European Journal of Business & Social Sciences
Available at https://ejbss.org/

ISSN: 2235-767X
Volume 07 Issue 03
March 2019

Sexual Harassment at the Workplace Act, 2013

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ABSTRACT: Actually, sexual harassment is earnestly harming and makes a disastrous, insufficient environment at the workplace. Today, it is a hazardous issue found in the workplace in India which has transformed into the basic factor for reducing the idea of working life. However, it is neither new nor phenomenal, rather than it isn't represented or talked sufficiently about at any workplace by and large. The fact is that at the key level, it is a show of male transcendence and the inherent inability to oversee women at standard with men. Moreover, its impacts and effects are whittling down rates of women in greater associations wherein authoritative positions the extent of women dwindled further. Today, the rate of sexual harassment is growing well-ordered and the law which is adequately strict ought to be totally associated. Keeping the fact in view the 2013 Act is the codification of Supreme Court in Vishakha Guidelines, which sees that every woman has the benefit to live with dignity without any discrimination and it is the basic human right in the modern world for every individual working woman. The present research paper makes a review of Sexual Harassment at the Workplace Act, 2013 and also gives some suggestions for the improvement in the existing scenario of this Act.

KEYWORDS: Workplace, Sexual Harassment, Female Workers, Vishakha Guidelines.

INTRODUCTION: It is a well-known fact that sexual harassment essentially constitutes overt physical acts and is a major misconception in extending the ambit of the definition. The psychological element, including any subtle gesture or innuendo, is equally important. Women across all ages and professions face the problem of sexual harassment. Today, the working women feel unsafe at the workplace and some professions and positions are more vulnerable

ISSN: 2235-767X
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than others. For example, women working in the film and modeling industries or those in the position of new recruits in private organizations or institutions are likely to be more prone to the menace of sexual harassment either due to the very nature of their profession or by being the junior most in the hierarchy of an organization headed by men. Most of the scholars are agree with the fact that no profession is truly and totally free from this problem and no woman is truly protected despite the legislative and organizational frameworks claiming to protect them. There are a large number of women who suffer in silence due to existing social norms and weakness of existing laws. Actually, it is the improper use of power to extort sexual gratification and reflects a power relationship that is exploitative. It results from a misuse of power and not necessarily sexual attraction. Moreover, it reflects a disparity in power between the perpetrator and the victim, which more often than not, mirrors the power differentials between men and women in society.

Most of the law scholars and jurists have emphasized that such conduct is objectionable because it does not only interfere with the personal life of the victim but also severely damages the victim's abilities and dignity in the family as well as in the society. Actually, Sexual Harassment is deeply rooted in the patriarchal societal setup where male power dominates and it can be seen as a form of discrimination based on sex since the expression of sexuality in the workplace. It is considered prejudicial to the dignity of women, aimed to maintain the system of exploitation based on unequal economic and social structures thriving in an atmosphere of threat, terror and reprisal. This is particularly true in India, where there is a deep rooted gender bias against women, manifesting itself in high rates of female infanticide and sexual violence against women. Hence, unfavorable working conditions for women by undermining their capabilities as workers is quite prevalent in the Indian context. Thus, essentially, sexual harassment constitutes one of the components of the wider problem of sex based discrimination against women in India. In case of working women, it seeks to institutionalize the subordination of women. That is why;

ISSN: 2235-767X
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Sexual Harassment has attracted the attention of law makers in the recent years. Consequently, this Act was framed and implemented to tackle with the problem.

Vishaka Guidelines: These guidelines are known as milestone in the history of women rights. In the year of 1997, the Hon'ble Supreme Court of India, in the case of Vishaka and Others Vs. State of Rajasthan acknowledged the gravity of sexual harassment of the working women at the workplaces and laid down guidelines making it mandatory for employers to prevent the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. Now, it was held by the Hon'ble Supreme Court that these guidelines would be strictly implemented in all work places for the prevention of Sexual Harassment and enforcement of the right to gender equality of the working women given in the constitution of India. In spite of this, it was observed by various Courts from time to time in the past that the guidelines and norms framed by the Hon'ble Supreme Court in Vishaka Judgment have not been followed in workplaces strictly. The increasing work participation rate of women made it imperative for enacting a comprehensive legislation focusing on prevention of sexual harassment as well as providing a redressal mechanism. Therefore, the Act-2013 came into existence.

Sexual Harassment at the Workplace Act, 2013: The fact is that all women parliamentarians of Indian legislature provided their concern and sensitiveness to the matter of sexual harassment. That is why a Bill was moved by Ms. Kamla Sinha in the parliament in May 1994 to provide for the prevention of sexual harassment of women employees at their workplace. In the statement of objects and reason, it was explained by Ms. Sinha that almost in every field of economic activity women form a large part of the workforce. But the working women are compelled to work in the worst service conditions and work environments. Moreover, they are harassed sexually at the workplace by their male colleagues, bosses, employers and others. Though offences like physical assault and molestation have been made punishable under the Indian penal code, yet working women feel insecure since all aspects are not covered by that code. Accordingly an urgent need

ISSN: 2235-767X
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is felt to deal with the situation more stringently. The Bill therefore, takes care of the offences related to sexual harassment of women at workplace.

However, before initiation of this Bill Bhanwari Devi, a rural change agent, was engaged as a sathin(friend) by the state of Rajasthan in 1992 to work towards the prevention of the practice of child marriage. During the course of her work she prevented the marriage of one year old girl in the community. Her work was met with indignation and attracted harassment from men of that community. Bhanvari Devi reported this to the local authority but no action was taken. That omission came to a big cost, Bhanvari was subsequently gang raped by those men. Based on the facts of Bhanwari Devi case a PIL (Public Interest Litigation) was filed by Vishaka and other women groups against the state of Rajasthan and union of India before the supreme court of India. Subsequently the three judge bench of the supreme court of India passed a major judgment in 1997 commonly referred to as the Vishaka judgment to be followed by all foundations while transacting with preventive and redress of sexual harassment. The judgment recognizes and defines sexual harassment of women at workplace for the first time. Before the judgment of 1997, the only recourse women workers experiencing sexual harassment at workplace had was lodging complaint under sections of Indian penal code. Further organizations, foundations, establishments and employees do not approach any accountability towards safety and security of their women colleagues. After this number of commitments and concerns were put forth by many of organizations one among them was the National Commission for Women which submitted drafts of a Code of Conduct for the Workplace in 2000, 2003, 2004, 2006 and 2010.

In this regard a Bill was introduced in 2007 by the then Women and Child Development minister, Krishna Tirath. It was known as The Protection of Women against Sexual Harassment at Workplace Bill. The Bill was approved in January 2010 by the Union Cabinet and was laid before the Lok Sabha in December 2010.Consequently, the Bill was referred to the Parliamentary Standing Committee which published its report in November 2011. Further, in May 2012 the Cabinet made some basic amendments in the Bill and it was passed by the Lok Sabha in

ISSN: 2235-767X
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September 2012. The Rajya Sabha communicated its final decision on the Bill in February 2013. Finally, it was signed by the President in April 2013 and came into force on December 9, 2013 as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

- This Act preserves the essence of the Vishakha Guidelines, and expands on its provisions.
- It widens the definition of 'aggrieved woman' to include all women, irrespective of age and employment status.
- It covers clients, customers and domestic workers. It expands 'workplace' beyond traditional offices to include all kinds of organizations across sectors, even non-traditional workplaces and places visited by employees for work.
- It mandates the constitution of the Internal Complaint Committee (ICC) and utters the action to be taken if an ICC is not formed, and the filing of an audit report of the number of complaints and action taken at the end of the year.
- It enlists the duties of the employer, like organizing regular workshops and awareness programs to educate employees about the Act, and conducting orientation programs for the members of the ICC. If the employer fails to constitute an ICC, or does not abide by any other provision, they must pay a fine of up to 50,000. If the offender is a repeat offender, the fine gets doubled. If the employer has been previously convicted of an offence under the Act, he shall be convicted for twice the punishment, and the second offence can also lead to cancellation or non-renewal of his license.
- A Metropolitan Magistrate or a Judicial Magistrate of the first class shall try the offence punishable under the Act. All this has provided women working in an organization either in government or private divisions a sense of security from sexual assault. By providing them a secure working environment they may develop best out of them.

Questionable Provisions of the Act: However, this Act within the purview of the employers' responsibility -- in preventing, prohibiting and redressing cases of sexual harassment is very clear. Therefore, the law should be welcomed to the extent that it makes the establishment responsible

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in the first three scenarios. But it might have gone overboard by making the fourth situation the remit of the employer. How can an establishment be responsible when neither of the two parties is its employee? This is not the only provision of the sexual harassment law that can be questioned. For example, it allows the Internal Committee inquiring into the complaints to arrive at a 'settlement' involving the harasser and the harassed. Therefore, any settlement has come to be looked upon as a pejorative with its implications of a compromise, and wheeling and dealing. Actually, the sexual harassment law does not permit settlement on condition of payment of monetary compensation, but does allow settlement involving an adverse entry in the employee's record book as well as deduction from his dues. Both smack of silence being bought, with a slap on the wrist for the harasser. The law gives the harassed woman the right to file a complaint before the magistrate as an alternative to filing a complaint with the internal or local committee where the latter does not exist.

Suggestions: Here are some of the suggestions and recommendation which will help in prevention of sexual harassment incidents at workplace:

- All the organizations or institutions should train their employees about sexual harassment and its legal implications where it is suitable.
- More and more seminars, workshops and mock drills should be organized by the competent authority about the evil practice of sexual harassment.
- We should create maximum job opportunity and promotion reserved for women which will help them not get emotionally tracked and avoid their future worry.
- There should be Internal complaints committee and grievance cells in every organizational setup wither it is governmental or private, to monitor the cases of sexual harassment.
- There should be legal awareness programmes arranged and organized by each department under government and private sectors which will familiar the women employees about their rights and privileges.

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- The NGOs should also organize awareness programs for working women.
- There should be a strong redressal mechanism to combat the evil of Sexual Harassment.

CONCLUSION: Thus, we can point out that the enactment of the 2013 Act is a significant step forward to protect women from sexual harassment as well as to provide redressal forum to the victims. However, the Act has its own loopholes, but it has brought about a paradigm shift in the work culture. The fact is that the Sexual Harassment Act-2013 has helped to create a healthy and safe environment for working women by adhering the Act and by enacting an effective policy for their organization in the preview of Vishakha guidelines. Now, it is hoped that this Act can bring a radical change for the women in workplace. It has been acknowledgment as the battle for the human rights of working women. However, we have to do a lot of work in this direction with full letter and spirit.

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ISSN: 2235-767X
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