

AN OVERVIEW OF POSH ACT

The #Metoo movement has brought the sexual harassment laws to the fore. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 was a late but welcome enactment of the government, following the landmark judgment of the Hon'ble Supreme Court of India in *Vishakha v. State of Rajasthan* in 1996. Although with that name, the act seems highly misleading in its intent to bring about a change. A change that shall be directed towards the way we share workspace with the women of today and allocate responsibility of giving a safe working atmosphere to them.

Further, with the Indian demography getting younger and education becoming a mass movement, there is a dire need to make the workplace equally nurturing to both the sexes. The idea behind this legislation is largely to address the issues of sexual harassment coupled with discrimination it causes to their growth in diverse professions. The act envisages this in three forms – “prohibition”, “prevention” and “redressal”.

PROHIBITION

This is the most obvious methodology amongst the three. Not that sexual harassment is not a crime under the Indian Penal Code of 1860 or is not indictable under the Labour Laws like Industrial Employment (Standing Order) Act of 1946, but the focus is to bring attention to the nature of sexual harassment faced at workplaces by the female members of our society. It stands to nullify their right to equality under Articles 14 and 15 read with Article 19 (1) (g) of the Constitution of India that ensures equality in professional opportunities and freedom to carry on any trade or business.

The act defines what constitutes sexual harassment, what a workplace is and who will be deemed as an employer for the purpose of implementation under this law, amongst other important terms. It prohibits all defined acts of sexual harassment and further enlarges its scope to other circumstances, which may not amount to sexual harassment standing on their own, but would indicate at a hidden motive to lure sexual favours. There is no clear line to define what constitutes an offence under this act and what doesn't. However, a larger scope of application would definitely deter offenders from adopting mannerisms which are ambiguously riddled with sexual overtures.

PREVENTION

This methodology comprises of duties, obligations and compliances for all employers. This bit is more educating and handholding than anything else. The Act gives a long list of mandatory precautions that are binding upon the employers and authorities established by the law. It also emerges from the legislation that the liability is pushed onto the employers to sensitize the employees and instil in them the right values with respect to their conduct in the workplace. If the employer benefits from its human resources, it only makes sense to make them develop an upright workforce and hold them liable for employees' actions.

REDRESSAL

The law makes a huge impact on this front by enacting provisions for establishment of Internal Complaints Committee at every workplace, which will work like courts to bring relief to the aggrieved party. The sections provide specific instructions for constitution of the committee, mandatory gender-based composition of the committee, procedure for filing complaints and how the inquiry into that must be conducted, interim measures and punishments to bring immediate relief to the victim, preparation of inquiry as well as final reports, monitoring mechanisms etc. The efforts to appreciate the interests of the women complainant are laudable. A similar local complaints committee is also directed to be established by the district-level officers, who will simultaneously monitor the enforcement of this act in all the industries set-up in the entire district.

The Act also looks into making sure that these inquiries are conducted in complete confidentiality to safeguard the reputation of the complainant as well as the respondents. A chapter on miscellaneous provision works on the punishments for various non-compliances, and leaves the scope for the government to bring in a robust framework of rules that can implement the law better.

The subsequently enacted rules notified by the government provide the exact procedure for each stage of inquiry. It also enables the women to file complaints through another person in cases where she cannot do it herself. In the end, the rules provide guidelines for the employers, encouraging them to take up informative sessions with their workforce about gender-oriented rights and obligations.

GAPS/GREY AREAS

One of the areas where a huge gap has been left by the act is the provision for right to appeal. The section for appeal gives the right to appeal against a limited number of outcomes of the inquiry conducted by the ICC but doesn't provide any authority to any government or judicial appointee, directly. Also, it is entirely vague in providing a forum for appeal. This is not just bad for respondents who have been wrongly framed but also for the complainants whose grievances were ignored or rejected by the ICC, due to corrupt motivations. Moreover, this is extremely important since the ICC consists of members from the same workplace who can be easily influenced by people of ascending hierarchy, and there is no way of ensuring independence or neutrality like that of judiciary.

An appeal can only be filed at higher courts when all the remedies have been exhausted and appropriate forums, up to that level, have been approached. But since there is no direct authority nominated to entertain appeal, the aggrieved party has nowhere to go. This is especially true in the cases where the workplace involved is not a public office or a government aided set-up, as they cannot challenge the recommendations of ICC under the writ jurisdiction provided in the Constitution of India.

Also, the law is too heavily dependent on the penalty provisions for assuring that the employers maintain strict adherence to it. The severest action an employer may face

is the cancellation of the licence to operate. However, the important thing is that there is no incentive for the workplaces to self-regulate, and thus they can easily get away with non-compliance if the enforcement agencies at the district-level show any sort of laxity in monitoring such workplaces.

Another problem seems to be in the implementation of the Act in the unorganised sector which is where the maximum female workforce is employed in India. There are no provisions specially catering to the needs of such women who work in irregular or day-to-day employment. Not to forget, the state governments have been given the baton to establish and run a district-level mechanism for redressal, through District Officer and Local Complaints Committee, which needs strong will and sincere efforts from the already sloppy law enforcement machinery.

FINAL WORDS

There is no doubt in my mind that this shapes up as a good step in the right direction, and is impactful insofar as the idea is to push the responsibility onto the employer. The mechanisms established through this law can be easily accessed for resolution and settled locally, if need be. This is important because women do not feel encouraged in using the court machinery for redressal of their grievances in such cases. However, keeping it away from the lagging court procedures comes with a cost, and that is the difficulty in ascertaining the integrity and independence of the adjudicators and officers empowered by this law. Moreover, the authorities and committees need to be earnestly monitored and regulated, so that the powers are not misused or the law does not become redundant.

As is true in any democratic country, the law is as good as the faith people have in it. And therefore, if the system to eradicate sexual harassment of women, in all forms, is not regularly adapted to better fit the evolving society, it may soon run out of its mileage.