

# **SEXUAL HARASSMENT AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESAL) ACT 2013: ASSERTION FOR WOMEN'S EMPOWERMENT IN INDIA**

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## **Introduction:**

Development of society today means development of all sections of society without caste, class, religion and gender bias. As women comprise half of the Indian population, their development cannot be ignored from the developmental agenda. As Indian society is patriarchal in nature, women suffered discrimination, oppression and injustice from time immemorial. Patriarchy is existing in different forms at multiple levels, from family, community and from the patriarchal state itself. Not only had the patriarchal structure of the society, the religious texts and practices, scriptures, and tradition perpetuated the second class status of the women which created a dominant mindset of their male counterpart. Many religious texts project women as impure and their role confine to the reproduction, and due to this there is no freedom and opportunity for self development. Chastity, virginity was the tool to control the women within the four walls of their home. But the women were not safe even inside the fourwalls of their home and she faced violence even in the midst of their own family members. As per the tradition women don't have any freedom and in her life cycle she is continuously dependent on father, husband and son. It is due to the pioneering efforts of Raja Ram Mohan Roy, Swami Dayanand Saraswati, Ramakrishna Paramahansa, Jyotibha Phule, Savithri Bai Phule, and Dr. Ambedkar that Indian women was able to break the chains of subjugation to an extent. Today women surpass in various fields of human enterprise in parity with men. They are able to move outside the four walls of home to explore the world and to excel in their personality. To achieve the goal of women's empowerment it is clear that women's economic independence is inevitable. But while working in diverse fields outside home women are subjected to gender specific sexual harassment which is a violation of women's right to life, equality, liberty which adversely affects her work participation and thereby social and economic empowerment. Sexual harassment is any sexually oriented practice that endangers an

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individual's continued employment negatively affects his or her work performance, or undermines his or her sense of personal dignity. Empowering women to fully participate in economic life across all sectors is essential to build stronger economies, achieve internationally agreed goals for development and sustainability, and improve the quality of life for women, men, families and communities.

It is the "Bhavari Devi case" which led to the laying down of Vishaka guidelines by the Supreme Court and with this the question of sexual harassment of women at workplace came to the fore in academic and legal forums. In the Bhawari Devi case Supreme Court reiterated the need for specific legislations dealing with sexual harassment at work place as there is no legislation in India which address sexual harassment at workplace. The Indian parliament enacted Sexual Harassment of women at workplace (prevention, prohibition and Redressal) Act 2013, after the Nirbhaya case and Justice Verma Committee, which is a desirable positive step towards economic empowerment of women and a violent free workplace. This paper is attempt to analyse how the Act is useful in achieving the goal of women's empowerment and also it tries to unearth the ground realities on the ground, and the obstacles in the proper implementation of its act and possible solutions through suggestion and recommendations.

"As sexual harassment strike at the heart of women's economic self sufficiency, disrupting women's earning capacity by forcing them out of workplace or school" There are two categories of sexual harassment. The first is "quid pro quo harassment" where the sexual harassment consists of demands accompanied by the threat of consequences in job if the demands are refused. The second one is "hostile environment" where the harassment consists of conduct that renders the environment at the workplace offensive or derogatory to the victim due to her gender . Sexual harassment at workplace has serious emotional, physical , psychological impact on the victim and affects the self development, confidence and work potential. Sexual harassment at work place violates the rights embodied in the Article 14, 15, 19(1) and 21 of the constitution of India. It also violates the Article 11 of the Convention on Elimination of all forms of Discrimination against Women (CEDAW) . The harassment lead to absenteeism, decrease in efficiency, lack of concentration, and resignation and affects women's overall economic self sufficiency. Along with this the typical Indian mindset will not allows them to report the harassment due to the shame, social stigma which forces them to bear the injustice instead of revolting. So sexual harassment at

workplace is the threat to the status of women, emancipation of women and thereby a peril to the national development.

### **Salient features of the Act**

Based on the background of the Vishaka guidelines laid down by the Supreme Court, the objective of the Act is to “enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of age, employment status, free from all forms of sexual harassment”. The definition of Sexual harassment includes any or more of the following unwelcome acts or behaviour namely, Physical contact and advances or a demand or request for sexual favours or making sexually coloured remarks or showing pornography or any other unwelcome physical, verbal or non verbal conduct of sexual nature. Section 2 of the Act contains definition. The definition of “Employee” is very broad covering persons employed on regular, temporary, adhoc or on daily wages and even includes contract worker, probationer, trainee and apprentices etc. The definition of “workplace” is too wide which includes government sector, private sector organisations, hospitals, nursing homes, sports institutions and even a dwelling place, or a house is included in the definition. The act provides for twofold redressal mechanism internal complaint committee and local complaint committee. It has been made obligatory for every employer who employs more than ten employees to constitute an internal complaint committee. Its presiding officer should be a woman employed at a senior level. At least half of the members should be woman and at least two members must be from employees. An NGO or a member of an NGO must be included in the committee. A local complaints committee having jurisdiction over a district is to be constituted under this Act.

### **Procedure:**

When an aggrieved woman makes a complaint in writing to the internal complaint committee (ICC) about the sexual harassment at workplace, then the committee will have to take steps to settle the matter through conciliation. Monetary benefit and settlement is totally prohibited under this Act. Where the respondent is an employee then the ICC shall proceed as per the service rules applicable to him. If the respondent is an employer then the matter must be dealt with the local complaints committee (LCC). If on inquiry it is found that a prima facie case is in existence then the LCC/ICC should register a case under section 509 or other relevant provisions of the Indian Penal Code. During the pendency of complaint, the aggrieved women may ask for her transfer or

transfer of the respondent to another workplace. She can also be granted leave for three months. On the completion of enquiry the ICC/LCC should send their report within a period of 10 days. If allegations of the sexual harassment are proved then the committee shall recommend to the employer or the district officer to take action for the sexual harassment as misconduct according to the service rules. It can also recommend for the deduction of money from the wages of the respondent. Under section 29, of the Act, the government is empowered to make rules for the effective implementation of the Act. Also action can be taken against a woman who makes a false complaint or malicious complaint or produces forged or misleading document. For determining the quantum of compensation, mental trauma, pain, suffering and emotional stress, loss of career opportunity etc are to be taken into consideration. The complaints and inquiry proceedings about sexual harassment are not to be published or made known to the public, press and media in any manner.

#### **Analysis:**

Indians are too proactive in enacting laws due to the pressure built in society but government lack the will power to implement these laws as the redressal mechanisms mentioned in the act is nonexistent, which makes the laws ineffective on the ground. The definition of sexual harassment must include the newer forms of harassment through technology like photos, videos, Emails, MMS, SMS, and other electronic methods. In many institutions the internal complaint committee's does not exist and if it is there its functioning is not satisfactory. They seem to be only the ornamental bodies established to fulfil the obligations under the law and meetings of ICC/LCC is becoming only a formality without any serious initiatives of gender justice. Even though sexual harassment at workplace is a usual phenomena many of the higher authorities or heads of the institutions deny the happenings of such incidences and they fear that this law may be misused by women employees. If the woman employee is negligent in her duties or not ready to obey the orders of the boss if he takes action against her she may threaten her with the allegations of sexual harassment, which is not conducive for the proper implementation of this law. At the same time women are not aware of the law and their rights which force them to suffer the harassment in silence. As there are many myths regarding this act there is need to discuss and to create positive public opinion for the positive implementation of this Act. Sensitization of law enforcement agencies, heads of the departments, and officers must be the first priority. As the root cause for the

sexual harassment of women is the patriarchal society and its gender discriminatory attitude towards women. For this enacting laws is not enough, gender sensitization and internalization of new values through mass awareness, mass media, awakening programs and value based education is crucial. If women make a false complaints or a malicious complaint she is held liable under this act But if the woman is really a victim of sexual harassment but not able to substantiate her claim, remains liable under this act. Sexual harassment is a subjective concept and is very difficult to prove through prima facie evidence. What is harassment for one may not be harassment for other due to the cultural specificity and prejudiced position and socio economic condition, evidence rarely will be at her disposal. This condition is unfavourable to women and due to this many women will be hesitant to report the harassment. Factors like humiliation, stigmatization, fear docile and submissive attitude of the women, society portrays the victim herself is perceived to be responsible for sexual harassment. Eventhough the prohibition of publication of the complaints and proceedings of ICC/LCC are favourable to women, there is no mechanism to monitor whether these committees are functioning properly or not. Due to the veil of secrecy there is no data available, for measuring the gravity of incidences of sexual harassment of women at workplace. Keeping the identity confidential, it is essential to maintain the data relating to sexual harassment at workplace should be made available to academicians and research scholars which will only help to monitor and assess the functioning's of the committees created under this act and the act itself. Moreover the capitalism and globalism even though providing more avenues for women, without protective mechanisms, the fruits of the globalism is not reaching to the skilled women even. The aggrieved women's freedom of speech and expression and freedom of movement and their free participation in work place is drastically affected. The acts of harassment at workplace violate victim's freedom to work and create a hostile and uncomfortable working environment. The globalism to women is like a deep odyssey with deep costs.

### **Conclusion:**

Through the analysis we come to know that due to patriarchal structure of the society and capitalist economy the expectation from women is high but without safety mechanisms, lack of infrastructure, persistence of patriarchal mindset only enacting laws is not the solution for women's issues in India. Empowerment is a comprehensive term, a psychological sense of control of one's lives and resources, with social influence, economic self-sufficiency, political power and



legal rights. Amartya Sen 1998 Global Prize winner for Economics, said that when you have some rights but you cannot read and don't know what your rights are and you may find that your rights are violated. Women's right to work cannot always be taken for granted like other rights. For women in India as everywhere else, right to gainful employment is far more than just a matter of survival. Moreover, political will and effective implementation mechanisms and monitoring and evaluation is crucial to fulfil the objectives of the law. Only then this law will be a positive initiative and a landmark to women's economic self-sufficiency and empowerment. Along with the state, media, women's organisation, women's leadership, NGOs, social activists and education should take collective initiatives to create awareness in the society about this act. It is the responsibility of the civil society to keep vigilance and build pressure for the effective implementation. PIL (Public interest Litigation ) may be effectively used in cases of sexual harassment at workplace State and society will have to work hand in hand for the effective functioning of any laws. The petty politics and political pressures must not hamper the execution of women reforms. India need to powerfully implement Uniform Civil Code to stop all the sufferings of the women in the name of religious, social and cultural traditions. Law as such is not problematic, but the style of functioning of the law enforcing machinery is not willing to perform efficiently. The implementation of this law is vital to maintain the promise of our democratic constitution and the citizenship based on equality and justice. In the era of globalisation, nuclear families, before reserving seats for women what is needed is democratisation of family, accepting her individuality and elimination of poverty as there is close link between human rights, democracy and development. To conclude, Justice Krishna Iyer in his scholarly paper Human right to be Women, remarks with militant zeal in his inimitable style, "Freedom is indivisible between men and women. Either both or neither so women power shall break its promethean chain and emerge unbound through law if possible and against the law if necessary".