

SEXUAL HARASSMENT AT THE WORKPLACE ACT: A CRITICAL ANALYSIS

Written by Vedika Bhandari

5th year BA LLB Student, Jindal Global Law School

ABSTRACT: This paper would attempt to study the trajectory of rules and regulations against sexual harassment at workplace in India. In doing so, this paper would majorly focus on and examine and analyze the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Sexual Harassment of Women at Workplace Rules, 2013. Further, an attempt would be made to evaluate the success with respect to the implementation of the Act. Finally, a critique of this Act would be presented while determining the shortcomings of this Act.

INTRODUCTION: Sexual Harassment at workplace is a phenomenon that is very common throughout the world. In India too, sexual harassment at workplace is prevalent issue which poses a major challenge with respect to dignity and safety of the workmen. In India, prior to 1997, there was neither a specific legislation nor concrete precise guidelines governing prevention, protection or redressal of sexual harassment at workplace. The only option available was filing a criminal case under Section 354 or Section 509 of the Indian Penal Code, 1870. Section 354 provides for imprisonment for a maximum period of two years in case a person “assaults or uses criminal force to woman with intent to outrage her modesty.”¹ While, Section 509 deals with imprisonment for a maximum period of one year for a person who “uses any word, gesture or undertakes any act with the intention to insult the modesty of a woman.”² Hence, clearly there were no regulations specifically pertaining to sexual harassment at workplace.

¹ Section 354 of the Indian Penal Code, 1860

² Section 509 of the Indian Penal Code, 1860

Vishaka Guidelines: *Vishaka and Ors. v State of Rajasthan*³ was a landmark judgment by the Supreme Court where the Supreme Court recognized that there was a “*vacuum in the existing legislation*”⁴ and that sexual harassment at the workplace is a major issue that needs to be immediately dealt with. The Supreme Court held that sexual harassment at workplace violates basic human rights. Hence, the Supreme Court laid down various guidelines to prevent and address the issue of sexual harassment at workplace in India. Bhanwari Devi, who was a social worker and worked in Rajasthan, was brutally gang-raped. Following this, Vishakha Group for Women Education and Research (Vishaka), an NGO and four other NGO’s filed public interest litigation in the Supreme Court. The Supreme Court held that sexual harassment at workplace was in violation of the fundamental rights, especially Article 14 (Right to Equality), Article 15 (Prohibition of Discrimination), Article 19(1)(g) (Right to practice any profession or carry out any trade, occupation or business), and Article 21 (Right to Life and Personal Liberty) of the Indian Constitution. Further, the Supreme Court laid down guidelines with respect to the “duty of the employer to prevent the acts of sexual harassment in workplace, provide for procedure for resolution, set up a complaint mechanism by establishing a complaint committee in the workplace for redressal, create awareness by holding various programmes and educating the employees with regard to the equal rights of the female employees, expressly prohibit sexual harassment by, establish appropriate working conditions for women.”⁵ Importantly, the Supreme Court laid down the definition of sexual harassment and held that sexual harassment includes “*unwelcome sexually determined behavior, whether directly or by implication, as a physical contact and advances or a demand or request for sexual favours or sexually coloured remarks or showing pornography or any other unwelcome physical verbal or non-verbal conduct of sexual nature.*”⁶

³ (1997) 6 SCC 241

⁴ *Vishaka v State of Rajasthan*

⁵ *Id.*

⁶ *Id.*

The Supreme Court also stated that the Central Government must enact a legislation preventing and protecting sexual harassment at workplace as soon as possible and until such time these guidelines by the Supreme Court would hold the force of law.

Sexual Harassment of Women at Workplace Act, 2013: Despite the judgment of the Supreme Court in 1997 in the case of *Vishaka v State of Rajasthan*, it was only in 2013, i.e. 16 years later, that the Central Government enacted the legislation to provide protection, prevention and redressal against sexual harassment of women at workplace. The Act reiterated the definition of sexual harassment as was held by the Supreme Court in *Vishaka v State of Rajasthan* under Section 2(n) of the Act. In my opinion, this definition narrows down the meaning and interpretation of sexual harassment. In a world of technological advancement, sexual harassment through electronic means is a great possibility and the Act unfortunately does not include it.

Further, as was provided in the Vishaka guidelines, Section 4 of the Act provides for a setting up of an Internal Complaints Committee (ICC) by an employer who has employed ten or more people. According to Section 4, “the ICC shall consist of a Presiding Officer (defined under Section 2(l) of the Act) appointed by the employer, *who shall be a woman employed at a senior level at the workplace*, at least two members amongst the employees *who are preferably committed to the cause of women or have the required legal knowledge or have experience in social work* and one member is to be appointed from a non-governmental organization.”⁷ The Act stipulates that half of the committee members have to be women. Section 26 of the Act provides that in case the employer fails to constitute an ICC, the employer may be liable to fine to the tune of fifty thousand rupees.⁸

In case there are less than ten employees in a workplace or of the complaint is against the employer, the Act provides for a mechanism for establishing a Local Complaints Committee (LCC) under Section 5. Section 6 of the Act provides for setting up of the LCC in every district by the District Officer; defined under Section 2(d) to mean a “*District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as notified by the*

⁷ Section 4; Sexual Harassment of Women at Workplace Act, 2013

⁸ Section 26; Sexual Harassment of Women at Workplace Act, 2013

*appropriate government.*⁹ According to Section 7 of the Act, the District Officer shall nominate the members of the LCC and “shall include a *woman chairperson who is experienced in the field of social work, one woman member to be appointed amongst the ones working in block, tehsil or ward or a municipality and two members, out of which at least one shall be a woman, appointed from non-governmental organizations.*”¹⁰

COMPLAINT UNDER THE ACT: Section 9 of the Act prescribes the manner of making a complaint to the ICC or LCC, as the case may be. It provides with a time limit of three months from the date of the incident for the aggrieved woman to register a complaint against the respondent with the ICC/LCC. Further, this section provides “that only in the cases that the aggrieved woman is unable to register a complaint herself because of physical or mental incapacity, can her legal heir register her complaint on her behalf.”¹¹ Section 11 states that when the aggrieved woman makes a complaint, the ICC/LCC shall conduct an inquiry and in case a prima facie case exists against the respondent, the ICC/LCC shall forward the complaint to the police within seven days of the registering of complaint. Further, Section 11 grants immense powers to the ICC/LCC, i.e. that of a civil court under the Code of Civil Procedure, 1908 in “*summoning any person and examining him on oath and requiring the discovery and production of the documents.*”¹² In my opinion, if such immense powers are granted, then the Act must compulsorily mandate the presence of at least one legal expert in the ICC. As of now, presence of a person with legal knowledge is only an option under the Act.

The inquiry by the ICC/LCC is to be completed within ninety days from the date of filing of a complaint. Further, Section 13 of the Act provides that in case after the completion of inquiry, “the ICC/LCC holds the respondent guilty of sexual harassment, the employer or the District Officer may undertake action for misconduct in accordance with the service rules

⁹ Section 2(l); Sexual Harassment of Women at Workplace Act, 2013

¹⁰ Section 7; Sexual Harassment of Women at Workplace Act, 2013

¹¹ Section 9; Sexual Harassment of Women at Workplace Act, 2013

¹² Section 11; Sexual Harassment of Women at Workplace Act, 2013

and deduct any amount from the salary of the respondent and pay it to the aggrieved woman or her heir.”¹³

Section 18 of the Act provides for an appeal mechanism and states that “in case any party is aggrieved by the decision of the ICC/LCC, than an appeal shall lie to the labour court/labour tribunal, *depending on the service rules of the employment* within 90 days.”¹⁴

DUTIES OF THE EMPLOYER: The employer, under Section 19, is required to “provide *safe working environment for women* and make the consequences of sexual harassment clear to its employees.”¹⁵ Further, the Act demands that the employer *organize workshops and awareness programmes and treats sexual harassment as misconduct under the service rules.*¹⁶ Although, the Act does provide for the employer to conduct workshops, it fails to provide for the consequences in case the same is not conducted. Further, the Act just states that the workshops must be conducted in a timely manner. It does not define what is timely manner and how often are these workshops to be conducted. Hence, the employers could immensely misuse this provision, as there are no consequences provided within the Act in case of defiance from Section 19 of the Act and the goal of prevention of sexual harassment that this Act seeks to achieve, may never be achieved.

Sexual Harassment of Women at Workplace Rules, 2013: Along with the Act, some Rules too were enacted in 2013. Rule 6(3) provides that in case an aggrieved person is unable to file a complaint, the reason of which is not physical or mental incapacity, then any person who has the knowledge of the incident may file the complaint only with her written consent. What is left unanswered is whether the ICC/LCC can take suo moto cognizance and initiate an inquiry in case it has the knowledge of sexual harassment. It is important to address this issue, as more often than not the victims of sexual harassment are hesitant in registering a complaint.

¹³ Section 13; Sexual Harassment of Women at Workplace Act, 2013

¹⁴ Section 18; Sexual Harassment of Women at Workplace Act, 2013

¹⁵ Section 19; Sexual Harassment of Women at Workplace Act, 2013

¹⁶ *Id.*

Section 21 of the Act along with Rule 14 mandates the ICC/LCC to submit an annual report every year with respect to “number of cases reported and disposed off, nature of action taken by the employer/District Officer and number of workshops conducted.”¹⁷

SHORTCOMINGS: The Act only covers women thereby implying that only women can be sexually harassed. There are various reports that suggest that even men and transgender people could be sexually harassed.¹⁸ Further, there is a lack of knowledge of the Act in the organizations and hence essentially the Act isn’t implemented. The Act is present in paper, but the implementation rate is extremely low. Further, as per a report, “70% of the working women do not report sexual harassment at workplace due to fear of repercussions.”¹⁹ Additionally, “the ambit of the Act is not wide enough to cover harassment by the boss or colleagues at a party as the Act entails only sexual harassment during the course of employment or arising out of the employment.”²⁰

CONCLUSION: Although, the Act does provide for a redress mechanism within the workplace, it is not short of loopholes, as mentioned above. It is important that proper implementation of the Act is done, awareness regarding the Act is created and the employers undertake prevention mechanism as provided under the Act in order to ensure gender equality and provide safe working environment for both women and men.

¹⁷ Rule 21; Sexual Harassment of Women at Workplace Rules, 2013

¹⁸ Even Men Aren’t Safe From Sexual Harassment At Workplace: Survey *available at* <http://economictimes.indiatimes.com/magazines/sunday-et/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms> (last visited April 13, 2017)

¹⁹ Despite Law 70% Working Woman Don’t Report Workplace Sexual Harassment *available at* <http://economictimes.indiatimes.com/news/company/corporate-trends/despite-law-70-working-women-dont-report-workplace-sexual-harassment/articleshow/57464870.cms> (last visited April 14, 2017)

²⁰ Will the Anti Sexual Harassment Act be truly effective? <http://blogs.economictimes.indiatimes.com/lawstreet/will-the-anti-sexual-harassment-act-be-truly-effective/> (last visited April 14, 2017)