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The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in India: An Analysis

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Abstract:

Women in India are being exploited since long. Crimes against women in India are rampant despite of a number of legislations passed to combat the same. Sexual harassment of women at workplace is one of the crimes against women. It is a fact that women also have right to work. It is not only constitutional right but also human right of women. It has been recognized as human right by International instruments like Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Article 21 of the Constitution of India provides right to life as fundamental right which includes right to live with dignity. Sexual harassment of a woman at workplace is the violation of fundamental right of a woman enshrined under Articles 14, 15, 21 and 19 (1) (g) of the Constitution of India. It is the right of women and duty of employer to provide safe environment at the workplace. Supreme Court of India on 13th August 1997 laid down the guidelines to be followed by the employer for tackling the incidents of sexual harassment of women at the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is passed in order to protect the rights of women at workplace in light of constitutional and human rights of women at national as well as international level. This Act is divided into 8 chapters. The object of this research paper is to analyze the provisions of the Act to point out the weaknesses and lacunas of the Act and suggest changes for strong implementation of the Act. The doctrinal method is applied to achieve the purpose.

Key words: Sexual Harassment, Workplace, Internal Complaints Committee, Local Complaints Committee

1. Introduction:

Women in India have been guaranteed a number of rights by the Constitution of India. Article 21 secures that no person shall be deprived of his/her life or personal liberty 'except according to procedure established by law'.¹ Article 14 secures right to equality.² Article 15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth.³ Article 19(1) (g) guarantees to all citizens the right to practice any profession or to carry on any occupation, trade or business.⁴ It also provides directives for the State in the form of Directive Principles of the State policy under chapter IV of the constitution. Although they are not enforceable in

¹ Jain, M.P., Indian Constitutional Law, New Delhi, Lexis Nexis Butterworths Wadhwa Nagpur, 2008, p. 1079.

² Id p. 855

³ Ibid

⁴ Supra note 1, p. 1032

courts but constitution solemnly proclaims them to be “fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”.⁵ Article 42 requires that the State shall make provision for securing just and humane conditions of work and for maternity relief.⁶ Constitution also imposes duty on the citizens under Article 51 A (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities; to renounce practices derogatory to the dignity of women.⁷

Right to work in safe/peaceful environment is also recognized at international level by different conventions. On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly. It came into force as an international treaty on 3 September 1981. Government of India ratified the convention on June 25, 1993. Article 11 of the Convention requires that State Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women. Article 11 (a) provides the right to work as an inalienable right of all human beings and Article 11 (f) provides the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.⁸

Any act of sexual harassment to a woman at workplace is not only the violation of her constitutional rights but also violation of her human rights. It creates an insecure and hostile work environment, which discourages women’s participation in work, thereby adversely affecting their economic empowerment and the goal of inclusive growth.⁹ It brings the women at an inequitable position as compared to the male employees. Safe working environment is essential for the exercise of the right to work, the right to life with dignity.¹⁰ It is employer’s responsibility to provide a non-discriminatory and non-violent workplace atmosphere. Employers are required by law to take steps to prevent and deal with harassment at the workplace.¹¹ Before 1997, a woman experiencing sexual harassment at workplace had to lodge a complaint under Section 354 IPC that deals with the ‘criminal assault of women to outrage women’s modesty’ and Section 509 IPC that punishes an individual for using a ‘word, gesture or act intended to insult the modesty of a woman’. These sections left the interpretation of ‘outraging women’s modesty’ to the discretion of the police officer.¹²

In the absence of civil and penal laws in India, for providing adequately and specific protection to women from sexual harassment in the work places, in 1997, the Supreme Court passed a landmark judgment in **Vishaka vs. State of Rajasthan**¹³ laying down guidelines to be followed by establishments in dealing with complaints about sexual harassment. The Supreme Court directed the employer or other responsible persons in the workplace or

⁵ <http://www.preservearticles.com/201012251613/directive-principles-of-state-policy.html> visited on 4.5.2014

⁶ Supra note 1, p. 1383

⁷ Supra note 1, P. 1395

⁸ <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article22> visited on 4.5.2014

⁹ <http://pib.nic.in/newsite/erelease.aspx?relid=92690> visited on 6.5.2014

¹⁰ <http://www.helpline.law.com/docs/main.php3?id=SHWI5> visited on 4.5.2014

¹¹ <http://www1.umn.edu/humanrts/svaw/harassment/explore/5prevention.htm> visited on 6.5.2014

¹² <http://infochangeindia.org/women/analysis/a-brief-history-of-the-battle-against-sexual-harassment-at-the-workplace.html> visited on 8.9.14

¹³ JT 1997 (7) SC 384

institution to implement certain guidelines to ensure the prevention of sexual harassment of women, until legislation is passed to deal with the issue.

Following the guidelines, the Government of India passed an Act to prevent and combat the occurrence of sexual harassment of women at workplace. This Act namely 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.¹⁴ It was passed in the Lok Sabha on September 3, 2012 and in the Rajya Sabha on February 26, 2013.

It got the assent of the President on April 22, 2013.¹⁵ The Act came into force on December 9, 2013. It extends to the whole of India including the State of Jammu and Kashmir. It is the duty of the appropriate government to monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.¹⁶ The appropriate Government may, subject to the availability of financial or other resources, develop relevant information, education, communication and training materials and organise awareness programmes to make aware the public about the provisions of this Act.¹⁷ It is the duty of the appropriate government to formulate orientation and training programmes for the members of the Local Complaints Committee.¹⁸ The appropriate government has the power to call for information and inspection of records from any employer or district officer in public interest or interest of the aggrieved women. Any officer may be appointed to inspect the records and workplace in relation to sexual harassment. He shall also submit a report within such period as may be specified in the order by the appropriate government.¹⁹ Every offence under this Act shall be non-cognizable.²⁰ No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorized by the complaints committee. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.²¹

1.1 Aggrieved Woman:

Aggrieved woman in this Act means a woman of any age who is employed or not at the workplace who alleges to have been subjected to any act of sexual harassment.²² It also includes woman employed in a dwelling place or house.²³ It covers domestic workers which includes a woman who is employed to do the household work in any household for remuneration whether in cash or in kind. She may be appointed directly or through any agency.

¹⁴ <http://www.thehindu.com/opinion/op-ed/protecting-women-at-workplaces/article5483861.ece> visited on 8.9.2014

¹⁵ [http://en.wikipedia.org/wiki/The_Sexual_Harassment_of_Women_at_Workplace_\(Prevention,_Prohibition_and_Redressal\)_Act,_2013](http://en.wikipedia.org/wiki/The_Sexual_Harassment_of_Women_at_Workplace_(Prevention,_Prohibition_and_Redressal)_Act,_2013) visited on 5.5.2014

¹⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, section 23

¹⁷ Id, section 24(a)

¹⁸ Id, section 24(b)

¹⁹ Id, section 25 (1)(a & b)

²⁰ Id, section 27(3)

²¹ Id, section 27(1 & 2)

²² Id, section 2(a)(i)

²³ Id, section, 2(a)(ii)

She may be on permanent, part time or full time basis. It does not include any member of the family of the employer.²⁴

1.2 Workplace:

The scope of workplace²⁵ in this Act is inclusive in nature. It includes:

- (i) Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided by the appropriated government or the local authority or a government company or corporation or a co-operative society.
- (ii) It also includes private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service.
- (iii) Hospitals or nursing homes.
- (iv) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto.
- (v) Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.
- (vi) In relation to unorganized sector, workplace means an enterprises owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever and where the enterprise employs workers, the number of workers is less than ten.²⁶

1.3 Behaviour Constituting Sexual Harassment:

The term sexual harassment²⁷ under the Act covers one or more unwelcome acts or behaviour whether directly or by implication. Such unwelcome acts or behavior are:

- (i) physical contact and advances or
- (ii) a demand or request for sexual favours or
- (iii) making sexually coloured remarks or
- (iv) showing pornography or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment at workplace may amount to sexual harassment:²⁸

- i) Implied or explicit promise of preferential treatment in her employment or
- ii) Implied or explicit threat of detrimental treatment in her employment or
- iii) Implied or explicit threat about her present or future employment status or
- iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her or

²⁴ Id, section 2(e)

²⁵ Id, section 2(o)

²⁶ Id, section 2(p)

²⁷ Id, section 2(n)

²⁸ Id, section 3(2)

v) Humiliating treatment likely to affect her health or safety.

1.4 Complaint of Sexual Harassment:

The complaint of sexual harassment at workplace may be made in writing to the internal committee if it is constituted or the local committee, in case it is not so constituted within a period of three months from the date of incident and in case of a series of incidents within a period of three months from the date of last incident. The committee is also empowered to extend this time limit of three months if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period. If woman cannot file complaint in writing then the committee shall render all reasonable assistance to the woman for making the complaint in writing.²⁹ The complainant shall submit to the complaints committee six copies of the complaint along with supporting documents and the names and addresses of the witnesses.³⁰ If aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.³¹

1.5 Aggrieved Woman Physically Incapable or in Mental or other Incapacity:

Where an aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed on her behalf by the following:³²

- i) her relative or friend;
- ii) her co-worker;
- iii) an officer of the National Commission for Women or State Women's Commission;
- iv) any person who has knowledge of the incident with the written consent of the aggrieved woman.

Where an aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed on her behalf by the following:³³

- i) her relative or friend;
- ii) a special educator; who is a person trained in communication with people with special needs in a way that addresses their individual differences and needs;
- iii) a qualified psychiatrist or psychologist;
- iv) the guardian or authority under whose care she is receiving treatment or care;
- v) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist or guardian or authority under whose care she is receiving treatment or care.

Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.³⁴ Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

²⁹ Id, section 9(1)

³⁰ Rule 7 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

³¹ Supra note 13, section 9(2)

³² Supra note 27, rule 6 (i)

³³ Supra note 27, rule 6(ii)

³⁴ Supra note 27, rule 6(iii)

2. Complaints Committee:

Complaints committee under the Act means Internal Committee or the Local Committee as the case may be.³⁵ The Act provides for the constitution of internal complaints committee. Every employer of workplace is bound to constitute in writing the internal complaints committee. Where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the internal committee shall be constituted at all administrative units or offices.³⁶

The committee shall consist of the following;

- i) A presiding officer and other members. The presiding officer and every member of the committee shall hold office for such period not exceeding three years from the date of their nomination.³⁷ Presiding officer of the committee shall be a woman employed at a senior level at the workplace from amongst the employees. If senior level woman employee is not available, the presiding officer shall be nominated from other offices or administrative units of the workplace. Further, in case, other offices or administrative units of the workplace do not have a senior level woman employee, the presiding officer shall be nominated from any other workplace of the same employer or other department or organization.
- ii) Minimum two members, male or female from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
- iii) One member shall be from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. At least one-half of the total members so nominated shall be women.

2.1 Person familiar with the issues:

Person familiar with the issues relating to sexual harassment³⁸ shall be a person who has expertise on issues relating to sexual harassment and may include any of the following:

- i) a social worker with at least five years experience in the field of social work which leads to creating of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;
- ii) a person who is familiar with labour, service, civil or criminal law.

2.2 Procedure followed by the Complaints Committee:

Before initiating the inquiry, Complaints Committee on the request of the aggrieved woman may try to settle the dispute with the respondent through conciliation. In case there is no settlement and the respondent is a employee, the complaint committee shall proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exists, in such manner as may be prescribed or in case of domestic worker, the complaint committee shall, if prima facie case exists, forward the complaint to the police within a period of seven days for registering the case under section 509 of the Indian Penal

³⁵ Supra note 27, rule 2 (c)

³⁶ Supra note 13, section 4(1)

³⁷ Supra note 13, section 4(3)

³⁸ Supra note 27, rule 4 (a & b)

Code and any other relevant provisions of the said Code.³⁹ Further, where the aggrieved woman informs the complaints committee that the respondent is not complying with any term or condition of the settlement arrived through conciliation, the complaints committee shall proceed to make an inquiry into the complaint or forward the complaint to the police. In case, both the parties are employees, the parties shall during the course of inquiry be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the committee.

If the dispute is not settled or resolved then the complaints committee shall start inquiry. The complaints committee shall send one of the copies received from the aggrieved woman to the respondent within a period of seven working days.⁴⁰ The respondent shall file his reply to the complaint along with his list of documents and names and addresses of witnesses within a period not exceeding ten working days from the date of receipt of the documents.⁴¹ The complaints committee shall make inquiry into the complaint in accordance with the principles of natural justice.⁴² The complaints committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails without sufficient cause to present herself or himself for three consecutive hearings convened by the chairperson or presiding officer. But such termination or ex-parte order may not be passed without giving fifteen days advance notice in writing to the party concerned.⁴³ The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the complaints committee.⁴⁴ In conducting the inquiry, a minimum of three members of the complaints committee including the presiding officer or the chairperson shall be present.⁴⁵

2.3 Powers of Complaints Committee:

The Internal Complaints Committee and the Local Committee have been vested with the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, which are;⁴⁶

- i) Summoning and enforcing the attendance of any person and examining him on oath;
- ii) Requiring the discovery and production of documents;
- iii) Any other matter which may be prescribed.

The Committee on the written request of the aggrieved woman has the power to recommend to the employer during the pendency of the inquiry the following and the employer shall implement the recommendations:

- (i) To transfer the aggrieved woman or the respondent to any other workplace;
- (ii) To grant leave to the aggrieved woman upto a period of three months and this leave shall be in addition to the leave she would be otherwise entitled;
- (iii) To grant such other relief to the aggrieved woman as may be prescribed.⁴⁷

³⁹ Supra note 13, section 11(1)

⁴⁰ Supra note 27, rule 7 (2)

⁴¹ Supra note 27, rule 7 (3)

⁴² Supra note 27, rule 7(4)

⁴³ Supra note 27, rule 7(5)

⁴⁴ Supra note 27, rule 7(6)

⁴⁵ Supra note 27, rule 7(7)

⁴⁶ Supra note 13, section 11(3)

⁴⁷ Supra note 13, section 12(1)

- (iv) The Act provides the settlement of dispute through conciliation at the request of the aggrieved woman before initiating an inquiry under section 11 of the Act. But monetary settlement shall not be made the basis of conciliation.⁴⁸
- (v) In case, the complaints committee arrives at a conclusion that the allegation against the respondent has not been proved, it can recommend to the employer that no action is required to be taken in the matter.⁴⁹
- (vi) In case, the complaints committee arrives at a conclusion that the allegation against the respondent has been proved, it can recommend to the employer the following:⁵⁰
 - (vi-a) to take action for sexual harassment as a misconduct under the service rules or if no service rules have been made, in such manner as may be prescribed;
 - (vi-b) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs. If employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment, it may direct to the respondent to pay such sum to the aggrieved woman. If respondent fails to pay the sum, the complaints committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

2.4 Duties of the Complaints Committee:

The Complaints committee after completion of an inquiry shall submit its report of its findings to the employer within a period of ten days. Such report shall be made available to the concerned parties.⁵¹ Complaints committee shall complete the inquiry within nineteen days.⁵² The Internal Committee or the Local Committee shall prepare an annual report in each calendar year and submit the same to the employer and the District Officer.⁵³

3. Action for Sexual Harassment:

In case service rules do not exist and complaints committee arrives at a conclusion that the allegation against the respondent has been proved, it shall recommend to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carry out community service.⁵⁴

3.1 Compensation to the Complainant:

The complaints committee is empowered to determine the sum to be paid to the aggrieved woman. The complaints committee at the time of determining the sum shall have regard to:

- i) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- ii) the loss in the career opportunity due to the incident of sexual harassment;
- iii) medical expenses incurred by the victim for physical or psychiatric treatment;
- iv) the income and financial status of the respondent;

⁴⁸ Supra note 13, section 10(1)

⁴⁹ Supra note 13, section 13(2)

⁵⁰ Supra note 13, section 13(3)

⁵¹ Supra note 13, section 13(1)

⁵² Supra note 13, section 11(4)

⁵³ Supra note 13, section 21(1)

⁵⁴ Supra note 27, rule 9

v) feasibility of such payment in lump sum or in installments.⁵⁵

3.2 Other Relief to Complainant:

The Complaints Committee may recommend to the employer on the written request of aggrieved woman to⁵⁶;

- i) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report and assign the same to another officer;
- ii) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

3.3 Punishment for False Complaint:

Complaints committee has the power to recommend to the employer to take action against the complainant, in case, complaints committee arrives at a conclusion that the complaint has been made maliciously and knowing it to be false or the complainant has produced any forged or misleading document. But mere inability to substantiate the complaint or provide adequate proof in support of the complaint need not attract action against the complainant. Moreover, the malicious intent on the part of the complainant shall be established by the complaints committee before recommending the action against the complainant.⁵⁷

Complaints committee has also power to recommend to the employer of the witness to take action against him, in case, complaints committee arrives at a conclusion that during the inquiry witness has given false evidence or produced any forged or misleading document.⁵⁸

4. Restrictions on Publication:

Any information regarding identity and address of the aggrieved woman, respondent and witnesses or any information relating to conciliation and inquiry proceedings, recommendation of the complaints committee and the action taken by the employer or the district officer shall not be published, communicated or made known to the public, press and media in any manner.⁵⁹ Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses. The Act also provides for the provision of penalty if any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exists, in such manner as may be prescribed.⁶⁰

5. Provision of Appeal:

The complainant or the respondent is empowered to file an appeal to the court or the tribunal in case he is not satisfied with the recommendations of the inquiry committee or non-implementation of such recommendations.

⁵⁵ Supra note 13, section 15

⁵⁶ Supra note 27, rule 8

⁵⁷ Supra note 13, section 14(1)

⁵⁸ Supra note 13, section 14(2)

⁵⁹ Supra note 13, section 16

⁶⁰ Supra note 13, section 17

An appeal shall be filed in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then the aggrieved person may prefer an appeal in such manner as may be prescribed but without prejudice to provisions contained in any other law for the time being in force.⁶¹ An appeal shall be filed with in a period of 90 days of the recommendations.⁶²

6. Duties of the Employer:

The Act also provides for the duties of the employer in case of sexual harassment. It provides that every employer shall⁶³:

- i) Provide safe working environment at the workplace. It also includes the safety from the persons coming into contact at the workplace.
- ii) Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the Internal Committee.
- iii) Organise workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act. Organise orientation programmes for the members of the Internal Committee.
- iv) Provide necessary facilities to the internal committee or the local committee for dealing with the complaint and conducting an inquiry.
- v) Assist in securing the attendance of respondent and witnesses before the internal committee or the local committee.
- vi) Make available information having regard to the complaint to the internal committee or the local committee.
- vii) Provide assistance to the aggrieved woman if she chooses to file a complaint under IPC or any other law for the time being in force.
- viii) Cause to initiate action against the perpetrator under IPC or any other law for the time being in force or if the aggrieved woman so desires, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place.
- ix) Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.
- x) Monitor the timely submission of reports by the Internal Committee.
- xi) The employer shall include in the annual report of his organization, the number of cases filed and disposed under this Act or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.⁶⁴

6.1 Duties of the District Officer:

The district officer has the following duties under the Act:

- i) Monitor the timely submission of reports furnished by the local committee.⁶⁵
- ii) Take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of the women.⁶⁶

⁶¹ Supra note 13, section 18 (1)

⁶² Supra note 13, section 18(2)

⁶³ Supra note 13, section 19

⁶⁴ Supra note 13, section 22

⁶⁵ Supra note 13, section 20(a)

- iii) After receiving the annual report in each calendar year from the Local Committee, he shall submit a brief report on it to the State Government.⁶⁷

6.2 Punishment for the Employer:

If the employer fails to constitute an internal committee or contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder shall be punishable with fine which may extend to fifty thousand rupees.⁶⁸ If any employer who is convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to⁶⁹:

- i) Twice the punishment which might have been imposed on a first conviction subject to the maximum punishment provided for the same offence. And in case a higher punishment is provided under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding punishment;
- ii) The government or the local authority can cancel his license or consider withdrawal or non-renewal or approval of his license which is required for carrying on his business or activity.

7. Critical Appraisal and Suggestions:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a land mark step for protecting rights of women and providing safe environment to women at workplace.

After going through the Act, I wish to submit a few suggestions for the effective implementation of the Act. Under this Act aggrieved woman is required to file a complaint under section 9 to the complaints committee. But woman should be free to file a complaint either to the committee or before any authority at the workplace and authority should be bound to transfer the complaint to the complaints committee. Aggrieved woman can file a complaint to the committee within three months of the incident and committee is empowered to extend this period upto three months in case reasonable cause of delay. She must be free to file a complaint at any time after commission of the incidence in case of reasonable cause of delay.

Section 10(1) provides for the settlement of the dispute through conciliation at the request of the aggrieved woman. Sexual harassment at workplace is the violation of right to work in safe environment of women. It is a wrongful act which affects deep on women. It affects her future scope of work and confidence. It is the breach of the employer's duty to provide safe workplace. Such acts are the grave violation of a woman's dignity. Therefore, these should not be the matter of conciliation. The provisions of the Act should have deterring effect on the wrongdoers. The guilty should not be let free after paying money.

In such cases there is need for the other workers to know the identity and act done by the accused, so that they may also safeguard themselves. There is no justification to mandate secrecy, when the Committee determines the guilt. There is societal need of public naming and shaming so that he may not repeat the act.

⁶⁶ Supra note 13, section 20(b)

⁶⁷ Supra note 13, section 21(2)

⁶⁸ Supra note 13, section 26(1)

⁶⁹ Supra note 13, section 26 (2) (I &ii)

Complaints committee is empowered to grant leave to the aggrieved woman during the pendency of the inquiry for upto three months. It is suggested to increase this limit of three months to one year and leave must be granted with salary.

The employer is bound to take action on the recommendations of the complaints committee within sixty days from its receipt. But it is not mentioned as to what will be the remedy if employer fails to take action within this time limit or does not take action because justice delayed is justice denied.

A complaint can be filed by the aggrieved woman or in case of her incapacity by her relative or friends. Provision should be made that any other person having the knowledge of the incident can also file a complaint on behalf of the aggrieved woman but consent of the aggrieved woman or in case of her incapacity by her relative or friends in writing is necessary. I suggest that no written consent should be made necessary for making a complaint. A woman may wish to remain silent. So, if any person has knowledge of the incident, the Act should enable him to inform the employer or district officer about such incident. The employer should be enabled to take suo motu action, in case he comes to know about such incident. And the committee should take cognizance of the complaint made by a person without consent of the aggrieved woman.

There should not be any need to submit six copies of the complaint before complaints committee. It should be the duty of the employer to provide copy of the complaint to all the members of the committee. The punishment is not provided in this Act. It only provides for monetary compensation to the aggrieved woman or punishment under service rules. The Act should also make provision for imprisonment of the respondent. Something more is needed, which a legislation can not provide. There is need to understand the problems faced by the women.

Succinctly, though a comprehensive law is made, but to create deterrence and combating sexual harassment occurrences, the main requirements are the effective and dedicated implementation of the Act
