

## **A Study on the Legislative Measures to Protect Women at Work Places**

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### **ABSTRACT**

*Sexual harassment at workplace has become a serious problem for the women at workplaces as most of the women are found suffering from this evil. Under the articles of 14[2] and 15[3], the term of gender equality is mentioned and it is regarded as the fundamental right of women to choose any profession having safe environment in terms of their protection.*

*But, this sexual harassment violates this fundamental rights of women. Hence, many laws are made in order to secure the protection of women at workplaces and hard punishments are facilitated for the persons who are found guilty of sexually harassing at workplaces. The current paper highlights the legislative measures for the protection of women rights at work place.*

### **KEYWORDS:**

Harassment, Workplace, Law, Women

### **INTRODUCTION**

With the increase in the modernization in Indian society, the trend of doing job has been increased in recent years in India. Now, the females want to be financially independent and hence, they prefer doing the jobs. In some cases, it is also observed that some females have to do jobs to strengthen the economic condition of their houses. Hence, a number of women can be seen doing jobs especially in urban areas.

This trend is good as far as the progress of the women in every field of life is concerned. But, there are some side-effects of this trend as a number of cases are reported regarding sexual harassment of women at work place. This is very serious issue as many females are tortured mentally and physically at the work places.

To overcome this insecurity among the working women, Section 354A of the Indian Penal Code was included in the Criminal Law Amendment Act of 2013 where the terms related to sexual harassment and its related offences are mentioned in association with the specification of punishment for the same.

This Section 354A defines sexual harassment as unwanted physical relations, forcefully showing some sexual images or videos. A punishment up to three years is facilitated under this section with a provision of fine as well.

Section 354B considers forcefully undressing a woman as a part of sexual harassment and a punishment of the imprisonment up to seven years and a fine are specified under this section.

On the other hand, Section 354C; considers the watching or storing the images of a woman without her permission is regarded as harassment and an imprisonment of up to three years and a fine are mentioned as punishment under this section.

Additionally, Section 354D states trying to make contact with a woman despite her refusal is an act of harassment and the imprisonment of up to three years is mentioned here.

Despite these laws, still; a number of cases are observed regarding sexual harassment done at working women. In some cases, the suffering women are told not to complain otherwise their family members would be killed.

And, in some cases, it is observed that the accused persons get released by the court due to lack of evidences as all the evidences are destroyed or changed with the help of money and power used by the accused person. This shows some kind of limitation on our laws and these laws needed to be strengthened more in order to protect the fundamental rights of women working at work place as there are a lot of issues regarding their security

due to the fact that some of the work places have not safe environment to work for the women.

### **LEGISLATIVE MEASURES TO PROTECT WOMEN AT WORK PLACES**

Before the Vishaka guidelines came into picture, the women had to take matter of Sexual Harassment at Workplace through lodging a complaint under Sec 354 and 509 of IPC.

Sexual Harassment as we know has become a global problem which is a kind of violence against women. International community has recognized in their International treaties and documents, the protection from Sexual Harassment as a human rights of women. All the legal instruments dealing with this matter have been laid down to protect life and liberty and these instruments have been used as a means to curb and address this issue.

In India until the Vishaka's judgment was given out, there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW). The Indian Constitution had grounded provisions in the form of fundamental rights.

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual

harassment. Without chauvinism to the generality of this obligation they should take the following measures:

- a. Express prohibition of sexual harassment at the work place should be notified, published and circulated in appropriate ways.
- b. The rules of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for adequate and appropriate penalties against the offender.
- c. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (standing orders) Act, 1946.
- d. Appropriate work conditions should be 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.

### **Criminal Proceedings-**

Where such conduct amounts to an offence under the IPC or under any other law, the employer shall initiate appropriate action in accordance with law by making complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized

or discriminated against while dealing with complaints of sexual harassment.

India did not have any legislation till the Bill for the Protection of Women from Sexual Harassment was moved in the Parliament in the year 2005. After a 10 long years gap in 2010, the Bill was in the Lok Sabha with slight changes in the old Bill.

The new Bill defined “sexual harassment” and also provided for a redressal mechanism through “Internal Complaints Committee” in the workplace or “Local Complaints Committee” at the district level. Women who are employed as well as those who enter the workplace as clients, customers or apprentices besides the students and research scholars in colleges and universities and patients in hospitals are sought to be covered under the proposed legislation.

However, domestic workers working at home are not covered. Additionally, there were problems regarding the action to be taken against false and malicious charges or complaints, subsequently to solve this issue the Parliamentary Standing Committee in June 2011, submitted recommendations to remove false and malicious charges.

Then the newer version of the Bill retained the action against false and malicious charges by ICC or Local Committee against the Complaint under Section 14.

According to Section 13 of the Bill there are two stages of enquiry, one is once the charges are found and proved the report of the same must be sent to the DC (Disciplinary Committee) and it will take action as per the service rules. This is again a time consuming process, where the victim has to produce the evidences again and go through cross examination, which is a kind of mental torture to the victim.

## **DISCUSSION**

The case may be different with a private sector regarding the second process of enquiry, these stages or traditions are acting against the value Constitution of ICC.

In relation to this, the Apex Court in case of Medha Kotwal has clearly laid down that the report of the committee is final and the disciplinary committee is vested with the power to give punishment and to conduct second enquiry. Till the new Act of 2013, came into effect; the problem of sexual harassment was governed by the guidelines laid down by the Vishaka's case in the year 1997. The main objective of the Act was to implement the guidelines and to ensure an access a safe workplace by woman.

Until the enactment of this law, vicarious liability on sexual harassment at the workplace was non-existent. However, while the Government of

India has been taking steps to monitor implementation of the 2013 Act in government offices, there is an absence of mechanism to check execution in the private sector. The damage that is happening as a result of state apathy is unpardonable and irreparable.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was a response to the public outrage over what has come to be known as the Nirbhaya case. The redress forum under the Act is an Internal Complaints Committee appointed by the employer to be comprised of a woman senior employee, two other employees, and a social worker; it is mandated that at least half the committee must be constituted of women. Where such a committee is not set up by the employer, or where the complaint is against the employer himself, a provision is made for the setting up, by the District Magistrate, of a panel drawn from social workers and NGOs.

Based upon the complaint of the victim, the Committee is to conduct an inquiry and submit its recommendations to the employer (or District Magistrate), who is required to take action on the same. Where an offence is made out, the punishment for misconduct is as per the service rules of the employer; where no such rules exist, then as per the Rules under the Act. Under the Act, redress ranges from apology and censure to withholding promotion and increments, and stretches to termination.



The Act, however, is silent on the situation where the employer's service rules contain less stringent provisions.

Section 10 provides the possibility for conciliation between the parties to be undertaken by the Committee prior to inquiry; this can be done only at the request of the victim. Conciliation is the process where a neutral engages with the parties to try and arrive at a settlement of their differences and disputes. The process has been in vogue in our industrial dispute enactments and in matrimonial litigation proceedings.

Under the synonymous term of mediation, it is increasingly a feature of the country's courts, many of which have set up their own mediation centres, offering the service free of charge in thousands of cases where lawyers trained in the process mediate a range of commercial, property, and divorce disputes. The advantages are several — it enables better communication and understanding, is conducted in a confidential setting, and seeks a solution acceptable to both sides. At first sight, therefore, it seems quite reasonable to contemplate conciliation being used in sexual harassment cases.

However, this is an area where we have to tread warily, and certainly not rush in. Sexual harassment cases usually have a marked power imbalance between the victim and the accused; this is implicit in the nature of the offence. This may well affect the negotiation scenario, with

the victim being unable to hold her own, and end with a result advantageous to the other side.

## **CONCLUSION**

Sexual harassment is a serious problem in the workplace and it has become one that receives a lot of negative attention. However, India is a late entrant in formalizing sexual harassment at workplace as a penal offence punishable with imprisonment and penalty.

The harsh reality of sexual harassment cases at workplace is that there is more to worry about under-reporting than people misusing the law. With the advent of the present legislation, a paradigm shift can be noticed in the way employers are made liable for the breach of law by its employees.

## **REFERENCES**

- [1] (1997) 6 SCC 241, AIR 1997 SC 3011.
- [2] Article 14- Equality before law
- [3] Article 15- Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- [4] Article 21- Right to life and personal liberty
- [5] Article 19 (1)(g)
- [6] AIR 1997 SC 3011
- [7] Medha Kotwal Lele vs. Union of India and others, (2013) 1 SCC 297