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ANALYSIS OF THE LAW AGAINST SEXUAL HARASSMENT IN INDIA

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Abstract

The community can barely advance further if fifty percent of its citizens are kept back from participating in society's growth, which is largely dependent on their sense of security and contentment. Women have battled overcome prejudice based on gender, exploitation, and worse, harassment, which is a problem that exists regrettably everywhere. Every twelve minutes, a woman in India is forced into prostitution. It has emerged from gender discriminatory views and is a complicated interaction of power dynamics between gender and sexuality, being disrespectful towards human dignity, human rights, and gender equality. Globally, sexual assault is a persistent issue. To deal with the impacts of this kind of issue, several worldwide areas have taken action. The characteristics of women are changing quickly in India as a result of Industrialisation, Globalisation, and progress in many sectors. This article will examine the legal situation of sex harassment at work for women in India.

Keywords: women, sexual, harassment, workplace, Rights.

I. Introduction

India recently celebrated its 75th anniversary of independence, and throughout that time, it truly made great strides in many spheres of life. Thanks to the federal government and the law, India is not simply an excellent example of a democracy today but also a rising worldwide force. All of this would not have been achieved if that we as a nation and their forebears had not properly recognized and corrected our flaws. India's power comes from its forward-thinking outlook and self-improvement efforts. There were additionally problems with issues related to gender. In the early days of India, women's status had been relatively conventional and patriarchal, but legislative changes led to their freedom.

Today's women venture outside the four walls of home to obtain monetary security and social recognition. They have access to education and jobs. The opposite page, however, is crammed with stories about crimes against women, while the first page features news about women's

accomplishments. Ironically, as we can see from the rise in instances of sexual assault of women at work, with more possibilities for women also came new an opportunity to exploit them. Today's women venture outside within the confines of the home to obtain independence from money and social recognition. An atmosphere at work that is hostile, frightening, unpleasant and humiliating treatment that might endanger her health or safety. They have access to training and jobs. But while there are stories about women's accomplishments on one page, there are headlines on the other side.²³

II. Legal Remedy

The Right to Life as well as Liberty (Article 21), which guarantees a person's dignity and safety, and the Fundamental Right to Equality (Article 14), which includes equal treatment for men and women and protection, are both enshrined

²³ Rica Bhattacharyya, *Sexual Harassment cases rise as work from office resumes*, ETPRIME (Oct 12, 2022, 11:59 AM IST), <https://economictimes.indiatimes.com/news/company/corporate-trends/sexual-harassment>

in the Indian Constitution's fundamental framework. Similar rules have been broken in *Vishakha v State of Rajasthan*²⁴ – where a gang-rape victim's case had been dropped due to a lack of evidence, which had sparked grassroots campaign for gender equality and along the way, the development of the "Vishakha Guidelines" for workplace sexual harassment. A victim of employment sexual harassment had only the option of filing a complaint on Section 354 "criminal assault against a woman to enrage her" prior to this case in 1997. However, seventeen years after the Vishakha case recommendations, the provisions of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act 2013 was approved by the Lok Sabha on the third of September 2012, and the Rajya Sabha on February 26, 2013, and it was notified on April 23, 2013.

III. Details and Scope

Sexual harassment has negative effects on the offender, the organization, and other employees in addition to the victim. To prevent undue influence, every employer must establish a "Internal Complaints Committee (ICC)" in workplaces with 10 or more employees, with a majority of women members. If this requirement is not met, the right government agency notify a District Magistrate, Collector, or Officer and their office "Local Committee (LCC)". This also includes domestic workers and the unorganized sector. If the allegations of sex discrimination are found to be true, the employer must act "in keeping with the stipulations of the service rules," which may differ at different establishments. For example, the employer may deduct money from the perpetrator's pay to cover their suffering and psychological anguish, the victim's lost career opportunities, their medical costs, etc. Additionally, the Committees may attempt informal negotiations and mediation between those involved at the request of the lady who was wronged. If either side is unsatisfied, they have 90 days to file a

court appeal. Instances reported under both the Indian Penal Code section 354A²⁵ and Section 509²⁶. If proven, are punishable by up to three years in jail, a fine, or both if not released on bond. Additionally, the fourteenth provision of the Act offers defences against untrue or malicious accusations.²⁷

IV. Importance

The POSH Act, which directly targets the forthcoming challenges and crimes against women have been confronting, was essential to ensuring the advancement of women. This historic law was passed to create a safe and courteous workplace that was free from exploitation and prejudice. The most prominent aspect of the Act is the composition of the ICC, which must have a senior woman chairperson, two or more members with social or legal experiences, a representative from an NGO, and at least half of its members be female. The Act covers all women, regardless of age or employment status, organised or haphazard sector, either the public or private sector, whether they are clients, customers, domestic workers, students, or patients at healthcare facilities, educational institutions, sporting events, or non-traditional workplaces, etc. It also stipulates a timeline for action, requiring the Committees to complete the investigation within 90 days and submit the results to the employer or the District Officer.²⁸ Complaints Committees possess civil court authorit.²⁹ The

²⁵ Advocate Chikirsha Mohanty, *SECTION 354A IPC - Indian Penal Code - Sexual harassment and punishment for sexual harassment*, LAWRAO, (May 01, 2023), <https://lawrato.com/indian-kanoon/ipc/section354a#:~:text=Yes%E2%80%A6the%20offence%20under%20section,not%20listed%20under%20Compoundabl e%20offences>.

²⁶ Advocate Chikirsha Mohanty, *SECTION 509 IPC - Indian Penal Code - Word, gesture or act intended to insult the modesty of a woman*, LAWRAO, (May 01, 2023), <https://lawrato.com/indian-kanoon/ipc/section-509#:~:text=out%20an%20arrest,-,IS%20THE%20OFFENCE%20UNDER%20SECTION%20509%2C%20IPC%2C%20BAILABLE%3F,Section%20509%2C%20IPC%20is%20bailable>.

²⁷ Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Bill, 2013, Bill No. 144-C of 2010 (India).

²⁸ State Resource Center for Women Women & Child Development Department Government of Odisha, *FREQUENTLY ASKED QUESTIONS ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT & RULES, 2013*, (2014), https://wcd.nic.in/sites/default/files/FAQ_SRCW.pdf.

²⁹ Tanya Sharma, *Ultimate POSH Guide for IC Members*, ELEARNSOSH.COM, (Mar 30, 2020),

²⁴ Vishaka & Ors. v State of Rajasthan & Ors., (1997) 6 SCC 241 (India).



Act also establishes an administrative fee of Rs. 5000 for violating confidentiality and calls for taking appropriate action against the fictitious victim in cases of malicious prosecution. They may even arrange for conciliation before opening an inquiry. In addition, failure to comply with the Act may result in a financial penalty of not less than Rs. 50000, with further offences carrying stiffer penalties or the termination of firm. The Act mandates that both employers and workers receive training, raise awareness of the issue, and receive education on their rights, obligations, and the proper legal procedure.³⁰ By creating appropriate structure and processes to address and resolve important challenges with minimal complexities and damage, the Act has helped organisations change for the better and brought law and order. It promotes awareness and empathy, while highlighting the accountability and obligation of the business towards their employees. This will encourage employees' trust and loyalty, the organization's goodwill, and an all-around positive workplace culture.

V. Critical Analysis

There is no question that the Act has been quite successful in fostering a safe workplace for working women, but there are still certain areas that require improvement. The Act's wide coverage of all women employees, albeit it could not be applicable to those who can define themselves differently, but nonetheless experience sexual harassment, is one of its merits. Additionally, there are no adequate provisions for ad hoc, or casual employees, among others. An Act, employees' rights, and the correct legal process are not well-known to many organisations or workers. Many businesses fail to train or sensitise their employees. This results in poor compliance and an ineffective complaint procedures. The efficacy of ICC may differ. Some ICCs may not

have the necessary tools or training to handle delicate situations. In order to aid victims through the complaint procedure, there is a requirement for greater support systems, such as psychological counselling or helplines. The LCCs could likewise be inconsistent in a similar manner. To evaluate them, there aren't enough strict monitoring and assessment systems. Regular audits and reviews can assist find problems and enhance how the Act is put into practise. The victim has a heavy burden of proof, which makes it difficult for them to determine their case. In order to avoid vengeance or a lack of assistance, victims are frequently discouraged from reporting occurrences by this burden. The Act fails to explicitly safeguard victims, those who assist them, or anybody else who desires to file a complaint; as a result, they risk hostility or unfavourable professional repercussions for coming up. The Act largely emphasises internal dispute resolution processes including conciliation and investigation panels. Although these tools are crucial, there should additionally be clear instructions on how to use legal methods if necessary. The punishments are mostly monetary, and while they are generally severe, they may not always be effective as a deterrence. The POSH Act largely focuses on relationships between employers and employees; it falls short in circumstances where harassment is committed to clients, consumers, or outside suppliers.

VI. Comparative Analysis

In India, the POSH Act addresses instances of sexual harassment at work.³¹ It includes unwanted acts, demands, or behaviour that is sexual in character under its wide definition of sexual harassment. Although the particular definitions and legal requirements may differ, other nations, like the USA and the United States, also have wide definitions which encompass a variety of kinds of unwanted sexual activity. The

https://elearnposh.com/ultimate-posh-guide-for-ic-members/#Inquiry_and_Report.

³⁰The Protection of Women Against Sexual Harassment at Workplace Bill, 2010, PRS LEGISLATIVE RESEARCH, <https://prsindia.org/billtrack/the-protection-of-women-against-sexual-harassment-at-work-place>

³¹ Explained Desk, The POSH Act, and the procedure for complaint against sexual harassment at the workplace, INDIAN EXPRESS, (May 23, 2023), <https://indianexpress.com/article/explained/explained-law/posh-act>

Act, for example, is applicable to a variety of industries, as is the case in many other nations, albeit the extent of coverage may vary. For instance, the United Kingdom has distinct laws for the governmental and private sectors, the Employment Rights Act 1996 and the Equality Act 2010 respectively. Here, the employer has the majority of the obligation for preventing sexual harassment. Other nations, including the US (Title VII of the Civil Rights Act), Canada (Human Rights Act), and Australia (Sex Discrimination Act), also mandate that employers take proactive steps to prevent and address sexual harassment, including the creation of complaint mechanisms and training programmes. In Canada, complaints can be made to human rights, tribunals or labour boards, whereas in the United States, complaints can be made to the Equal Employment Opportunity Commission (EEOC) or state-level human rights commissions. Sexual harassment complaints are received and handled by ICCs in India. The Indian Act outlines the consequences for non-compliance and offers remedies including restitution, disciplinary action, and starting legal actions. However, in the United States, there is a possibility for injunctive remedy, reinstatement, and damages reimbursement. Canada also permits financial compensation as well as non-financial remedies like training and changes in policy. By addressing numerous types of discrimination and taking into account the particular experiences of people from marginalized communities in its legislation, Canada also expressly recognized intersectional issues. A crucial component of all-encompassing protection is this realization.

VII. Conclusion

A key piece of law designed to address sexual harassment in Indian workplaces is the Sexual Harassment at Workplace Act of 2013. The Act surely improved workplace safety and diversity by laying out an unambiguous framework for avoidance, prohibition, and restitution. However, it is essential to make sure that the legislation is

properly put into practice and that workers are informed of their legal rights. To end sexual harassment in the workplace and advance a climate of equality and respect, companies, workers, and society as a whole must work together. Sexual assault at work is a significant problem that has to be handled quickly and successfully. It stifles productivity, diminishes employee wellbeing, and fosters a toxic work atmosphere. All employees have a right to a secure and respected workplace, which is the responsibility of the employer. To ensure that every employee works in a setting that is safe and courteous, sexual harassment in the workplace must be successfully addressed. The following steps should be taken by organizations to address this issue like Clear Policies and Procedures: Businesses should have clear policies that expressly indicate that sexual harassment will not be tolerated. All staff members must be informed of these rules in order for them to be aware of the required standards of conduct and the penalties for harassment and Training and Education: Hold frequent training sessions to inform staff members on what sexual harassment is, how it affects people and organizations, and how to stop it. Respect, established limits, consent, and reporting procedures ought to be emphasized throughout this training.

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