



A Gateway to all Post Graduate Courses

An MHRD Project under its National Mission on Education through ICT (NME-ICT)

Subject: **Criminology**

Production of Courseware

e-Content for Post Graduate Courses



Paper : Social Legislations and Crime

Module : The Sexual Harassment at Workplace (Prevention, Prohibition, and Redressal Act), 2013



A Gateway to



## Quadrant – I: Description Of Module

Description Of Module	
Subject Name	Criminology
Paper Name	Social Legislations and Crime
Module Name/Title	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
Module ID	19
Pre-Requisites	Basic familiarity with criminal law and criminal procedure.
Objectives	To have an understanding of the history of the law on sexual harassment in India To analyse the structural framework of the Act
Key Words	Complaints committee, Internal Complaints Committee, <i>Local Complaints Committee (LCC)</i> Conciliation, procedure for inquiry

## Quadrant – II: E-Text

### Introduction

The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act was enacted by the Parliament in 2013 and came into effect from December 9, 2013. The Act was a culmination of nearly two decades of law reform efforts to enact a law to deal with cases of sexual harassment at workplace. This module has four objectives. These are: First, to understand the history of laws against sexual harassment in India; Second, to analyse the definition of sexual harassment under the Act and other legislations; Third, to discuss the procedure provided under the Act for filing of complaints and for conducting enquires; and Fourthly, to analyse the various provisions under the act.

### History of Laws Against Sexual Harassment in India



The origin of anti-sexual harassment laws in India can be traced to the landmark decision of the Supreme Court of India in *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241]. Vishaka, a NGO, and a few social activities approached the Supreme Court highlighting the lack of laws to deal with sexual harassment at the workplace. The immediate trigger was the brutal gang rape of Ms. Bhanwari Devi, a *saathinin* Rajasthan, who worked to prevent child marriage. Due to the opposition that she faced from various sections of society, she became a target of the gang rape, which was committed when she was undertaking her duties as a social worker. The case highlighted the lack of civil remedies, both to prevent and punish acts of sexual harassment at the workplace. The argument made by the petitioners in the case was that acts of sexual harassment violate Articles 14, 15, 19 and 21 of the Constitution of India.

The Supreme Court noticed that there was no law on the issue, although India had signed and ratified the U.N. Convention on the Elimination of All Forms of Discrimination Against Women.” The Convention requires state parties to take appropriate steps to eliminate discrimination against women in the field of employment in order to ensure the same rights for men and women – in particular the right to work, and sexual autonomy of women. India had also in 1993 signed and ratified a resolution relating to defining sexual harassment at the workplace, and agreed to reporting formalities under the Convention. Taking this into consideration, the Supreme Court issued guidelines to deal with sexual harassment at the workplace. The Court thus recognized that the right to life encompasses within it the right to live with dignity. In creating a “hostile work environment” for women at the workplace, Article 19(1)(g) – the right to practice any profession or to carry out any occupation, trade, or business is also violated.

In *Vishaka*, the Supreme Court defined sexual harassment to include “unwelcome sexually determined behaviour” such as: first, making physical contact and advances to a woman; second, demanding or requesting sexual favours from a woman; third, making sexually coloured remarks to a woman; fourth, showing pornography to a woman; fifth, any unwelcome physical or verbal or non-verbal conduct of a sexual nature. The Court instructed all employers to prohibit sexual harassment at the workplace, and to notify the guidelines laid down by it. It also directed setting up a “Complaints Committee” at every workplace, which would enquire into complaints relating to sexual harassment at the workplace. It mandated that such a Committee would be headed by a woman and at least half of its



members should be women. It also mandated that each of these committees should have an “external member,” who would be drawn from a NGO, or an individual who had experience relating to anti-sexual harassment laws. These definitions, procedures, and guidelines laid down by the Supreme Court were to stay in force until Parliament enacted legislation to cover the field.

The legislation, however, took nearly 16 years to be enacted by Parliament. In 2012, the Bill which was pending in Parliament was examined by the Justice Verma Committee on Reforms to the rape law. The Committee set up in December 2012 after the Delhi gang rape and murder incident, was headed by Former Chief Justice of India, Justice J.S. Verma, who was also the author of the Vishaka judgment. In its Report the Committee noted that the Bill was deficient in various aspects, that it diluted the framework laid down in Vishaka. The Committee was apprehensive that the procedures under the Act curtailed the ease of access to the Complaints Committee, which Vishaka had provided. It recommended a different framework for the Act, and a different adjudicatory mechanism. However, the Government did not accept the recommendations of the Justice Verma Committee in this regard, and enacted the Bill without any changes.

#### Framework of the Act

The Act defines “sexual harassment” in Section 2(n) exactly as Vishaka had done. However, in Section 3, it adds additional circumstances which may be considered sexual harassment. Section 3 states that five circumstances, if they are “present in relation to or connected with any act or behaviour of sexual harassment (as defined in Section 2(n)) may amount to sexual harassment. These circumstances are: first, implied or explicit promise of preferential treatment in the woman’s employment; second, implied or explicit threats of detrimental treatment in the woman’s employment; third, implied or explicit threats about the woman’s present or future employment; fourth, interference in the woman’s work or creation of an intimidating, offensive or hostile work environment; and lastly, humiliating treatment which is likely to affect the woman’s health. An instance of behaviour that the Act appears to seek to proscribe can be seen in the U.S. case of Lois Robinson. In the case, a female welder who worked in a mostly male shipyard won a law suit against her employer for sexual harassment. Her workplace was infested with so-called “girlie” calendars, pornographic pictures and graffiti. Male workers made graphic sexual comments in front of Robinson and other female employees. The workplace had hence become a “hostile environment” to work





in. The right of a woman to work with dignity was hence, violated, leading to a discriminatory impact on the woman. Another situation which would get covered within Section 3 is a boss inviting his subordinate for dinner, then seeking sexual favours from her, threatening to hold back an increment or promotion if she does not accede to his demand.

The terms “employee” and “employer” are defined in Sections 2(f) and 2(g) respectively. A broad definition has been provided. Employee includes a person who is either a regular employee, a temporary employee, an ad hoc employee, or a daily wager. The person may be employed through an agent, a contractor, with or without the knowledge of the principal employer. Volunteering work or non-paid work is also covered. Thus, probationers, trainees, apprentices and people with work of a similar nature are also covered. The aim of the Act is thus to provide protection for women at the workplace, irrespective of the nature of work they do, and whether they are remunerated or not. The object is to ensure that the rights of women are effectively safeguarded. Domestic workers are also included within the framework of the Act, through the manner in which “employer” is defined in Section 2(g).

The term “workplace” is defined in Section 2(o) of the Act. It includes both public and private sector organisations, government (state, central and local) and its departments, establishments which are funded directly or indirectly by the government, a government company, a government corporation or a government co-operative society. It also includes hospitals and nursing homes, stadia, sports complexes, competition or games venues, residential complexes used for training and other related sports activities. This recognises the fact of sexual harassment in the field of sports, and brings it within the purview of the act, by bringing sports facilities and residential facilities (such as hostels) connected to the discipline of sports. The definition of “workplace” also includes any place that the employee visits “arising out of, or during the course of employment.” Hence, if a woman goes for an off-site training, that would also constitute a “workplace” as also other places such as a client’s office that she may visit as a part of her work assignment. If sexual harassment occurs in a bus, cab or any other mode of transportation provided by the employer, that would also be covered within the purview of the Act. Keeping domestic workers in consideration, a dwelling house or a house are also defined as workplaces for the purposes of the Act. The Act is not only confined to the organised sector but also includes employees in the unorganised sector.

### Complaint Committees



The Act sets up two types of committees to enquire into and adjudicate cases of sexual harassment. These have been named “Internal Complaints Committee” and “Local Complaints Committee.” We will discuss the constitution of committees in this section.

#### *Internal Complaints Committee (ICC)*

Employers are required to constitute Internal Complaint Committees (ICC) in their respective organisations and workplaces. If there are various branches, administrative units etc., Internal Complaints Committees are required to be set up in each such branch or administrative unit. The ICC is presided over by a senior-level woman employee. Two other employees, committed to the cause of women or who have experience in social work or have legal knowledge also need to be appointed. The fifth member is to be drawn from NGOs or associations committed to the cause of women, or a person who is familiar with issues relating to sexual harassment. At least half of the members need to be women.

#### *Local Complaints Committee (LCC)*

The appropriate government is required to appoint the District Magistrate or Additional District Magistrate as the District Officer under the Act (Section 5). It is the responsibility of the District Officer to constitute the “Local Complaints Committee.” These committees are meant to receive complaints of sexual harassments from establishments where the ICC has not been established or if the establishment has less than ten employees, or if the complaint is against the employer himself. The LCC is chaired by a woman, who is eminent in the field of social work and is committed to the cause of women. Another female member is to be nominated from amongst women working in the block, taluka, tehsil, ward or municipality in the district. Two other members also need to be appointed from amongst NGOs or associations committed to the cause of women, one of whom is required to be a woman. The Act also states that one of these two members should preferably be someone who has legal knowledge or has a background in law. Further, the Act also requires that one of the two members shall be a woman belonging to the Scheduled Caste or Scheduled Tribe or a minority community. The officer in the district dealing with the issues of social welfare, women and child development is an ex-officio member of the LCC.



### Complaints

The procedure for making a complaint of sexual harassment is provided in Section 9 of the Act. The complaint has to be made in writing to the ICC or the LCC, as the case may be. The complaint is to be made within three months from the date of the incident, and if it is a series of incidents, three months from the last incident. However, the ICC or the LCC may extend the time limit beyond three months, if there existed circumstances which prevented the woman from filing the complaint. The Committee is required to record its reasons for condoning the delay in filing of the complaint. If the woman who was sexually harassed is not in a position to file the complaint on account of physical or mental incapacity or death or any other reason, her legal heir or any other person as prescribed in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013 may make the complaint on her behalf. If the woman cannot make the complaint in writing, the Committee is required to assist the woman in making the complaint in writing.

### Conciliation

Section 10 of the Act also provides for a process of conciliation. The process of conciliation may be initiated by the woman, and is carried out by the ICC or the LCC. The aim of the conciliation is to settle the matter between the complainant and the respondent. The Act prohibits any monetary exchange as a part of the settlement. If a settlement is arrived at, the inquiry stops at the stage and the record of the settlement is sent to the employer for necessary action.

The Justice Verma Committee had deprecated the presence of a provision relating to conciliation in the Bill. The Committee noted that there is a power differential between the complainant and the respondent, which in the first place would have been the root cause of the sexual harassment. The Committee recognised that sexual violence is a tool of subjugation – an assertion of power by the man over the woman. In such a circumstance, where there is no level-playing field, providing for conciliation may be counter-productive. Women may be forced to settle matters, instead of taking the complaint to its logical conclusion.

### Procedure for Inquiry

Section 11 of the Act provides the procedure for an inquiry into a complaint filed under the Act. Inquiries are conducted using the procedure prescribed in the service rules of the



organisation where the respondent is employed. If the organisation does not have service rules, the procedure laid down in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013 is followed. In case of domestic workers, the Act requires the LCC to forward the complaint to the police for registration of a FIR for offences under the Indian Penal Code. Hence, the approach that the Act seems to employ is that sexual harassment against domestic workers should be dealt with within the purview of the criminal justice system, rather than the civil framework provided by the Act. The LCC and ICC are vested with necessary powers, as provided in the Civil Procedure Code of 1908 to summon witnesses and examine them, to require the discovery and production of documents, and for any other related matter. The Act also mandates that all inquiries should be completed within ninety days of the complaint being instituted.

The Act also provides for various interim measures during the pendency of the inquiry. On a written request of the complainant, the ICC or the LCC as the case may be, may recommend to the employer to transfer the complainant or the respondent to any other workplace, or to grant leave to the respondent for a period not exceeding three months, or grant any other relief as provided in the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Rules, 2013. To ensure that the leave does not work to the woman's disadvantage, the leave granted is to be counted in addition to the leave that the woman is already entitled to as per the terms of her employment. This provision is especially necessary in situations where the complainant and the respondent are in the same physical office space. Separating the two of them ensures that further harassment or intimidation does not occur during the inquiry process. At the same time, transferring either the complainant or the respondent may work to their detriment as well. In situations where sexual harassment has occurred and the woman is transferred to another office (albeit at her request), it may impact her career adversely. Conversely, if the respondent is ultimately exonerated of charges, the three months that he was transferred or proceeded on leave may work to his detriment. Hence, it was necessary for the Legislature to find different and possibly innovative ways to ensure that a free and fair inquiry, without any intimidation, takes place. Transferring a person or asking him/her to proceed on leave does not appear to be the ideal solution to the issue.

The Inquiry Committee is required to submit its report to the employer or the District Officer, as the case may be, within 10 days of completion of the inquiry. If the Committee finds that





the respondent has committed the act of sexual harassment, it may recommend that action be taken against him as per the service rules applicable to him. It may also recommend that compensation be paid to the complainant or her legal heirs by deducting such amount from the salary or wages of the respondent. If the salary has ceased, the respondent may be directed to pay compensation to the complainant. If the respondent fails to pay compensation as directed, the same may be recovered from him as an arrear of land revenue. In determining the compensation payable, Section 15 states that the Committee may consider the following factors: First, the mental trauma, pain, suffering and emotional distress caused to the victim; second, the loss in career opportunity due to the incident; and third, medical expenses incurred for physical and/or psychiatric treatment. The Committee should also take note of the income and financial status of the respondent, as also the feasibility of making payment as a lump sum or in instalments.

The entire process of the inquiry is supposed to be kept confidential (Section 16). The contents of the complaint made, the identity and address of the complainant, respondent, witnesses and any other information relating to the conciliation process (if any) and the inquiry proceedings, as well as the recommendations of the inquiry committee are all confidential and there is a bar against publishing these documents, or communicating it to the public or the media. The documents cannot also be obtained by a filing a Right to Information request. Any violation of Section 16 is dealt with as per the provisions in the service rules. The inquiry committee or the employer, may however use the information to show that action has been taken in a particular case, without naming the complainant or the witnesses.

### False Complaints

The Act in Section 14 provides punishment for filing a false or malicious complaint. If the ICC or the LCC concludes that the allegation made was malicious or the complaint has been made knowing it to be false or if a false, forged or misleading document is produced as evidence, the Committee may recommend action against the original complainant. An inquiry is then conducted against the original complainant to adjudicate whether the complaint was malicious, known to be false etc. If these elements are proved, then action as prescribed in the service rules, is taken against the complainant. The Act however clarifies (in the proviso to Section 14) that mere inability to substantiate a complaint or provide adequate proof shall not be amount to filing a false complaint. However, having a separate



provision relating to false complaints, when it can be dealt with within the framework of existing law, may lead to a chilling effect in filing of complaints. This does not appear to have been taken into consideration while introducing such a provision in the Act.

### Appeals Process

The Act also provides for an appeal from the recommendations made by the inquiry committee. The appeal procedure is the same as prescribed by the service rules applicable to the person making the appeal. Such appeal has to be filed within 90 days of the recommendations being made by the Inquiry Committee.

### Duties of the Employer

The Act lays down various responsibilities on the employer. These include providing a safe working environment for all its employees; displaying in a conspicuous place, the penal consequence of sexual harassment as well as the constitution of the ICC; organise workshops and awareness programmes in order to sensitise employees with the provisions of the Act, as well as organising such programmes for the members of the ICC; providing necessary facilities to the ICC to be able to conduct the inquiry; provide assistance to the woman if she chooses to file a complaint under the Indian Penal Code or any other law for the time being in force. The Act also states that the employer shall “cause to initiate action under the Indian Penal Code or any other law for the time being in force” against the perpetrator,” and in case the respondent is not an employee to initiate a complaint in his workplace. The employer is also required to treat sexual harassment as a misconduct in its service rules. Hence, a wide range of responsibilities are placed on the employer. Non-compliance with these provisions, including failure to set up an ICC, failure to take action as recommended under the IPC or contravention of other provisions of the Act leads to a maximum penalty of Rs. 50,000 in the first instance, and twice the punishment (maximum of Rs. 1,00,000) in the second instance. The licence of the employer, for carrying on business may also be cancelled or withdrawn, as also not renewed.

### Conclusion

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was a much-needed and long-pending legislation. It provides an essential framework for civil remedies in cases of sexual harassment at the workplace. However, it has many deficiencies especially in relation to the inquiry committees. The qualifications that



it seeks to appoint persons as members of the ICC and the LCC are burdensome. Since every organisation is required to have an ICC, it becomes difficult to find appropriately qualified people to serve on these committees. Further, the *Vishakaguidelines* had focussed on the importance of the external member of the committee, which the Act seems to ignore. At some places, it does not recognise the power differential between the respondent and the complainant and treats sexual harassment like any other professional misconduct, which it is not. However, the Act is an important beginning in relation to safeguarding the rights of women guaranteed by Articles 14, 15, 19 and 21 of the Constitution of India.

