Amendment Act, 2013 it was brought within the ambit of Section 354 which made any act outraging the modesty of a woman a crime. After the said amendment, Section 354A has been inserted to make sexual harassment

a particular offence. The following sections address the offence of sexual harassment:

- (a) **Section 294:** Obscene acts in any public place, singing obscene songs to the annoyance of others. Punishment for violation of this Section is Imprisonment for a term of up to 3 months or fine, or both.
- (b) **Section 354(A):** A man committing any physical contact, advances involving unwelcome and explicit sexual overtures; or demanding or requesting sexual favours; or showing pornography against the will of a woman; or making sexually coloured remarks, shall be guilty of the offence of sexual harassment. It entails a punishment of rigorous imprisonment for a term which may extend to three years.
- (c) **Section 509:** Uttering any word or making any gesture intended to insult the modesty of a woman and intrudes her privacy. The offender is punished with simple imprisonment for a term which may extend to three years, and also with fine.

3. The Indecent Representation of Women (Prohibition) Act, 1987

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for matters connected therewith or incidental thereto. If an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing 'indecent representation of women' they are liable for a minimum sentence of two years. According to this Act, "indecent representation of women" means the depiction in any manner of the figure of a woman; her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.

A critical analysis of the legislative protections available

Prior to the year 1997, India neither had a legislation combating the menace of sexual harassment at workplace nor was there any sturdy judicial pronouncement dealing with the same. Equality to women was guaranteed under the Constitutional safeguards provided by Articles 14, 15, 19 and 21. There did not exist any legislation that specifically dealt with the problem of sexual harassment within or outside the workplace. India is also a party to the Convention on Elimination of Discrimination Against Women. Unfortunately, despite ratifying CEDAW in 1993, India remained without an effective legislation battling the nuisance of

sexual harassment at workplace for almost 20 years until 2013 and working women in the country continued to struggle with sexual advances at the place of their work in the absence of any stringent grievance redressal mechanism. The Indian Penal Code also did not criminalize specific acts of Sexual Harassment until the Amendment Act of 2013 when Section 354A dealing with sexual harassment specifically was inserted in the Penal Code. Although there are two sections in the IPC which deals with the outraging of modesty of women namely Section 354 and 509, the term modesty has not been defined anywhere. In the case **Swapna Barman v/s Subir Das** the Supreme Court held that “Under Section 509 that the word ‘modesty’ does not lead only to the contemplation of sexual relationship of an indecent character. The section includes indecency, but does not exclude all other acts falling short of downright indecency.” Moreover, the view of the Supreme Court is that the essence of a woman’s modesty is her sex. As per the Justice Verma Committee Report, certain modifications should be done in Section 509 of the IPC. The Committee has suggested that use of words, acts or gestures that create an unwelcome threat of a sexual nature should be termed as sexual assault. Similarly in Section 294 the word obscene has been used but the word has not been defined. The meaning of the word keeps varying from place to place. It differs in accordance to the circumstances- cultural, social and economic. Moreover, the essential condition to be satisfied is that the obscene act or song must cause annoyance. Since annoyance is a mental faculty of a person, therefore it has to be derived from the facts and circumstances of the case.

The Sexual Harassment Against Women at Workplace Act, 2013 was passed in order to protect the rights of women at workplace in light of constitutional and human rights of women at national as well as international level. It is also construed as a response to the public outrage that was seen after the Nirbhaya case in 2012. It extends to the whole of India including the State of Jammu and Kashmir. It is the duty of the appropriate government to monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace. Although this Act was welcomed as a much needed step on the part of the legislature, there are certain parts which need to be further amended. Discrimination is evident in the scope and ambit of the act as it is not gender-neutral. The Act provides protection against acts of sexual harassment only for women and not men. Interestingly, various recent studies and surveys have shown that that very often, workplaces also involve women initiating and engaging in acts of sexual harassment. In a recent survey there were 527 people queried across seven cities in the country. It was found that in practicality, circumstances are not totally so as they were envisaged by the legislators.

Although, this Act is a great step forward in protection for women, it provides no mechanism to deal with situation where men are the victims of sexual harassment. According to the US Equal Employment Opportunity Commission, both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex. But the Indian laws, except the Industrial Employment (Standing Orders) Act do not deal with such situations. In Hyderabad, 29% of the respondents said they have been sexually harassed by their female bosses while 48% accused their male bosses while in Delhi 43% reported to have been sexually harassed by their female colleagues.

Under this Act, an aggrieved woman means a woman of any age who is employed or not at the workplace who alleges to have been subjected to any act of sexual harassment. It also includes domestic workers which includes a woman who is employed to do the household work in any household for remuneration whether in cash or in kind. The aggrieved woman is only one who “alleges”. But it is seen that most cases of sexual harassment go unreported. This is primarily because it would have been embarrassing to discuss such matters with their family members and moreover it would have only aggravated their problem by troubling their family members who in distress might have asked them to leave the job / education or there was some apprehension that they might have found faults with their behaviour to have “invited” the abuse. Therefore, the woman who faces such harassment does not even ‘allege’ of any such occurrence. Moreover, it has been provided under the Act that “where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.” But the Act covers women who work as domestic help. It is seen in most cases that the women are not literate. The Act does not also give any provisions for educating and sensitizing women from such backgrounds regarding the remedies available to them.

Another question that has been raised on numerous occasions is with regard to the definition of the word “employee”. The ambit of this definition is very wide. It can roughly be interpreted to include almost any male worker. This is evident by use of words like, “any work”, “regular”, “ad hoc”, “temporary”, “with contract”, “through agent”, “without agent”, “voluntary basis” etc. Therefore, this raises a greater possibility of untrue allegations for malafide reasons and gives a lot of scope for frivolous and unnecessary litigation. It has been pointed out, that in light of the increased number of complaints since the passing of this Act, the employers feel discouraged from hiring women all together. This could result a great step backward in

providing equal opportunity to women. If the case is found to be malafide, the complainant would face the same consequences, but no one really believes the latter would ever actually be carried out. Moreover, should a situation arise where a victim is unwilling to complain and an employer is aware of the situation there is no obligation under this Act to report it against the victim's wishes. The employers should be enabled to take suo-motu action, in case they come to know about such incident. And the committee should take cognizance of the complaint made by a person without consent of the aggrieved woman. Under this Act aggrieved woman is required to file a complaint under section 9 to the complaints committee. But woman should be free to file a complaint either to the committee or before any authority at the workplace and authority should be bound to transfer the complaint to the complaints committee. Aggrieved woman can file a complaint to the committee within three months of the incident and committee is empowered to extend this period up to three months in case reasonable cause of delay. She must be free to file a complaint at any time after commission of the incidence in case of reasonable cause of delay.

Under the definition of "sexual harassment" the Act defines acts that include physical contact, verbal request and showing of pornography. The provision narrows the scope of what may be construed as sexual harassment for application of this Act. Acknowledgement of technological advancements could have also been noted, so as to include all possible electronic means of sexual harassment. The definition of "sexual harassment" has also neglected to grant protection against potential victimization of the complainant by an employer. In regards to the constitution of the Internal Complaints Committee it should be noted that in-house management of complaints may act as a deterrent to victims. It is therefore suggested that the complainant need not forcibly file a complaint with the Internal Complaints Committee. A more adequate forum would be an independent employment tribunal to handle complaints in a more efficient manner, which would simultaneously be preferable to a victim. Apprehension has been expressed with respect to the disposition of the committee as a whole. The reason for it is the feminist biasness of the committee itself as it comprises of stakeholders strongly prejudiced in favour of the female sex. The most conspicuous shortcoming, however, is that the internal committee is composed of persons without any legal qualifications. This absence of training specifications for the internal complaints committee will result in an ill-equipped team and obstruct justice.

Section 10(1) provides for the settlement of the dispute through conciliation at the request of the aggrieved woman. Sexual harassment at workplace is the violation of right to work in safe

environment of women. It becomes illogical and inconceivable to ask a sexually harassed woman to reconcile with her offender. Although, it is at the request of the aggrieved women to initiate such proceedings, provisions should be made as to why the woman would want to arrive at a settlement. The provision under Section 10(4) is that no further enquiries shall be made against the offender. However, stringent disciplinary steps should be taken against the perpetrator.

Complaints committee is empowered to grant leave to the aggrieved woman during the pendency of the inquiry for up to three months. These leaves should be paid leaves and it should not be granted only on the recommendation of the ICC. The employer should be obligated to grant such leaves to the aggrieved women. If the alleged sexual harassment is proved, the committee is empowered to take action against sexual harassment in accordance with the prescribed service rules, or to deduct adequate compensation from the salary of the employee, or to recover the compensation from the accused employee. Instead drastic action, such as dismissing the accused from employment or suspending him for a considerable time period without any pay should be taken. Section 26 prescribes penalties for non-compliance with the provisions of the Act, which includes a monetary fine upto Rs.50,000, and on repetition of the same offence, could result in punishment being doubled and/or cancellation of registration of the entity or revocation of any statutory business licenses. Herein, a heavier fine along with imprisonment as a punishment should be imposed rather than cancellation of licenses as revocation of license will inflict injury on unrelated and innocent parties associated with the business of the employer as well. Moreover, the complainant is required to submit six copies of the complaint to the ICC. There should not be any need to submit six copies of the complaint before complaints committee. It should be the duty of the employer to provide copy of the complaint to all the members of the committee.

Conclusion

Sexual harassment is considered as a violation of a woman's fundamental right. It is against the human rights standards set at the international level through conventions such as the UDHR or the CEDAW. Prior to the year 1997, India neither had a legislation combating the menace of sexual harassment at workplace nor was there any sturdy judicial pronouncement dealing with the same apart from the Constitutional safeguards. The Sexual Harassment Against Women at Workplace Act as an alternative structure and process is welcome, but needs much

alteration. Helping the victims to make informed choices about the different resolution avenues, providing trained conciliators, settlement options by way of monetary compensation, an inquisitorial approach by the Committee must be adopted. After almost 4 years of its enactment, consideration must be given to the criticisms against it and thereby, adopt provisions that answer the need of the hour. The legislation appears to be further excessive in the redressal mechanisms which it has established by leaving short-comings in the powers and functions of these non-judicially equipped bodies. Moreover, some provisions could have been more leaning to the female victim, such as the provisions for conciliation and punishment for false or malicious complaints. The problematic provisions and unanswered questions present a conundrum for application of the Act, and should to be clarified for effective implementation of the Act.

Moreover, the utmost need at this time is a change in the mindset to understand the fears, compulsions, and pressures on women victims. Instead of blaming the victim for having invited such sexual advances, it is important to shift the blame to the perpetrators. The law should also bring within its ambit the situations faced by men as it also goes on to hamper their productivity just like it affects the over-all well-being of an aggrieved woman.