A SAFE WORKPLACE IS EVERY HUMAN’S RIGHT

With increasing access to education more and more women are joining the workforce population of India. Many working women face sexual harassment at the workplace every day, despite the fact that working in a safe and secure environment is a fundamental right of every individual in the country. Every citizen of India has a Constitutional Right to live with dignity as per Article 21 of the Constitution of India.

Sexual harassment at workplace is a gross violation of a human right to equality and dignity (for both women as well as men) and has continued to be a serious offence. It was only in the case of *Vishakha v. State of Rajasthan in 1997* that, for the first time, sexual harassment at the workplace was recognized to be a violation of human rights by the Hon’ble Supreme Court of India. This led to laying down of elaborate guidelines against sexual harassment at workplace.

Finally, on April 23rd, 2013, a comprehensive legislation was enforced to protect women against sexual harassment at workplace by enacting *the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013.* This new legislation was enacted against inappropriate behavior at workplace and to put in place a redressal mechanism to handle related complaints.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 will definitely ensure safe working environment for women to build enabling culture to respect women’s right to equality of status and opportunity. An effective implementation of the Act will surely contribute to the recognition of their right to gender equality, life and liberty and equality in working conditions. The sense of security at the workplace will improve women’s participation at work, resulting in their economic empowerment and inclusive growth.

The said legislation is an important step forward within the larger architecture of women’s rights, as it tackles the issue to secure the rights of women workers across the country. However, in my view, there are still certain loopholes in the legislation that may raise certain concerns, key ones being, lack of awareness amongst the women workers; ambiguities related to definitions and discrimination in scope of the legislation.

The legislation has been framed mainly keeping in mind workplaces like offices, organizations and enterprises, where complaints can be referred to a Committee. The problem is that many Indian women also work in informal sectors like in fields as agricultural workers, construction workers etc. Not all women work in big enterprises or in cities. Hence, on the ground, many women workers may not even be aware of their rights under the legislation.

One of the key gaps in the legislation is discrimination in the scope and ambit of the Act. It provides protection against acts of sexual harassment only for women and not for men. In these times, when we talk of creating equal opportunity and focus on eliminating discrimination of any kind, this particular legislation in India is not gender neutral. Men can also be subjected to inappropriate behavior at the workplace and additionally trans-gender individuals. There appears to be no such recourse to legislative action for sexually harassed men. According to the law in place, no complaint may be filed by a male employee. In cities such offences are gender neutral. There have been rising instances where we have seen women initiating and engaging in acts of sexual harassment. Hence, the legislation should have covered all individuals irrespective of the gender.

Although, this legislation is a great step forward to protect women against acts of sexual harassment, it however, leaves a wide scope for misuse and false allegations by women. This, not only creates trouble for the man accused of such acts but also may result in damaging his reputation.

In a professional work environment the employees irrespective of gender receive certain remarks or feedback with regard to quality of their work and the improvements required in their performance which may not always be positive. Sometimes, such feedback, may not be well received and may lead to misusing the provisions under the legislation and filing of frivolous complaints by women employees.

Further, this legislation could end up hurting women more from employer’s perspective. In light of the increased number of complaints by women employees, the employer may feel discouraged to hire women since they may want to avoid the risk of any such allegations. This may result in a step backward in providing equal opportunity to women.

The term *workplace* has been defined very generally, including *“any place which arises within the course of employment”*, Hence for the purpose of this legislation, the areas over which the employer has no access or control are deemed to be a workplace, and the liability of any incident of sexual harassment may lie upon the employer.

The legislation requires formulating of an Internal Complaints Committee in all administrative units or offices for each workplace. The Committee is required to include four members out of which three should be employees and one should be an external person. Half of the members of the Committee are supposed to be women. From my perspective, this may lead to biased decisions since the female members may be prejudiced in favor of the woman employee.

Further, there is no provision laying down the credibility and legal expertise of the Committee members. There is no specification for training requirements for the members which may result in a Committee with an ill-equipped members and may lead to either delay or obstruction in fair justice.

The in-house management of complaints may act as a deterrent for victims to file a complaint with the Internal Complaints Committee. In my view, an independent employment tribunal would have been a better forum to handle such complaints. Also, having an odd member Committee members would have been a better proposition to enable the Committee to reach a majority-based decision in the event of a deadlock.

The legislation also provides for the Committee to make an attempt to resolve the complaint through conciliation proceedings undertaken at the victim’s request and proceed to make inquiry only if a settlement is not reached. This provision seems to be very illogical as to why would a sexually harassed woman would like to reconcile with her offender.

To conclude, the new law is commendable and is welcome, but needs changes to plug-in the gaps and to make it more effective. The legislatures need to consider making suitable and reasonable amendments to the legislation. There are many provisions which needs further clarity for effective implementation of the provisions under the said Act.

 **Deepali**

 **Senior Legal Counsel**