
**SEXUAL HARASSMENT OF WOMEN AT WORKPLACE
(PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013
– ‘NOT SO FUTURISTIC’**

Ms Ankita Kumar Gupta, Ph.D. Research Scholar, Mewar University, Chittorgarh, Rajasthan

&

Dr Kanwal Sapra, Academician and a practicing Lawyer at Supreme Court and High Court of Delhi

ABSTRACT

It was almost after two decades from when the evil of sexual harassment at workplace knocked the doors of Indian Society for the 1st time in 1992 that the Indian Legislature enacted a Law for prevention and protection from Sexual Harassment at Workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 was thought to be a positive step toward the prohibiting, preventing and protecting against the sexual harassment which might happen in workplaces but to its misfortune it is succumbing due to its limitation. The Act 2013 aimed to cover up the limitations of the Vishaka guidelines. But it is not so futuristic and is faulty on many grounds. The need of the hour is to have a law which deals with the present situation as well as is futuristic to deal with all the aspects. The Act 2013 has completely ignored sexual harassment faced by males at workplace. Also in today's virtual era, with increasing technological complexities, cyberspace sexual harassment is the ongoing trend. But the Act 2013 lacks to cover the same. It seems that the law makers while drafting the Act 2013 closed their eyes and ears towards any though socially conflicting but existing realities.

INTRODUCTION

It was almost after 21 years from when the evil of sexual harassment at workplace knocked the doors of Indian Society for the 1st time while making Bhanwari Devi¹ its victim in 1992; that the Indian Legislature enacted a Law for prevention and protection from Sexual Harassment at Workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act received the president's assent on 22nd April, and came into force from 9th December 2013. The Act was thought to be a positive step toward the prohibiting, preventing and protecting against the sexual harassment which might happen in workplaces but to its misfortune it is succumbing due to its limitation.

The fountainhead of the Act is the guidelines given by the Hon'ble Supreme Court of India in *Vishaka v. State of Rajasthan*². With increasing number of incidents of sexual harassment at workplace it was felt that the guidelines are not sufficient and that there was an urgent need of a strong piece of legislation on this subject. Hence the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (here in after called the Act) was enacted. The Act tried to go one step ahead from the already established guidelines such as covering under its ambit all types of establishments including the private sector organizations, dwelling houses, also inclusion of the term domestic worker in unorganized sector in order to address the issue of sexual harassment at all levels. The definition of 'workplace' under Section 2(o) of the Act also covers under its ambit the places visited by the employee during the course of employment including transportation provided by the employer for commuting to and from the place of employment. The Act comprises of VIII Chapters and 30 Sections in total.

DEFINITIONS

Section 2 of the Act provides the definition of some very relevant terms such as 'Aggrieved Woman', 'Employee', 'Employer', 'Sexual Harassment' and 'Workplace'.

According to the Act 'Aggrieved Women' means "(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house."³

¹ The Victim in *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

² (1997) 6 SCC 241

³ S. 2(a) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

‘Employee’ means “a person employed at a workplace for any work on regular, temporary, adhoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.”⁴

Further the Act states that ‘Employer’ means “(i) in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf; (ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace; (iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees; (iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.”⁵

The term ‘Sexual Harassment’ can be fully understood by reading Section 2(n) and Section 3(2) together. According to definition of ‘Sexual Harassment’ provided under the Act it “includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

- 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.”⁶

⁴ S. 2(f) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁵ S. 2(g) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁶ S. 2(n) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Further Section 3(2) provides that “the following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-

- 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
- v. Humiliating treatment likely to affect her health or safety.”⁷

According to the Act ‘Workplace’ means “(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 directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society; (ii) any 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 by the employer for undertaking such journey; (vi) a dwelling place or a house.”⁸

COMPLAINT MECHANISM

Internal Complaint Committee

The Act provides that every employer is should constitute an Internal Complaint Committee (ICC) for grievance redressal of any aggrieved women.⁹ If any employer fails to constitute this committee he shall be punishable with h fine which may extend to fifty thousand rupees.¹⁰ The ICC is obligated under the act to enquire about the complaint made by the aggrieved women

⁷ S. 3(2) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁸ S. 2(o) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁹ S. 4(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

¹⁰ S. 26(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

and also generate awareness about sexual harassment at workplace. The ICC should also take preventive measures in order to make sure that there is a conducive working environment for women employees.

According to the Section 4(2) the Internal Complaint Committee shall consist of the following people:-

- a) Presiding Officer – who shall be a women employed at senior level in the organization.
- b) Two Members – who are amongst employees and are committed to the cause of women or have an experience in social work.
- c) One External Member – who is member of a Non-Governmental Organization which is committed to cause of women.

All the members of the ICC shall be holding their office for a term of 3 years and shall be paid a prescribed allowance by the employer. The members can also be removed from their office if any of them have been:-

- a) contravening the provisions of Section 16 of the Act
- b) convicted for an offence under any law
- c) found guilty in any disciplinary proceeding
- d) abusing their position as to render his continuance in office prejudicial to the public interest.

Local Complaint Committee

Chapter III of the Act provides for the constitution of the Local Complaint Committee (LCC). Section 5 to Section 8 of the Act under Chapter III provides for its notification, constitution, composition and audit. The Act provides that a LCC shall be constituted at every district for redressal of grievance relating to sexual harassment at workplace, where an ICC cannot be established due to the fact that there are less than 10 workers or if the complaint is against the employer himself.¹¹

The District Magistrate who shall be the District Officer shall further appoint a Nodal Officer at every block, taluka and tehsil in rural areas or municipality in urban areas for receiving complaints of sexual harassment and then forwarding them to the LCC.¹²

¹¹ S. 6(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

¹² S. 6(2) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

According to the Section 7(1) the Local Complaint Committee shall consist of the following people:-

- a) A Chairperson – who is nominated in the field of social work
- b) One Member – who is nominated from amongst the women working in block, taluka or tehsil or municipality
- c) Two Members – form them at least one shall be a woman and to be nominated from a non-governmental organization. One of them must be having a background in law and one of them shall be a women belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community
- d) An Ex officio Member – who is dealing with the social welfare for women and child development in the district

All the members of the LCC shall be holding their office for a term of 3 years and shall be paid a prescribed allowance by the State Government. The members can also be removed from their office if any of them have been:-

- a) contravening the provisions of Section 16 of the Act
- b) convicted for an offence under any law
- c) found guilty in any disciplinary proceeding
- d) abusing their position as to render his continuance in office prejudicial to the public interest.

Complaint of Sexual Harassment at Workplace

The main object of the Act is to provide a simple and effective legal mechanism for the redressal of complaints relating to sexual harassment at workplace by any aggrieved women. The procedure is clearly laid down under the Act for prevention and prohibition of the same.

Any aggrieved women may make a written complaint of sexual harassment at workplace to either ICC or LCC with a period of 3 months from the date of the incident and in case where there is a series of incidents then 3 months from the last incident. Where the aggrieved woman is unable to file a written complaint then it shall be the duty of the Presiding Officer of the ICC or the Chairperson of the LCC to provide her the reasonable assistance. The ICC or LCC shall record the reasons in writing for extending the time limit to further 3 months where the aggrieved woman is not able to file the written complaint within 3 months.¹³ If the aggrieved

¹³ S. 9(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

woman is unable to make a written complaint due to her mental or physical incapacity or death, her legal heirs can file the complaint on her behalf.¹⁴

In exercise of the power under the Section 29 of the Act the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013. Under these rules if an aggrieved woman is not able to make a written complaint under Section 9 of the Act on account of her physical incapacity, “a complaint may be filed by:-

- a) her relative or friend; or
- b) her co-worker; or
- c) an officer of the Notional Commission for Women or State Women’s Commission; or
- d) any person who has knowledge of the incident, with the written consent of the aggrieved woman;

And where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by:-

- a) her relative of friend; or
- b) a special educator; or
- c) a qualified psychiatrist or psychologist; or
- d) the guardian or authority under whose care she is receiving treatment or care; or
- e) 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.”¹⁵

Conciliation

The Act also provides for settlement through conciliation where in the ICC or the LCC can at the request of the aggrieved women take steps to settle the matter through conciliation; before making and inquiry under Section 11 of the Act; but any monetary settlement should not be made the basis of such conciliation.¹⁶

The Justice J.S. Verma Committee in its report on the amendment to criminal law dated January 2013 had observed that this provision is a violation of the Vishaka’s guidelines and must be deleted. They observed that “We note that Section 10(1) of the Sexual Harassment Bill, 2012

¹⁴ S. 9(2) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

¹⁵ Rule 6 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

¹⁶ S. 10 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

*stipulates that on receipt of complaint of sexual harassment, conciliation must be attempted between the complainant and respondent. This is in violation of the mandate prescribed by the Supreme Court in Vishakha, which was a direction to the State 'to ensure a safe workplace / educational institution for women'. In this context, we think that the attempts to get justice cannot be muscled by attempts at conciliation. There are certain areas, such as contractual matters where there could be conciliation, but in matters of harassment and humiliation of women an attempt to compromise the same is indeed yet another way in which the dignity of women is undermined. We are in agreement with the objections raised by many women's organizations that the said provision actually shows very little regard for the dignity of women. We think that Section 10(1) of the Bill, in so far as it proposes conciliation as a first step, must be deleted."*¹⁷

Sexual Harassment is a paradox of power. It occurs when a person in power exercises his or her power over a person who is subordinate to them. In such a situation it is unreasonable to expect that there can be negotiation or conciliation between the parties with unequal bargaining powers. This provision is also a violation of the Part III of the Indian Constitution which guarantees fundamental rights to all the citizens of India. Right to Dignity to work comes under the ambit of Article 21 of the Indian Constitution and it is a rule that no one can renounce their fundamental rights through the negotiation with the offender party. This provision also provides that once a settlement is arrived between the parties, no further enquiry shall be conducted in the matter.¹⁸ This is an invitation to easy abuse and potential humiliation of the victim at the hands of harasser. Hence this provision is contrary to the objective of the Act.

Inquiry into complaint

The main purpose of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is to provide a simple and effective redressal mechanism for the complaints of Sexual Harassment. The procedure of enquiry should be easy to understand and at the same time should adhere to the principles of natural justice, so that the respondent is given adequate opportunity to defend himself.

¹⁷ Report of the Committee on Amendment to Criminal Law by Justice J.S. Verma, Justice Leila Seth and Gopal Subramaniam, Dated 23rd January 2013, available at https://adrindia.org/sites/default/files/Justice_Verma_Amendmenttocriminallaw_Jan2013.pdf, last visited on 5th May 2021

¹⁸ S. 10(4) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Section 11 of the Act provides for “*Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, 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 exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where 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.”¹⁹

In the absence of the service rules which can be applied to the respondent, the procedure provided under Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Rule 7 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013 shall be applied. The procedure shall involve the following steps:-

- a) Upon the receipt of the complaint, the ICC or LCC shall send one copy of the complaint to the respondent within a period of 7 working days.²⁰
- b) The respondent shall file his reply within 10 working days.²¹
- c) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.²²

¹⁹ S. 11(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

²⁰ Rule 7(2) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

²¹ Rule 7(3) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

²² Rule 7(4) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

- d) If the parties fail, without sufficient cause, to present herself or himself for three consecutive hearings the Complaints Committee shall have the right to terminate the inquiry. Provided that such termination or ex-parte order may not be passed without giving a notice in writing.²³
- e) 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.²⁴
- f) A minimum of three members of the complaints committee shall be present in conducting the inquiry.²⁵
- g) At the request of the aggrieved women the ICC or LCC is empowered to consider whether any other relief or action is necessary during the pendency of the proceedings.²⁶
- h) On the completion of an inquiry, the ICC or LCC shall provide a report of its findings to the employer or to the District Officer within a period of ten days.²⁷
- i) In case the ICC or LCC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.²⁸
- j) In case the ICC or LCC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed; to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved women.²⁹
- k) The employer or the District Officer shall act upon the recommendation within 60 days of its receipt.³⁰

False or Malicious Complaint and False Evidence

²³ Rule 7(5) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

²⁴ Rule 7(6) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

²⁵ Rule 7(7) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

²⁶ S. 12 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with Rule 8 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

²⁷ S. 13(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

²⁸ S. 13(2) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

²⁹ S. 13(3) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³⁰ S. 13(4) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Section 14 sub clause (1) of the Act provides for action to be taken on False Complaint. It provides that “Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.”³¹

Further Section 14 sub clause (2) provides for the action to be taken for giving False Evidence. It provided that “Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.”³²

Where the Complaint Committee arrives at the conclusion that the allegation made against the respondent are false or malice, it can recommend the employer or the district officer to take the following actions against the plaintiff³³:-

- a) Written apology
- b) Official Warning
- c) Reprimand
- d) Withholding Promotion
- e) Withholding Pay or Increments
- f) Terminating the Plaintiff from service
- g) Undergoing Counseling
- h) Community Service

³¹ S. 14(1) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³² S. 14(2) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³³ Rule 10 read with Rule 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013

But the irony is that this section does not do Justice to the Harm that a false allegation is going to cause. Only taking action, 'according to the service rules' as prescribed by Section 14, would not do Justice. Where, Section 11 of the Act talks about taking Criminal action against the offender under Sec 509 Indian Penal Code 1890 which provides one year of punishment or fine, it is unjust to just award civil liability on a false accuser.

An Allegation is a statement of belief that some wrong has been committed against the victim by the offender. These allegations are subjective in nature. It is because of the subjective nature of the allegations of Sexual Harassment at Workplace; an unbiased fact-finding investigation is utmost required. The investigation is required to prove beyond reasonable doubt that what happened would come under the ambit of Sexual Harassment at Workplace. If the allegations have any merit it should be substantiated by proper evidence.

Ms. Nivedita Anil Sharma, Additional Session Judge, Delhi very correctly observed in *State v. Mr Pherudin khan*³⁴ in Para 131 of the Judgment that "No one discusses about the dignity and honour of a man as all are only fighting for the rights, honour and dignity of women. Laws for protection of women are being made which may be misused by a woman but where is the law to protect a man from such a woman where he is being persecuted and implicated in false cases, as in the present case. Perhaps, now it is the time to take a stand for a man."

Prohibition on Publication

The Act provides for the protection of the identity of the plaintiff, respondent and the witnesses involved in the Sexual Harassment Complaint. The Act places an obligation upon all the persons who are involved in the proceedings to protect their identity. "*Any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.*"³⁵ If any person contravenes this provision he "*shall be liable for penalty in accordance with the provisions of the service rules and where no such service rules exist, in such manner as may be prescribed.*"³⁶

³⁴ State v. Mr Pherudin khan, Feb 12 2016, Available at <https://indiankanoon.org/doc/137982073/?type=print>, last visited on 11th May 2021

³⁵ S. 16 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³⁶ S. 17 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Appeal

Any person who is not satisfied or is aggrieved from the order of the Complaint Committee made under Section 13 sub clause (2) or sub clause (3) or under Section 14 sub clause (1) or Sub clause (2) or under Section 17 or for non-implementation of the recommendation of the order of the Complaint Committee call file an appeal under Section 18 of the Act within 90 days of the said order.

DUTIES OF THE EMPLOYER

The Sexual Harassment of Women at Workplace Act 2013 imposes a legal duty on the employer to provide for a safe working environment for women employees and that the working environment should be free from any form of sexual harassment. The Vishaka Guidelines before the Act 2013 and presently the Sexual Harassment of Women at Workplace Act 2013 provides that there shall be a complaint mechanism established in accordance with law to enquire and redress the complaints of sexual harassment at the workplace.

The employer shall be obliged with the following duties:-

- a) *“To provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;*
- b) *To display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;*
- c) *To organize workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;*
- d) *To provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;*
- e) *To assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;*
- f) *To make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;*

- g) *To provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code 1860 or any other law for the time being in force;*
- h) *To cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force, against the perpetrator, 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;*
- i) *To treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;*
- j) *To monitor the timely submission of reports by the Internal Committee.*³⁷

DUTIES OF THE DISTRICT OFFICER

The District Officer has a number of statutory duties under the 2013 Act, including:-

- a) Constituting the LCC at the district level and nominating the members of the same.³⁸
- b) To receive complaints from the nodal officer, in the rural areas and in urban areas, and forward to the LCC.³⁹
- c) To ensure that the recommendation of the LCC with regards to the interim protection to the complainant are complied with and a compliance reports is sent to the LCC.⁴⁰
- d) To receive the report of the findings and recommendation of the LCC, taking a decision on the action to be taken.⁴¹
- e) To monitor the timely submission of the annual report by the LCC.⁴²
- f) To take such measures as may be necessary to engage NGOs for creation of awareness on sexual harassment at the workplace and the rights of women.⁴³

The Act 2013 though provides for many duties for the district officer but at the same time does not invite any legal consequence for not complying with the same. There are no statutory consequences under the Act 2013 upon the appropriate government for failing to notify the district officer or upon the district officer for failing to constitute the LCC.

³⁷ S. 19 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³⁸ S. 6 (1) and S. 7 (1) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

³⁹ S. 6 (2) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁰ S. 12 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴¹ S. 13 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴² S. 20 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴³ S. 20 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

FUNCTIONS OF THE APPROPRIATE GOVERNMENT

There are number of statutory obligations on the appropriate government as well. The most important of them are:-

- a) The appointment of the District Officer.⁴⁴
- b) To monitor the implementation of the Act 2013 and maintain data on the institution and disposal of the complaints.⁴⁵
- c) To develop relevant information, education, communication and training materials, to advance the understanding of the public in respect of the provisions of the Act and organizing of awareness programmes.⁴⁶
- d) To call upon any employer or the district officer to furnish any information and inspect records of any workplace regarding sexual harassment at workplace.⁴⁷

NON COMPLAINE OF THE ACT

Section 26 of the Act provides that if any employer fails to constitute the Internal Committee or fails take action under the act or contravenes any provision of the Act then he shall be punishable with fine which may extend to Rs. 50,000. Where the employer is convicted twice for an offence under this Act it may lead to cancellation of license for carrying out business activity or imposition of twice the punishment. The offences under the Act shall be non-cognizable.⁴⁸

COMPARATIVE ANALYSIS OF VISHAKA'S GUIDELINES AND THE ACT 2013

The comparative analysis of the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the guidelines established in the *Vishaka v. State of Rajasthan*⁴⁹ gives a collective overview of the social-legal understanding of the concept of sexual harassment in India. The Comparative analysis is provided in the Table 1.1.

Table 1.1

S. No.	Provisions	Vishaka's Guidelines	Sexual Harassment of Women at Workplace (Prevention,

⁴⁴ S. 5 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁵ S. 23 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁶ S. 24 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁷ S. 25 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁸ S. 27 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁹ Supra note 4

			Prohibition and Redressal) Act, 2013
1.	Organizations covered	Covers only governmental, public sector and private enterprises. Did not expressly cover employees working in NGOs, sports complex, stadiums etc where there may be no strict employee-employer relationship.	Covers almost all types of organizations, including NGOs, hospitals, sports institute, complex or stadiums.
2.	Category of working women protected	As per the definition of ‘employee’ provided under vishaka’s guidelines any working woman, whether she is drawing a salary or an honorarium or working voluntarily. It was not clear whether trainees and interns were covered.	The definition of ‘employee’ under the Act 2013 is wider in scope and covers temporary or contract employees, interns and trainees.
3.	Scope of the Workplace	The Vishaka judgment did not expressly elaborate on what constitutes ‘workplace’ except for a general statement that government, public and private enterprises are all covered.	As per the definition of ‘workplace’ under the Act 2013 any place visited by the employee in course of employment (including transportation provided by the employer) is included under the ambit of Workplace.
4.	Complaint Mechanisms	Organizations had significant flexibility on how they could create mechanisms to address	The Act has strict provision for instituting complaint of sexual harassment at workplace and its disposal thereof. A complaints

		sexual harassment. There were no technical requirements.	committee must be constituted as per the Act, which must necessarily have an external member with appropriate skills and requisite number of women members.
5.	Inquiry	No detailed inquiry process was laid down. The guidelines merely stated that it must be time-bound. Employers had freedom to determine broad timelines on their own.	The Act prescribes detailed guidelines for conducting the inquiry process. There is an overall timeline for completion of inquiry in 90 days.
6.	Remedy	If the perpetrator is found guilty of sexual harassment at workplace then ‘appropriate disciplinary actions’ will be taken against him. Compensation was not specifically provided for.	Several remedies are provided under the 2013 Act like disciplinary action, withholding of promotions and salary increases, awarding of compensation is expressly permitted. Complaints committees may also provide interim relief such as transfer of the complainant or the accused.
7.	Powers of the Committees	Complaints Committees were not granted any special powers.	Under the Act 2013 the Local Complaint Committee and the Internal Complaint Committee has many powers. For the purpose of enforcing attendance of accused and witnesses and collection of documentary evidence the Complaints Committees have the powers of a

			Civil Court. They can also provide the option of settlement to parties based if certain conditions are fulfilled.
8.	Duties of the Employer	Apart from establishing a redressal mechanism and employee training & sensitization the employer did not have any significant obligations.	The Act lays down many statutory duties on the employer that he must comply with and violation of any of them has serious consequences. It also includes the responsibility to sensitize employees, create complaints committees which are in compliance with the law, train members of complaints committees, put up notices and file annual reports.
9.	Appeal	There was no process of filing an appeal from the decision of the Complaints Committee.	One can file an appeal as per Service Rules or to the Authority Appointed under the Industrial Employment (Standing Orders) Act.
10.	Conciliation	There is no settlement mechanism through conciliation under the vishaka guidelines.	The Act allows settlement of the complaint through conciliation facilitated by the Complaints Committee.
11.	Consequences of non-compliance	No specific punishment or penalty was mentioned under Vishaka guidelines for non-compliance	The Act imposes a punishment of fine up to INR 50,000 for non-compliance with the law. For any subsequent conviction, the employer may have to pay double the fine amount and also

			be liable for cancellation of business license
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The comparative analysis of the Vishaka guidelines with the Act 2013 does show the some progressive steps that are taken in the Act 2013 to cover up the limitations of the Vishaka guidelines. But the Act itself is not so futuristic and is faulty on many grounds. The need of the hour is to have a law which deals with the present situation as well as is futuristic to deal with all the aspects.

CRITICAL ANALYSIS OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has the following lacunas:-

1. Gender Inequality

Our patriarchal society is unaccepting towards men being victims of any form of sexual violence. Hence the Act 2013 has completely ignored sexual harassment faced by males at workplace. These cases are not recorded and often go unnoticed. It is mainly because of the stigma attached to the fact that males will be ridiculed socially for being a victim of sexual harassment and questions will be raised on their Masculinity. Therefore the male victims prefer to suffer in silence.

2. Cyberspace Harassment

In today's virtual era, with increasing technological complexities, cyberspace sexual harassment is the ongoing trend. But the Act 2013 lacks to cover a lot of futuristic aspects like gender equality and cyberspace sexual harassment. It seems that the law makers while drafting the Act 2013 closed their eyes and ears towards any though socially conflicting but existing realities.

3. Faults in the Composition of the Complaint Committees

There is an absence of a requirement of a legal person in the Internal Complaint Committee and the Local Complaint Committee. Section 4 of the Act which provides for constituting the Internal Complaint Committee does not mandatorily provide that the ICC shall consist of a member with legal background. It only provides that "*not less than two Members from amongst employees preferably committed to the cause of*

women or who have had experience in social work or have legal knowledge”⁵⁰. The word “or” between having experience in social work and have legal knowledge indicates that there is no mandatory requirement of a legal qualification for a member. Even in the case of the Local Complaint Committee there is no specific clause under Section 7 of the Act providing for a requirement of a member having legal qualification or legal knowledge. The Section 11 (3) of the Act gives the Complaint Committees the power equivalent to a civil court for summoning, discovery and production of documents, but there is no express requirement to have a legal person as a member of the Committee. Also the sections of the Act 2013 does not provide for providing any formal training or any capacity building programme for the members of the Complaint Committee. Section 4 and Section 7 requires to the committees to have four members, of which three must be employees and one can be a non-employee. More than half of them must be women, however in case a particular organization does not have women employee on the senior level the ambiguity around who is going to be the head of the complaint committee is not cleared by the Act.

4. No suo motto power with the committee

There is suo motto power given to the committee to take suo motto cognizance of any case. The case can only be registered by the aggrieved women or her legal heir or someone on her behalf.

5. Conciliation

Though the Justice Verma Committee pointed out⁵¹ that Section 10 providing for conciliation is a violation of the inherent object of the Act but still that Section is intact in the Act of 2013. The committee observed that conciliation might be a good recourse in contractual disputes but having to do conciliation in sexual harassment matters indeed undermines the dignity of the victim of the sexual harassment.

6. Confidentiality of Cases

The second proviso to Section 11(1) provides that where the both the parties are the employees, the copy of the findings inclusive of the name of victim and the witnesses shall be made available to both the parties enabling them to make representation against the findings before the committee. This can jeopardise the matter as the victim and the

⁵⁰ S. 4(2)(b) The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

⁵¹ Supra note 19

witnesses can be threatened by the defendant. This is no provision in the Act to keep a check on this.

7. Complaints of domestic workers

As per Section 11 in case of a domestic worker the Local Committee shall mandatorily forwarded to the police regardless of the fact that whether the domestic worker wants to avail such a remedy or not. Also civil remedies of compensation for domestic workers expressly are absent.

8. Punishment for sexual harassment at workplace

Section 13(3)(ii) provides that the punishment for any offence under the Act shall be as per the service rules or otherwise in such manner as may be prescribed. There is a lot of ambiguity as to what or how much punishment will be given to the wrong doer.

9. False complaint

Section 14 of the Act provides for the punishment for false complaints. But the irony is that this section does not do Justice to the Harm that a false allegation is going to cause. Only taking action, 'according to the service rules' would not do Justice. People often are falsely implicated and where, Section 11 of the Act talks about taking Criminal action against the offender under Sec 509 Indian Penal Code 1890 which provides one year of punishment or fine, it is unjust to just award civil liability on a false accuser.

10. Fault in the Compensation Scheme

Section 15(d) provides that the compensation to be paid shall depend on the income and financial status of the respondent. This may mean that the lower executives will have to pay less than the senior executives. There cannot be any reasonable justification of the same.

11. Ambiguity of Certain Provision

As far the duties of the employers are concerned which are provided under Section 19 of the Act, the Clauses (g) and (h) does not clearly provide as to which provision of the Indian Penal code 1860 it is talking about for filing a complaint under. This leads to ambiguous application of the Act.

12. Non-cognizable nature of the offence

Section 27 of the Act provides that no court shall take cognizance of any offence under the Act as all the offences under the Act will be non-cognizable in nature. However the upcoming new dimensions to sexual harassment offences challenge the righteousness of this provision.

CONCLUSION

Although the Indian Legislature has provided for a codified Law for the prohibition, prevention and redressal of sexual harassment at workplace but the same is falling into pieces due to its lacunas. The urgent need of the hour is to have a law which not only deals with the present problems but is also ready for the future. Our laws should be equal in considering all the Genders with the Dignity they truly deserve. Ignoring any aspect of the real world will make such a law fall on its face.