

## THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 – A CRITICAL ANALYSIS<sup>1</sup>

### Introduction

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>2</sup> (hereinafter, ‘the 2013 Act’ or ‘the Act of 2013’) was passed by the Lok Sabha on September 3<sup>rd</sup>, 2012 and the Rajya Sabha on February 26<sup>th</sup>, 2013. It received Presidential assent on April 23<sup>rd</sup>, 2013 and came into force on December 9<sup>th</sup>, 2013.

The main aim of the Act is to provide:

1. Protection to working women against sexual harassment;
2. Effective mechanism for sexual harassment complaints and other incidental matters.

The term ‘sexual harassment’ includes all such unwelcomed actions, gestures, and request for sexual favours or porno to the women at her workplace by other person or any other physical or verbal/non-verbal conduct of sexual nature.<sup>3</sup> The definition is inclusive in nature. Thus, an act of harassment may not be sexual in nature, but when the victim feels that it questions her modesty, it can be included herein.

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<sup>2</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

<sup>3</sup> Rajdutt S. Singh, *India: Overview of the Sexual Harassment of Women at Workplace*, (Dec. 07, 2017), <http://www.mondaq.com/india/x/348338>.

## **Convention on the Elimination of all forms of Discrimination against Women, 1979 (CEDAW)**

The Convention was adopted by the United Nations General Assembly and came into force in 1981. It is commonly referred as the International Bill of Rights for women. It defines what constitutes discrimination against women and sets out a comprehensive framework for tackling gender inequality. Some of the important provisions are:

1. Definition- The relevant provision is: “Article 1: Definition of ‘discrimination against women’ – Discrimination against women includes any distinction, exclusion or restriction made on the basis of sex that has the effect or purpose of impairing or nullifying women’s enjoyment of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. This is irrespective of their marital status, on a basis of equality of men and women.”<sup>4</sup>
2. Right to Work- The relevant provision is: “Article 11: (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular: (a) The right to work as an inalienable right of all human beings; (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment; (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training; (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work; (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction. (2) In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work,

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<sup>4</sup> The Convention on the Elimination of All Forms of Discrimination against Women (UN GA Resolution No. 34/180), 1979, art. 1.

States Parties shall take appropriate measures: (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status; (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances; (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them. (3) Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.”<sup>5</sup>

3. Health care service- The relevant provision is: “Article 12: (1) States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning. (2) Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.”<sup>6</sup>
4. Economic and social life- The State parties shall take all such measures as are appropriate to eliminate discrimination against women in other areas of economic and social life so as to ensure, on the basis of equality of men and women, the same rights in particular, right to family benefits; right to bank loans, mortgages and other forms of financial credit and right to participate in recreational activities, sports and all aspects of cultural life.<sup>7</sup>
5. Rural development- The relevant provision is: “Article 14: (1) States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including

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<sup>5</sup> *Id.*, art. 11.

<sup>6</sup> *Id.*, art. 12.

<sup>7</sup> *Id.*, art. 13.

their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas. (2) States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right: (a) To participate in the elaboration and implementation of development planning at all levels; (b) To have access to adequate health care facilities, including information, counselling and services in family planning; (c) To benefit directly from social security programmes; (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency; (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment; (f) To participate in all community activities; (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes; (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”<sup>8</sup>

Article 14 of CEDAW- Every incident of sexual harassment at workplace results in violation of Right to Life and Liberty and of Fundamental Right to Gender Equality, both being the most precious Fundamental Rights guaranteed under the Indian Constitution. The fundamental rights guaranteed under our Constitution are sufficient to encompass all the facets of gender equality, including prevention of sexual harassment and abuse. The Courts are under a constitutional obligation to protect, preserve and promote these rights. Sexual harassment of women at workplace is incompatible with her dignity and honour and must be eliminated. International instruments like the CEDAW and the Beijing Declaration that direct all State parties to take appropriate measures to prevent all forms of discrimination against women besides taking steps to protect her honour and dignity, is quite clear. Article 7 of CEDAW recognises her right

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<sup>8</sup> *Id.*, art. 14.

to fair conditions of work and reflects that women shall not be subjected to sexual harassment at workplace which might vitiate working environment. These international instruments cast an obligation on India to gender sensitize the laws and Courts are under an obligation to implement these international instruments in their true spirit.<sup>9</sup>

Vishaka case- In 1997 the Apex Court observed, “the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by this Court under Article 141 of the Constitution”.<sup>10</sup>

Position after Vishaka- The victim was appointed as principal of an Army Public School and Vice Chairperson of the School Management Committee used to make advances towards her via a love letter expressing his feelings towards her and also described her as a charming and gorgeous woman, beautiful and attractive, look very stylish and fashionable with slim and slender body. The father of the victim also met him and he was abused by the Vice Chairman. On the basis of two anonymous complaints which were received by the Management Committee from the Head Quarters against the victim, she was terminated from her services. There is neither any Complaint Committee constituted by the school management nor any mechanism to take care the complaint lodged by the victim. The Supreme Court directed appropriate authorities to take disciplinary action against the wrongdoer for sexual harassment against the victim and also directed the School Committee to bear all the expenses of the victim.<sup>11</sup>

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<sup>9</sup> Apparel Export Promotion Council v. A.K. Chopra, A.I.R. 1999 S.C. 625 (India).

<sup>10</sup> Vishaka v. State of Rajasthan, A.I.R. 1997 S.C. 3011 (India).

<sup>11</sup> D.S. Grewal v. Vimmi Joshi, A.I.R. 2009 S.C.W. 2123 (India).

In *Medha Kotwal Lele v. Union of India*<sup>12</sup> the Apex Court observed that the Vishaka guidelines shouldn't remain symbolic and hence issued following order:

“(i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iv) The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant – victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser

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<sup>12</sup> A.I.R. 2012 S.C.W. 6130 (India).

should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order.”<sup>13</sup>

#### **The Protection of Women against Sexual Harassment at Workplace Bill, 2010**

The Bill lays the definition of sexual harassment and seeks to provide a complaint redressal mechanism. The key postulates of the Bill are:

1. It defines sexual harassment at workplace and creates mechanism for redressal of complaints. It even provides safeguards against false and malicious charges.
2. Every employer must constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer must constitute a Local Complaints Committee at every district, and even at block level, if required.
3. The Complaints Committee has powers similar to civil court for collecting evidence.
4. All such Committees are required to provide for conciliation between parties before initiating any inquiry, if requested by complainant.

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<sup>13</sup> *Id.*

5. Penalties have also been prescribed. Non-compliance with provisions of this Act shall be punishable with fine up to Rs. 50000. Repeat offenders are subject to higher penalties and cancellation of licenses.

### **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>14</sup>**

The 2013 Act was a solution sought for all cases of sexual harassment at places where women work. Section 2 of the Act provides certain relevant definitions.<sup>15</sup> Section 4 provides for Constitution of Internal Complaints Committee.<sup>16</sup> It shall comprise of:

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<sup>14</sup> *supra* note 2.

<sup>15</sup> 2. Definitions.—In this Act, unless the context otherwise requires, —

(a) “aggrieved woman” 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;

(b) “appropriate Government” means—

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

(c) “Chairperson” means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) “District Officer” means an officer notified under section 5;

(e) “domestic worker” means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) “employee” means a person employed at a workplace for any work on regular, temporary, *ad hoc* 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;

(g) “employer” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, 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.

*Explanation.* —For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(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;

(h) “Internal Committee” means an Internal Complaints Committee constituted under section 4;



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- (i) “Local Committee” means the Local Complaints Committee constituted under section 6;
  - (j) “Member” means a Member of the Internal Committee or the Local Committee, as the case may be;
  - (k) “prescribed” means prescribed by rules made under this Act;
  - (l) “Presiding Officer” means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;
  - (m) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9;
  - (n) “sexual harassment” 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;
  - (o) “workplace” includes—
    - (i) any department, organisation, 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 organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, 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;
  - (p) “unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

<sup>16</sup> 4. Constitution of Internal Complaints Committee.— (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) 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;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

- (a) Presiding Officer- It shall be a woman employed at senior level at workplace from amongst the employees.<sup>17</sup>
- (b) Other members- At least two members from amongst the employees preferably committed to women's causes or who have had experience in social work or have legal knowledge.<sup>18</sup>
- (c) Representation of non-government organisations- One member must be from non-governmental organisations or associations committed to women causes or a person familiar with issues related to sexual harassment.<sup>19</sup>
- (d) Women representation- At least half of members nominated shall be woman.<sup>20</sup>
- (e) Tenure- All the members must hold office for a period of three years. Such date will be reckoned from the date of their nomination.<sup>21</sup>
- (f) Disqualifications- Members shall be disqualified from holding office in following cases:
- Disclosure of information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee.
  - Order of conviction or pending investigation.
  - Guilty of disciplinary proceedings.
  - Acts prejudicial to public interest.

Section 6 makes provision for constitution of a Committee to receive any complaint of sexual harassment from establishments where: (i) the Internal Complaints Committee has not been constituted due to having less than ten workers or (ii) if complaint is against employer himself. This committee shall be known as "Local Complaints Committee". The District Officer must designate one nodal officer in every block, taluka and tehsil in tribal or rural area and any ward or municipality. The duty of the

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(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

<sup>17</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India), s. 4(2)(a).

<sup>18</sup> *Id.*, s. 4(2)(b).

<sup>19</sup> *Id.*, s. 4(2)(c).

<sup>20</sup> *Id.*, Proviso to s. 4(2)(c).

<sup>21</sup> *Id.*, s. 4(3).

nodal officer is to receive complaints from aggrieved person and forward it to such Committee.<sup>22</sup>

### **Critical Analysis of the Act**

The Act of 2013 is faulty on various grounds. These *inter alia* include:

1. Gender bias- The Sexual Harassment law of India has completely ignored sexual harassment faced by males at workplace. Such cases often go unnoticed. This happens mainly because of social stigma attached to the fact that males will be ridiculed socially of being involved in such a case and people will raise questions on their masculinity, especially in a patriarchal society like ours. Such men instead chose to suffer the trauma in silence and hence there is scarcity of such reported cases as well. As per a recent Economic Times-Synovate survey, men need to be incorporated in the law.<sup>23</sup>
2. No provision for *suo motto* power of the Committee- There is no provision allowing the Committee to take *suo motto* cognizance of any case. A case can be registered only when the aggrieved woman or a legal heir will file the complaint.
3. Absence of a person with legal background in the Internal Complaints Committee- Despite the Act providing for establishment of an Internal Complaints Committee with powers equivalent to a civil court, there is no provision for presence of a person having sound knowledge of law in the ICC. There is no provision for providing any special training to Committee members for fulfilling his or her duties, as well.

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<sup>22</sup> 6. Constitution and jurisdiction of [Local Committee].—(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “[Local Committee]” to receive complaints of sexual harassment from establishments where the 1[Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned [Local Committee] within a period of seven days.

(3) The jurisdiction of the [Local Committee] shall extend to the areas of the district where it is constituted.

<sup>23</sup> Of the 527 people queried across seven cities – Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai and Pune – 19% said they have faced some kind of sexual harassment at office. In Bangalore, 51% of the respondents had been sexually harassed, while in Delhi and Hyderabad, 31% and 28% of those surveyed said they had been sexually harassed. Around 38% of the respondents across 7 cities in India said that in today’s workplaces, “men are as vulnerable to sexual harassment as women.”

4. Faults in composition of the ICC- The 2013 Act requires establishment of the aforesaid Committee in all administrative units or offices for each workplace. The Committee requires four members, of which three must be employees and one should be a non-employee. Half of them are supposed to be women.<sup>24</sup> However, what has not been taken into consideration is the fact that a particular organisation may not have a senior level woman employee to head the Committee. No provision has been made detailing the credibility and expertise of the Committee members, either, nor does the Act talk about the training and capacity building of such members. More so, in case of an establishment with various branches, offices or various departments requires formation of an ICC at each such branch, office or department.<sup>25</sup> Such a suggestion is quite unrealistic as a high level establishment most probably will be having hundreds offices across the country. Formation of such a committee at every level, hence, is impossible. Section 11(3) gives the ICC powers equivalent to a civil court for summoning,<sup>26</sup> discovery and production of documents,<sup>27</sup> whereas no provision is made for a legal person to be member of the ICC or for providing training to such members. Moreover, the procedure regarding documents and paperwork is tedious and cumbersome.
5. Punishments under the Act- The punishment on conviction for any offence under the Act shall be as per service rules of employer, if exist, or otherwise as per rules under the Act. But the law is silent in case a situation arises where provisions under the service rules of the employer are not strict in nature.
6. Confidentiality of cases- The Act makes a provision according to which six copies of the case inclusive of the name of victim and the witnesses are to be served. The same in most number of cases jeopardise the matter as mostly the victim and

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<sup>24</sup> *supra* note 16.

<sup>25</sup> *Id*

<sup>26</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India), s. 4(3)(a).

<sup>27</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India), s. 4(3)(b).

witnesses are threatened by the defendant. There is no provision of checks and balances in such a scenario which is another loophole.

7. Ambiguity of certain provisions- There is ambiguity regarding provisions under Section 19(g) and 19(h). Such an ambiguity leads to faulty application of the Act.<sup>28</sup>
8. Nature of the workplace- The law is general in nature and is not flexible in application regarding different workplaces. Agricultural sector and residential areas for domestic helps are not so accustomed to the Complaints Committee and its proceedings. The Act is vague and silent upon issues like whether educational institutions come under the category of 'workplace'. Few higher educational institutions have a working Sexual Harassment Committee in place and they would obviously prefer a system that is already established and is successfully working. The Act lacks on this front as well.
9. The unnecessary bias against certain establishments- No provisions has been made providing similar civil remedies to domestic workers as are made for other women. Complaints of domestic workers have to be mandatorily forwarded to a police station, regardless of whether they want to avail of such remedies or not. Civil remedies of compensation are absent.
10. Fault in the compensation scheme- The compensation to be paid shall depend on financial status of employee alleged for harassment. This means that lower executives have to pay less than senior executives. No reasonable justification can be given for the same.
11. Issues regarding complaints and false complaints- There arises a doubt with regard to Section 26, as to whom the complaint is made about the employer's failure to constitute an ICC as per the requirements of this section. The Act is also silent upon

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<sup>28</sup> 19. Duties of employer- Every employer shall-

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force.

(h) cause to initiate action, under the Indian Penal Code 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.

whom to shoulder the responsibility if the committee is not constituted within an organisation. People are often falsely implicated. There is no mechanism to deter the same. Another concern is that punishment for false complaints can deter women from filing genuine cases and hence make them suffer in silence.

12. Non-cognizable nature of the offence- The Act states that no court shall take cognizance of an offence under the Act and all such offences are non-cognizable in nature. However, recent allegations of sexual harassment against J. Ganguly challenge the righteousness of this provision.

### **Conclusion**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a law which has its own shortcomings and must be suitably amended. Listed below are few suggestions to control and eradicate the misuse of the incumbent law:

1. *The gender bias in the law must be removed to effectuate a more just law.* The provisions under Article 15(3) of the Constitution cannot supersede Article 14.. A male facing sexual harassment at workplace has no legal remedy to claim and hence such kind of unreasonable classification is unexplainable. It is violative of the provision of equality under the Constitution and hence, is deemed to be removed.
2. *A case under the Act can be registered only on a complaint filed by the aggrieved woman or someone on her behalf.* Absence of provision to take *suo motto* cognizance by the authorities under the Act is an unreasonable restraint on their powers and functions. Provision for the same must be made to make the law more effective.
3. *There must be provision for a legal person in the ICC.* The Internal Complaints Committee is devoid of a member having a legal background or legal qualification. Presence of such a person will help in solving legal complications which are deemed to arise while effectuating the law.

4. *Other faults in the composition of the ICC must be removed.* No provision has been made detailing the credibility and expertise of the members. Nor is there any provision for training and capacity building of such members. Moreover in case of an establishment with various branches, offices or various departments requires formation of an ICC at each such level. This is quite unrealistic in case of a multi-national establishment. Such problems need to be resolved. Section 11(3) gives power to ICC equivalent to that of a civil court, but there is no provision for a person with a legal background in the ICC. These things must be resolved to effectuate a better law.
5. *Provision for punishment as per service rules is unreasonable.* The provision for punishment under the Act must be made as rules under the Act. Penalising the offender as per service rules of the establishment in question is non-uniform and may lead to bias. It may also lead to non-effectiveness as the offender may be a high-level official or employee and the establishment is likely to be light in inflicting any kind of punishment. A uniform mechanism of punishing the offender must be provided in the Act itself.
6. *No provision of checks and balances in the Act.* The procedural compliances in the Act may tend to jeopardise the matter in many cases as victim and witnesses are likely to be threatened. It is sad that India does not have a witness protection programme. The same needs to be checked
7. *Ambiguity regarding certain provisions must be removed.* Ambiguity in Section 19(g) and 19(h) must be removed.
8. *'Workplace' under the Act is ambiguous and narrow.* The ambit of the Act is limited and does not include work places under agricultural sector, residential areas for domestic helps, etc. The same must be looked into and checked. Also unnecessary bias against certain establishments must be removed.
9. *Faulty compensation scheme must be amended.* The compensation to be paid shall depend on the situation that arises and not solely on financial status of the employee. This gives unnecessary advantage to such employment that are well established which is the complete anti-thesis of the purpose of the Act.
10. *All issues regarding complaints must be resolved and false complaints must be eradicated.* False complaints are a menace today in almost all women related laws.

A mechanism of checks and balances must be maintained and such false complaints must be looked into and complainant be penalised as a deterrent to like-minded individuals.

11. *Non-cognizable nature of offences is a deterrent in prosecution under the Act and must be suitably amended.* This provision deters the judicial authorities to take appropriate actions in cases of serious nature. The Act must be suitably amended to make offences of serious nature, cognizable.

Any law is deemed to have its flaws as law is a man-made instrument. Hence, accepting the flaws in the law is the first step towards a progressive society. A society that does not amend its laws with the changing times is deemed to succumb to its backwardness. Amendment does not mean insulting the law. One who thinks so has no understanding of the need of law in a society. Laws are meant to serve a purpose and once they become defunct, they are meant to be either suitably amended or removed, as deemed appropriate.

