

**INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES**

**[ISSN 2581-5369]**

---

**Volume 4 | Issue 6**

---

**2021**

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact [Gyan@vidhiaagaz.com](mailto:Gyan@vidhiaagaz.com).

---

**To submit your Manuscript** for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# 30 Years of Globalization and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

---

CHANDANI G S<sup>1</sup>

## ABSTRACT

*The New Economic Policy, 1991 was introduced in India when PV Narasimha Rao was the Prime Minister and Dr. Manmohan Singh was the Finance Minister. It brought into effect the concepts of liberalization, privatization and globalization (LPG). This year 2021 marks 30 years of globalization. Globalization has improved the lives of everyone in various ways. It has led to better employment and educational opportunities, better trade relations, growth in finance, development in the fields of transport, communication and information technology and so on. Globalization has increased the number of working women. This can serve as a tool to attain the goal of gender equality. At the same time, with rise in number of working women, the evil of sexual harassment at workplaces is also persisting. This paper seeks to conduct a critical analysis of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in light of 30 years of globalization. Firstly, it attempts to dig into the historical background and objective behind the implementation of the aforesaid statute. Secondly, it explores the impact of globalization on women. Thirdly, it discusses the brutal consequences of sexual harassment of women at workplaces. This brings to light the seriousness or gravity of the situation and the necessity for improvisation in the law on sexual harassment. Fourthly, it outlines the salient features of the Prevention of Sexual Harassment Act, 2013 and conducts a critical analysis of the same. Lastly, the paper concludes with recommendations on how the loopholes in the aforementioned legislation can be addressed and rectified.*

**Keywords:** Women, Sexual Harassment, Globalization, law.

## I. INTRODUCTION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force from December 9<sup>th</sup>, 2013. The absence of a statutory framework in India to deal with the offence of sexual harassment of women at workplaces led to the fabrication of this legislation. Previously, the only Sections under the Indian Penal Code, 1860 which dealt

---

<sup>1</sup> Author is a student at BMS College of Law, Bangalore, India.

with this issue were Sections 354 and 509 which are concerned with outraging the modesty of a woman and insulting the modesty of a woman respectively. The Criminal Law (Amendment) Act, 2013 has introduced certain new Sections including sexual harassment, stalking, voyeurism and so on. Some of the main factors that led to the formulation of this enactment were the Constitutional mandate envisaged under Articles 14, 15, 19 and 21, International obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), landmark judgment of *Vishaka v. State of Rajasthan* in which the Hon'ble Supreme Court laid down the Vishaka guidelines and other significant judicial decisions.

The New Economic Policy, 1991 was introduced in India when PV Narasimha Rao was the Prime Minister and Dr. Manmohan Singh was the Finance Minister. It introduced the concepts of liberalization, privatization and globalization (LPG). The advantages of globalization are numerous. It has led to the betterment of the lives of the people and has also contributed significantly to the economic development of the country. It has also increased the number of working women which can help in removing gender disparities. However, a major impediment to greater participation of women in the labour workforce is sexual harassment at workplaces. Sexual harassment at workplaces can widen the existing disparities between men and women. Sexual harassment is also a form of sexual discrimination.

Sexual harassment of women at workplaces can have pessimistic consequences on women that might last a lifetime by affecting their professional as well as personal life. Some of the consequences are progress and development in career is severely hindered, disincentivizes women to hold leadership positions, serious negative impact on mental health, grave implications on physical health, unnecessary medical expenditure and financial burden, ostracism in a social setup and so on.

The absence of a statutory framework in India to address the issue resulted in the fabrication of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. On a critical analysis of the aforesaid statute, some of the loopholes come to light. Taking for instance, it provides punishment for false and malicious complaints, it contains certain illogical procedural aspects, it is gender specific, lack of proper guidance to Internal Committees and so on.

This paper focuses on the following four aspects. Firstly, it traces the historical background or evolution of Prevention of Sexual Harassment Act, 2013. Secondly, it discusses the impact of globalization on women. Thirdly, it articulates the pessimistic consequences of sexual harassment of women at workplaces. Fourthly, it conducts a critical analysis of the POSH Act,

2013. Fifthly, it makes recommendations on how the legislation can be improved.

## **II. HISTORICAL BACKGROUND: EVOLUTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013**

The following factors were instrumental in the formulation of a statutory framework on prevention of sexual harassment at workplaces.

### **(A) Indian Constitutional mandate and International Conventions**

It is evident from the Statement of Objects and Reasons to this enactment that some of the main Indian Constitutional provisions instrumental in the fabrication of this legislation were Articles 14, 15, 19(1)(g) and 21. Article 14 confers equality before law to every person<sup>2</sup>. Article 15 prohibits discrimination on certain grounds including religion, race, caste, sex or place of birth<sup>3</sup>. Article 19(1)(g) guarantees the right to practice any profession, or to carry on any occupation, trade or business<sup>4</sup>. Article 21 which seeks to protect life and personal liberty<sup>5</sup> includes right to live with human dignity. The aforesaid fundamental rights become extremely relevant in the context of sexual harassment of women at workplaces and rights of women.

A notable International Convention is the Discrimination (Employment and Occupation) Convention, 1958 of the International Labour Organization (ILO). This Convention was ratified by India in the year 1960<sup>6</sup>. Another important international instrument is the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979 (CEDAW). This Convention was ratified by India in the year 1993. It has to be noted that under Article 253 of the Indian Constitution, Parliament has the power to formulate legislations for giving effect to international agreements including International Conventions<sup>7</sup>. In this way, the aforementioned International Conventions have been influential in framing of the statute on prevention of sexual harassment at workplaces.

### **(B) The historic case of Vishaka v. State of Rajasthan**

The landmark case of the Supreme Court which formed the entire edifice for this legislation is the judgment of Vishaka v. State of Rajasthan<sup>8</sup>. The horrific incident that led to this landmark

---

<sup>2</sup> INDIA CONST. art. 14.

<sup>3</sup> INDIA CONST. art. 15.

<sup>4</sup> INDIA CONST. art. 19, cl. 1.

<sup>5</sup> INDIA CONST. art. 21.

<sup>6</sup> Malavika Rajkumar, *The History Behind Sexual Harassment at the Workplace Law*, Nyaaya (Sept. 12, 2021, 5:20 PM), <https://medium.com/nyaaya/the-history-behind-sexual-harassment-at-the-workplace-law-33f378af66be>.

<sup>7</sup> INDIA CONST. art. 253.

<sup>8</sup> Vishaka v. State of Rajasthan, MANU/SC/0786/1997.

judgment was the brutal gang-rape of Bhanwari Devi. She was a Dalit woman and a social worker who was gang-raped in the year 1992. She had made efforts to stop a child marriage that was being performed in a family belonging to a higher caste in the State of Rajasthan. Ironically, the gang-rape was the reaction to her efforts. This occurrence depicts how deeply rooted is the culture of patriarchy in our society making it unsafe for women to raise their voice against social issues.

During the trial, the judges were changed five times and in the year 1995, the accused were acquitted of the charges of rape citing illogical and baseless reasons like the village head cannot rape, men of different castes cannot participate in gang rape, men of 60-70 years age group cannot rape, owing to reasons of purity a member of the higher caste cannot rape lower caste women, Bhanwari Devi's husband would not have silently watched his wife being gang-raped and so on<sup>9</sup>. The aforesaid judgment stimulated a lot of agitation in the country. Geeta Pandey has rightly pointed out in her article that, "*Justice has remained elusive for Bhanwari Devi, but she is the reason why millions of Indian women are now legally protected against sexual harassment in the workplace*<sup>10</sup>."

The Supreme Court in the judgment of Vishaka v. State of Rajasthan<sup>11</sup> has issued certain guidelines which are popularly known as the Vishaka guidelines. They are related to the duties of the employer at workplaces, definition of the act of sexual harassment, preventive steps to be taken, criminal proceedings, disciplinary action, complaint mechanism, complaint committees, creating awareness and so on.

### **(C) The Criminal Law (Amendment) Act, 2013 and the case of Rupan Deol Bajaj v. KPS Gill**

Before the passage of the Criminal Law (Amendment) Act, 2013, the only sections under the Indian Penal Code, 1860 relevant for the offence of sexual harassment were Sections 354 and 509 which are concerned with outraging the modesty of a woman and insulting the modesty of a woman respectively<sup>12</sup>. It is rightly pointed out by the author that the judgment of Rupan Deol Bajaj v. KPS Gill<sup>13</sup> is a very good instance wherein it was depicted that "*the gap in law was very apparent and the need for further reforms on sexual harassment was obvious*<sup>14</sup>." The

---

<sup>9</sup> Geeta Pandey, *Bhanwari Devi: The rape that led to India's sexual harassment law*, BBC NEWS (Sept. 12, 2021, 5:34 PM), <https://www.bbc.com/news/world-asia-india-39265653>.

<sup>10</sup> *Id.* at 9.

<sup>11</sup> *Supra* note 9.

<sup>12</sup> *Supra* note 7, at 3.

<sup>13</sup> Rupan Deol Bajaj v. Kanwar Pal Singh Gill, MANU/SC/0080/1996.

<sup>14</sup> *Supra* note 7, at 3.

Criminal Law (Amendment) Act, 2013 has introduced certain new Sections including sexual harassment and punishment for sexual harassment, assault or use of criminal force to woman with intent to disrobe, voyeurism and stalking.

#### **(D) Significant judicial decisions**

In the judgment of Apparel Export Promotion Council v. AK Chopra<sup>15</sup>, the Supreme Court has averred that physical contact is not an essential ingredient for the offence of sexual harassment. The term sexual harassment encompasses within its ambit action which is against moral sanctions and which does not withstand the test of decency and modesty.

Further, in the case of Medha Kotwal Lele v. Union of India<sup>16</sup>, writ petitions and appeals were filed for implementation of the Vishaka guidelines. The State Governments were asked to submit affidavits with respect to the above matter. It was observed that implementation of the guidelines should not only be in form but also in substance and spirit. The purpose was to provide a safe and secure environment to women at workplaces and to make way for them to function with decency, dignity, safety and respect.

It needs to be highlighted that the mission of “consciousness raising” or combating against social evils like demand for dowry, child marriage and so on especially at the village level is extremely difficult and challenging owing to the archaic caste systems and patriarchal mindsets<sup>17</sup>. The author at the beginning of the article rightly mentions that “*the irony of the whole situation is that even after Bhanwari Devi has won awards, recognition and leadership status at all levels, her very basic need, justice, remains unfulfilled*”<sup>18</sup>.

#### **(E) Recent developments**

A recent development is the case of Mobashar Jawed Akbar v. Priya Ramani<sup>19</sup>. Anchal Bhatheja in the article titled, “Priya Ramani Case: Judgment Reassures and Consoles Victims of Sexual Harassment” discusses in detail the implications of the judgment of Mobashar Jawed Akbar v. Priya Ramani<sup>20</sup> on the #MeToo Movement<sup>21</sup>. The author points out that this judgment comes as a reassurance for victims of sexual harassment wherein a senior journalist was

---

<sup>15</sup> Apparel Export Promotion Council v. A.K. Chopra, MANU/SC/0014/1999.

<sup>16</sup> Medha Kotwal Lele v. Union of India, MANU/SC/0898/2012.

<sup>17</sup> Halabol, *The Irony of Iconhood- The life and times of Bhanwari Devi*, thebetterIndia (Sept. 17, 2021, 10:00 AM), <https://www.thebetterindia.com/7199/the-irony-of-iconhood-the-life-and-times-of-bhanwari-devi/>.

<sup>18</sup> *Id.* at 17.

<sup>19</sup> Mobashar Jawed Akbar v. Priya Ramani, MANU/OT/0002/2021.

<sup>20</sup> *Id.* at 19.

<sup>21</sup> Anchal Bhatheja, *Priya Ramani Case: Judgment Reassures and consoles victims of sexual harassment*, THE LEAFLET (Sept. 17, 2021, 10:10 AM), <https://www.theleaflet.in/priya-ramani-case-judgment-reassures-and-consoles-victims-of-sexual-harassment/>.

acquitted of the charges of defamation under Sections 499 and 500 of the Indian Penal Code, 1860<sup>22</sup>. A person's right to reputation cannot supersede a woman's basic right to life and dignity<sup>23</sup>.

In light of the above discussed historical background, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into effect. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was passed by the Lok Sabha on September 3<sup>rd</sup>, 2012. It was passed by the Rajya Sabha on February 26<sup>th</sup>, 2013. It received the assent of the President of India on April 23<sup>rd</sup>, 2013. Therefore, it can be concluded that collective efforts made by the legislature, judiciary, international forces, non-governmental organizations, social activists and the media have played a major role in bringing into effect the POSH Act, 2013.

### III. IMPACT OF GLOBALIZATION ON WOMEN

The New Economic Policy, 1991 was introduced in India when PV Narasimha Rao was the Prime Minister and Dr. Manmohan Singh was the Finance Minister. It instituted the landmark concepts of liberalization, privatization and globalization (LPG). According to the International Monetary Fund (IMF), globalization is defined as, "*the growing economic interdependence of countries worldwide through increasing volume and variety of cross-border transactions in goods and services and of international capital flows and also through the more rapid and widespread diffusion of technology*"<sup>24</sup>."

According to the authors, globalization can have various effects including extension of social, political and economic activities beyond political frontiers and continents, increase in trade, investment, finance, migration, improvisation in transport and communication systems, growing relationship between domestic matters and global affairs and so on<sup>25</sup>. Y. Gurappa Naidu in the paper titled, "Globalization and its impact on Indian Society" discusses the impact of globalization on Indian women. According to him, globalization might amplify the problem of gender inequality through discrimination in favour of male workers<sup>26</sup>. It needs to be noted that sexual harassment is also a form of sexual discrimination.

---

<sup>22</sup> *Id.* at 21.

<sup>23</sup> *Supra* note 22.

<sup>24</sup> FRANCIS CHERUNILAM, BUSINESS ENVIRONMENT 687 (Himalaya Publishing House, 26th ed. 2017).

<sup>25</sup> David Held et al., *Globalization*, JSTOR (Sept. 19, 2021, 6:02 PM), [https://www.jstor.org/stable/27800244?read-now=1&refreqid=excelsior%3A1d900bfd1f56df2f6f6ba4c2c3f79b8a&seq=2#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/27800244?read-now=1&refreqid=excelsior%3A1d900bfd1f56df2f6f6ba4c2c3f79b8a&seq=2#page_scan_tab_contents).

<sup>26</sup> Y. Gurappa Naidu, *Globalisation and its impact on Indian Society*, JSTOR (Sept. 19, 2021, 6:05 PM), [https://www.jstor.org/stable/41856193?read-now=1&refreqid=excelsior%3A033ef5364b7f7fddc38bbd4511b35177&seq=7#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/41856193?read-now=1&refreqid=excelsior%3A033ef5364b7f7fddc38bbd4511b35177&seq=7#page_scan_tab_contents).

Some of the main advantages of globalization are reduction in transportation costs, exchange of knowledge and information, expansion in trade, growth in research and development, surge in foreign direct investment inflows and so on<sup>27</sup>. All this has resulted in better and wide range of employment opportunities for women. Greater employment opportunities are available outside of the household and participation in global trade and financial markets is going to upgrade the position of everyone, including women which can serve as a tool to attain gender equality<sup>28</sup>. It has drastically increased the number of working women. Traditionally, women were confined to doing household jobs but globalization has massively aided in transforming the status of women to working women<sup>29</sup>. This helps them to be financially independent and self-sufficient. It increases their confidence and self-esteem to raise their voice against patriarchal practices, stereotypical attitudes and archaic mindsets.

There are two schools of thought when it comes to analyzing the effects of globalization<sup>30</sup>. On one hand, globalization can benefit people in various ways. On the other hand, it can widen the existing degree of inequalities between men and women<sup>31</sup>. An economic environment encompassing free market conditions amplifies economic growth, economic progress and brings about competition<sup>32</sup>. This enhances the lives of everyone including women by raising income levels, standards of living and providing more educational opportunities<sup>33</sup>. Therefore, participation in global trade and financial markets is of massive significance to all citizens including women. An impediment to greater participation of women in the labour workforce is sexual harassment at workplaces. Sexual harassment at workplaces can widen the existing disparities between men and women.

Taking into consideration the choices that women have to make in traditional conservative societies, globalization has multiplied their freedom and it has presented a wide range of opportunities to women in both manufacturing and service sectors<sup>34</sup>. The author mentions that globalization has given women the power to put an end to the system that makes way to

---

<sup>27</sup> Atif Ali Jaffri et al., *Impact of globalization on gender inequality in labour market of Pakistan*, JSTOR (Sept. 19, 2021, 6:35 PM), [https://www.jstor.org/stable/26153246?read-now=1&refreqid=excelsior%3A77ab8628c3f96c1eb43154cb7ef17910&seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/26153246?read-now=1&refreqid=excelsior%3A77ab8628c3f96c1eb43154cb7ef17910&seq=1#page_scan_tab_contents).

<sup>28</sup> Mercedes Sanchez Apellaniz, *Women and Globalization*, RESEARCHGATE (Sept. 19, 2021, 6:15 PM), [https://www.researchgate.net/publication/256014247\\_Women\\_and\\_Globalization](https://www.researchgate.net/publication/256014247_Women_and_Globalization).

<sup>29</sup> *Id.* at 28.

<sup>30</sup> *Supra* note 28.

<sup>31</sup> *Supra* note 28.

<sup>32</sup> David L. Richards & Ronald Gelleny, *Women's status and economic globalization*, JSTOR (Sept. 19, 2021, 6:20 PM), [https://www.jstor.org/stable/4621746?read-now=1&refreqid=excelsior%3A8604b8d91a1dc71affb74dfa04543a9&seq=5#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/4621746?read-now=1&refreqid=excelsior%3A8604b8d91a1dc71affb74dfa04543a9&seq=5#page_scan_tab_contents).

<sup>33</sup> *Id.* at 32.

<sup>34</sup> Jayanta Parida, *Globalization and its impact on women- An Assessment*, JSTOR (Sept. 19, 2021, 6:30 PM), [https://www.jstor.org/stable/42761428?read-now=1&refreqid=excelsior%3A9b00727a62bdffb0acfe9cb3d9fa6f53&seq=2#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/42761428?read-now=1&refreqid=excelsior%3A9b00727a62bdffb0acfe9cb3d9fa6f53&seq=2#page_scan_tab_contents).



poverty, exploitation and oppression<sup>35</sup>. However, there are a number of women who are poor and desperately in need of money who are willing to work for poor wages and unsatisfactory working conditions<sup>36</sup>. A number of women work in the unorganized sector. There are all chances that undue advantage may be taken of their financial condition and they may become victims of sexual harassment.

#### **IV. PESSIMISTIC CONSEQUENCES OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACES**

Sexual harassment of women at workplaces can have pessimistic repercussions on women that might last a lifetime. They are discussed below in detail.

##### **(A) Progress and development in career is severally hindered**

When a woman is being subjected to sexual harassment at a workplace, her physical and mental health is brutally affected. The victim is demotivated to achieve her ambitions and goals at the workplace. Also, in severe cases, it tends to leave a long-term impact on the victim's mind, owing to which the woman might quit employment and not join work ever again. In instances where the woman is the only breadwinner of the family, the situation becomes pathetic for her. The authors in their article titled, "The economic and career effects of sexual harassment on working women" have rightly pointed out that sexual harassment affects immediate work outcomes including reduced job satisfaction, work withdrawal and increased absenteeism, deteriorating relationships with co-workers, reduction in organizational commitment and so on<sup>37</sup>. In a nutshell, sexual harassment of women at workplaces tends to shatter their dreams and aspirations. It is often quoted that the youth of today are the leaders of tomorrow. If the aggrieved woman is a fresher, a youth or someone who has just passed out of college, repercussions are ever-lasting and serious. The incident might completely discourage the youth from pursuing their career any further.

##### **(B) Disincentivizes women to hold leadership positions**

If women are encouraged to play leadership roles at workplaces, it is a thriving step towards attaining gender equality. However, the evil of sexual harassment is a grave impediment in this path towards equality. The authors in their article titled, "Sexual harassment of women leaders" are of the opinion that women supervisors are more likely subjected to sexual harassment at

---

<sup>35</sup> *Id.* at 34.

<sup>36</sup> *Supra* note 35.

<sup>37</sup> Heather McLaughlin et. al, *The Economic and Career Effects of Sexual Harassment on Working Women*, JSTOR (Sept. 19, 2021, 10:41 AM), [https://www.jstor.org/stable/44280313?read-now=1&refreqid=excelsior%3Aec09e82a87a5bdac6e0eb66a236d8d96&seq=3#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/44280313?read-now=1&refreqid=excelsior%3Aec09e82a87a5bdac6e0eb66a236d8d96&seq=3#page_scan_tab_contents).

workplaces than women employees<sup>38</sup>. It is pointed out that this risk of sexual harassment is greater in lower and mid-level positions of leadership and when the subordinates being supervised are mostly male employees<sup>39</sup>. It needs to be highlighted that a woman's consistent efforts to hold leadership positions in the labour market is a necessary ingredient towards building equality between men and women in terms of their economic status<sup>40</sup>. Therefore, if a woman holding any sort of leadership position is sexually harassed, it disincentivizes them to continue in such positions. As a result of which the dream of achieving gender equality in all spheres remains a dream. This signifies the gravity of the situation and the need for proper regulation.

### **(C) Serious negative impact on mental health**

Sexual harassment of women at workplaces can have perpetual effects on their mental and psychological health. Sandy Welsh enunciates that sexual harassment can result in anxiety, depression, sleep disturbances, nausea, stress, headaches and so on<sup>41</sup>. Women tend to suffer from serious mental health problems for no fault of theirs. Mental health deterioration can hamper their productivity and well-being at workplaces as well as their personal life. The impact of sexual harassment extends to their family life as well. Even to this day, a lot of cases go unreported owing to the stigma associated with sexual harassment in a social setup. The thought of getting ostracized in a social setup can greatly influence a woman's family life or personal life. As a consequence, the aggrieved woman might lose interest in her professional and personal life.

### **(D) Fears of aggrieved woman**

It has to be noted that a number of sexual harassment at workplace cases go unreported. Women are scared of the consequences that might follow after filing complaints of such incidents. According to Paula McDonald and Sara Charlesworth, the work-related consequences of sexual harassment from the aggrieved woman's point of view are changes to employment conditions, limited or denial of access to career opportunities, dismissal, forced resignation and so on<sup>42</sup>. The non-work related repercussions comprises of negative impact on relationships with family

---

<sup>38</sup> Olle Folke, *Sexual Harassment of Women leaders*, JSTOR (Sept. 19, 2021, 10:48 AM), [https://www.jstor.org/stable/48563040?seq=16#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/48563040?seq=16#metadata_info_tab_contents).

<sup>39</sup> *Id.* at 38.

<sup>40</sup> *Supra* note 38.

<sup>41</sup> Sandy Welsh, *Gender and Sexual Harassment*, JSTOR (Sept. 19, 2021, 10:52 AM), [https://www.jstor.org/stable/223502?read-now=1&refreqid=excelsior%3A92f235ad7882c0a8c775bdc6301af5a6&seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/223502?read-now=1&refreqid=excelsior%3A92f235ad7882c0a8c775bdc6301af5a6&seq=1#page_scan_tab_contents).

<sup>42</sup> Paula McDonald & Sara Charlesworth, *Workplace sexual harassment at the margins*, JSTOR (Sept. 19, 2021, 11:00 AM), [https://www.jstor.org/stable/26655451?read-now=1&refreqid=excelsior%3Acba142fe5d3d2111b3aaf7d9e922f9d7&seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/26655451?read-now=1&refreqid=excelsior%3Acba142fe5d3d2111b3aaf7d9e922f9d7&seq=1#page_scan_tab_contents).

or partner, distress, impact on health or well-being, financial hardships and so on<sup>43</sup>.

### **(E) Grave implications on physical health**

According to Section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, sexual harassment encompasses unwelcome acts or behavior whether directly or by implication. Unwelcome acts of physical contact can affect the victim in adverse ways. It makes her easily susceptible to sexually transmitted dangerous diseases like HIV/AIDS and she might incur physical injuries. Also, sexual harassment might result in unwanted pregnancies. If the victim opts for medical termination of such pregnancies, again it is adversely going to affect her physical health. This unwelcome act of sexual harassment makes a woman extremely vulnerable physically as well as mentally. The mental trauma and shock further hinders her speedy recovery.

### **(F) Medical expenses and financial incapacity**

It has to be noted that the aggrieved woman would have to incur huge medical expenses owing to this unwelcome attack of sexual harassment. The medical expenses incurred can be for physical, mental or psychological treatment. If the woman is the only breadwinner of the family or if she is from a below poverty line household, the problem worsens several times. Her financial condition might not permit her to bear the required expenses. It can act as an additional burden. As rightly pointed out by B.D Singh, there are two kinds of remedies namely monetary relief and immaterial damages<sup>44</sup>. Monetary relief is granted for the actual pecuniary harm suffered whereas immaterial damages are also called moral or compensatory damages given with the main objective of compensating the aggrieved woman for injury to her feelings, mental anguish and humiliation caused as a result of sexual harassment<sup>45</sup>.

### **(G) Problems faced by the aggrieved woman in a social environment**

Apart from medical expenses and loss in career opportunities, the victim has to face a lot of difficulties in a social setup. This incident of sexual harassment can influence the victim's relationships with her family, partner or friends. Also, owing to the stigma associated with sexual harassment and certain stereotypical mindsets, the victim might not disclose this fact that she was sexually harassed. The aggrieved woman is ridiculed and ostracized for no fault of hers. This archaic attitude prevailing in our societies must undergo a drastic change.

---

<sup>43</sup> *Id.* at 42.

<sup>44</sup> B.D. Singh, *Issue of Sexual Harassment- A legal perspective*, JSTOR (Sept. 19, 2021, 11:06 AM), [https://www.jstor.org/stable/27767699?read-now=1&refreqid=excelsior%3Af11ed590fecb39b42c934cbc1b48f94c&seq=7#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/27767699?read-now=1&refreqid=excelsior%3Af11ed590fecb39b42c934cbc1b48f94c&seq=7#page_scan_tab_contents).

<sup>45</sup> *Id.* at 44.

Tremendous reform should happen and the victim should be treated with care and affection. Her surrounding family and friends should help her get justice instead of ostracizing her and adding fuel to her pain.

It can be inferred from the aforementioned consequences that this act of sexual harassment at a workplace severely brings down a woman's dignity, right to life and right to equality. It not only affects her physical health but also demotivates her mentally and psychologically. The consequences are not only confined to her professional life but also to all spheres of life like family and social life. This might induce suicidal thoughts in the victim. Hence, taking into consideration, the seriousness of the situation, this issue should be addressed with great care and caution. This necessitates a robust legislative framework as well as its diligent implementation.

## **V. CRITICAL ANALYSIS OF PREVENTION OF SEXUAL HARASSMENT ACT, 2013**

In order to conduct a critical analysis of the aforesaid legislation, it becomes important to highlight certain prominent features of this enactment. Some of the primary features of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 are as follows<sup>46</sup>.

**1. Definition of aggrieved woman:** Aggrieved woman means 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. Aggrieved woman in relation to a dwelling place or house refers to a woman of any age who is employed in such a dwelling place or house.

**2. Definition of Sexual harassment:** The definition of sexual harassment under this Act is an inclusive definition. Any one or more of the below mentioned unwelcome acts or behavior whether directly or by implication amounts to sexual harassment. They include physical contact or advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography and any other physical, verbal or non-verbal conduct of a sexual nature. In addition to the aforesaid acts the following circumstances are also covered under the ambit of sexual harassment. They are implied or explicit promise of preferential treatment in her employment, implied or explicit threat of detrimental treatment in her employment, implied or explicit threat of her present or future employment status, interference with her work or creating an intimidating or offensive or hostile work environment and humiliating treatment likely to affect her health or safety.

---

<sup>46</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

**3. Constitution of Internal Complaints Committee:** The employer of a workplace shall by an order in writing constitute an Internal Complaints Committee also known as Internal Committee wherein the Presiding Officer shall be a woman who is employed at a senior level in the workplace.

**4. Constitution of Local Complaints Committee:** Every District Officer in their respective Districts shall constitute a Local Complaints Committee also called as Local Committee whose function is to receive complaints of sexual harassment at workplace from establishments wherein the Internal Committee has not been formed because there are less than ten workers or if the complaint is against the employer himself.

**5. Complaint:** An aggrieved woman can make a complaint of sexual harassment at workplace to the Internal Committee or the Local Committee in writing within three months from the date of the incident. Before initiating an inquiry, the Internal Committee or the Local Committee at the request of the aggrieved woman may take measures to settle the matter through the mode of conciliation between her and the respondent. The Internal Committee or the Local Committee shall conduct an inquiry into the complaint in consonance to provisions of service rules applicable to the respondent.

**6. Inquiry into complaint:** During the pendency of the inquiry before the Committees, the aggrieved woman or the respondent may be transferred to another workplace or the aggrieved woman may be granted leave up to a period of three months. If allegations are proved against the respondent before the Internal Committee or the Local Committee, action will be taken in accordance to the provisions of service rules applicable to the respondent, salary or wages may be deducted, respondent may be ordered to pay a sum of compensation to the aggrieved woman and so on. The compensation will be determined after taking into consideration the mental trauma, pain or suffering caused to the aggrieved woman, loss in prospective career opportunities due to this occurrence of sexual harassment, medical expenses incurred by the victim, income and financial capacity of the respondent and so on.

**7. Duties of the employer:** Under the Act, some of the principal duties of the employer are to provide a safe working environment at the workplace, to portray at prominent junctures in the establishment the penal repercussions of sexual harassment, or orchestrating workshops and awareness programmes for the purpose of sensitizing the employees and so on.

**8. Duties and powers of District Officer:** The District Officer is mandated to monitor the timely submission of reports furnished by the Local Committee and to take measures for enabling non-Governmental Organizations to create awareness on this impediment of sexual harassment and rights of women.

**9. Penalties:** Where the employer fails to comply with the provisions of the Act, he shall be punishable with fine which may extend to fifty thousand rupees.

## **VI. CRITICAL ANALYSIS OF POSH ACT, 2013**

### **(A) Punishment for false and malicious complaints**

Section 14 of the Act prescribes punishment for false and malicious complaints and also for false evidences. Under this Section, if allegations are not proved against the respondent, action will be taken against the complainant as per the service rules applicable. However, the prerequisite for such an action is malicious intent on the part of the complainant. Nonetheless, this particular provision can be easily misused and be taken to the advantage of the perpetrator. This Section brings adversity to the aggrieved woman. It needs to be highlighted that the employer holds no responsibility for any victimization that the woman is subjected to<sup>47</sup>. Therefore, this section brings adverse scope for misuse.

### **(B) The POSH Act contains illogical Procedural Aspects**

Under Section 9 of the Act, the aggrieved woman must make a complaint of sexual harassment at workplace to the Internal Committee or the Local Committee within a period of 3 months from the date of the incident. The complaint should be in writing. The limitation period may be extended by another 3 months but not beyond that. This extension can be granted and the delay can be condoned only if the Internal Committee or the Local Committee is satisfied of the circumstances that led to the delay. Therefore, such provisions make the law nascent, developing and unclear<sup>48</sup>.

### **(C) The POSH Act is gender specific**

The POSH Act, 2013 is gender specific and not gender neutral. It concentrates only on women.

### **(D) Conciliation is not an appropriate technique**

Under Section 10 of the Act, before initiating an enquiry under Section 11, the Internal Committee or the Local Committee may take steps to settle the matter between the aggrieved woman and the respondent through conciliation. In my opinion, conciliation is not an appropriate technique to address the issue of sexual harassment. The technique of conciliation might delay justice and cause undue intervention. Taking into consideration the gravity and sensitivity of the offence, conciliation is an unsuitable method.

---

<sup>47</sup> Monica Sakhrani, *Sexual Harassment: The Conundrum of Law, Due Process and Justice*, EPWengage (Sept. 19, 2021, 8:10 PM), <https://www.epw.in/engage/article/sexual-harassment-conundrum-law-due-process-and-justice>.

<sup>48</sup> *Id.* at 47.

**(E) Local Complaints Committee must reach out to women**

Under Section 4 of the Act, Internal Complaints Committees are constituted by the employer for establishments having more than 10 workers. Under Section 6 of the Act, local complaints committees are constituted by the District Officer to receive complaints from establishments having less than 10 workers or if the complaint is against the employer himself. Such committees are constituted for the benefit of women working in the unorganized sectors. It needs to be noted that to find a local complaints committee, the aggrieved woman has to visit the district officer's office or call the 181 helpline<sup>49</sup>. Such rigorous procedural aspects reduce easy accessibility and it is highly likely that a woman will not register the complaint itself until it is severe or repeated<sup>50</sup>. Therefore, easy accessibility should be ensured.

**(F) Lack of guidance to Internal Committees**

Under Section 11 of the Act, for the purpose of making an inquiry into the complaint, the Internal Committee and Local Committee shall have powers of a Civil Court as conferred by the Code of Civil Procedure, 1908. Nevertheless, there is no proper guidance to Internal Committees on how effectively they can exercise such powers and there is a need for Standard Operating Procedures<sup>51</sup>.

**(G) Lack of safeguards or protection for members of Internal Complaints Committee**

Under Section 4 of the Act, the internal complaints committee shall consist of a Presiding Officer who shall be a senior level woman employee at the workplace, 2 members from amongst the employees committed to the cause of women and 1 member from non-Governmental organizations familiar with issues relating to sexual harassment. The Internal Complaints Committee is an in-house mechanism set up by the employer within the workplace. However, the POSH Act prescribes no safeguards or protection for members of Internal Complaints Committee. It might hinder the members from taking free, fair and impartial decisions<sup>52</sup>. In certain cases, the members may be subjected to victimization and targeting if they take decisions which are against the senior management<sup>53</sup>.

---

<sup>49</sup> Akshaya Vijayalakshmi, *Extending the boundaries of #MeToo: Sexual Harassment in the lives of marginalized women*, EPWengage (Sept. 19, 2021, 10:40 PM), *Extending the Boundaries of #MeToo: Sexual Harassment in the Lives of Marginalised Women | Economic and Political Weekly* (epw.in).

<sup>50</sup> *Id.* at 49.

<sup>51</sup> Anagha Sarpotdar, *POSH ACT 2013: Are there legislative gaps which need to be bridged?*, LIVELAW.IN (Sept. 19, 2021, 10:46 PM), <https://www.livelaw.in/columns/posh-act-2013-are-there-legislative-gaps-which-need-to-be-bridged-159267>.

<sup>52</sup> Nitish Kashyap, *Need Safeguards for members of Internal Complaint Committees; PIL before Bombay HC seeks changes to the POSH Act*, LIVELAW.IN (Sept. 20, 2021, 7:56 PM), <https://www.livelaw.in/news-updates/bombay-high-court-sexual-harassment-of-women-at-workplace-act-pil-167926>.

<sup>53</sup> *Id.* at 52.

### **(H) Definition of workplace excludes a virtual workspace**

The COVID-19 pandemic situation has made work from home the new normal. Given this situation, there are all possibilities that women might be subjected to acts of sexual harassment on a virtual platform. Therefore, a redressal mechanism should be in place to tackle the same. Section 2(o) of the POSH Act defines the term “workplace”. Under this definition, a virtual workspace is not explicitly included. The definition should have incorporated terms like “graphic” or “electronic” within its ambit<sup>54</sup>. This would have enlarged the definition and given a wider meaning to it.

These are some of the loopholes or defects in the Prevention of Sexual Harassment Act, 2013.

## **VII. CONCLUSION AND RECOMMENDATIONS**

It can be inferred from the above discussions and analysis that this paper deals with four aspects. Firstly, it traces the historical evolution of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Secondly, it describes the impact of globalization on women. Thirdly, it narrates the pessimistic consequences of sexual harassment of women at workplaces. This brings to light the seriousness or gravity of the situation. Fourthly, it conducts a critical analysis of the Prevention of Sexual Harassment Act, 2013.

As regards the first issue, it can be inferred that a number of factors have influenced the fabrication of Prevention of Sexual Harassment Act, 2013. They include the Indian Constitutional mandate under Articles 14, 15, 19(1)(g) and 21, ratification of International Conventions by India like the United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979, the Vishaka guidelines laid down by the Supreme Court, insufficient provisions under the Indian Penal Code, 1860 to deal with the offence of sexual harassment, other noteworthy judicial decisions and so on.

Secondly, with respect to impact of globalization on women, globalization has created a positive as well as negative impact. Positively speaking, it has increased employment opportunities, educational opportunities, increase in trade, growth in investments, improvements in transport, communication and technology and so on. It has increased the number of working women. Negatively speaking, it has led to rise in discrimination against women. The impediment of sexual harassment of women at workplaces is persisting. This

---

<sup>54</sup> Meera Kaura Patel, *From Workplace to Cyber-Workspace: Practical challenges under sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013*, LIVELAW.IN (Sept. 20, 2021, 7:50 PM), <https://www.livelaw.in/columns/from-workplace-to-cyber-workspace-practical-challenges-under-sexual-harassment-of-women-at-workplace-preventionprohibition-and-redressal-act2013-160311>.



problem demotivates women to pursue their career.

Thirdly, the evil act of sexual harassment at workplaces has brutal consequences including grave implications on physical health, deterioration of mental health, progress and development in career is severely hindered, disincentivizes women to hold leadership positions, unnecessary medical expenditure, social ostracism and so on. The gravity or the seriousness of the problem can be inferred from the aforesaid consequences.

Fourthly, on conducting a critical analysis of the statute on sexual harassment, it becomes evident that this legislation suffers from certain loopholes. It provides punishment for false and malicious complaints, the Act is gender specific, it contains certain illogical procedural aspects, lack of proper guidance to Internal Committees, conciliation is not an appropriate technique, easy accessibility of Local Complaints Committee is not ensured, lack of protection to members of Internal Complaints Committee and the definition of workplace excludes a virtual workplace.

In order to rectify the aforementioned loopholes, I would like to make the following recommendations.

- Section 14 of the Prevention of Sexual Harassment Act, 2013 which prescribes punishment for false and malicious complaints can be omitted as it can be easily misused.
- Under Section 9 of the Act, the limitation period for filing a complaint of sexual harassment must be extended from 3 months to 1 year.
- The Prevention of Sexual Harassment Act, 2013 is gender specific. It should be made gender neutral.
- Section 10 of the Act prescribes conciliation as a mode to address the issue of sexual harassment. This technique of conciliation might delay justice. Therefore, this section can be omitted.
- The definition of a workplace under Section 2(o) of the Act must expressly include a virtual workspace.
- The Local Complaints Committees must be easily accessible. Lengthy procedural aspects must be avoided.
- The Internal Complaints Committees must be given proper guidance on how to exercise their powers.

- The Act must prescribe safeguards or certain protections to members of Internal Complaints Committees. As a result of which, members can take free, fair and impartial decisions.
- These are some of the recommendations that I would like to make.

\*\*\*\*\*