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LEGISLATION COMMENT ON PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE

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ABSTRACT

Sexual Harassment, A familiar word that every men and women in the society knows about and to be specific every working men and women knows about. The Paper discusses about Sexual Harassment in Workplace for one of the Vulnerable society i.e., Women. It's not that Men at Workplace do not go through any Sexual Harassment. They do, but the women are in huger part. The Sexual Harassment Act of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 talks about the sexual harassment that happens against ladies at workplace in India. The Act was made following the rules and regulations said in Vishaka Vs. State of Rajasthan case. Sexual harassment is basically said to be the main difficulty that a women face during her employment. Sexual harassment has become very prevalent in the society at present. Sexual harassment violates Article 14 of Indian Constitution. Every citizen in the country is to be treated equally without any sort of discrimination. In this act, Sexual harassment is a violation of a women's fundamental right to equality. Sexual harassment not only violates Article 14 of our Indian Constitution, but also violates Article 15, Article 19 (1) (g) and Article 21 of our Indian Constitution. Article 19 (1) (g) states that every citizen has the right to practice any profession and Article 21 talks about Protection of life and Personal Liberty of a citizen.

KEYWORDS - Sexual Harassment, Vishakha Guidelines, Workplace, Constitution.

INTRODUCTION AND BACKGROUND OF THE LEGISLATION:-

Sexual harassment is an intimidating conduct and a disrespectful behaviour that happens to someone in any ways like written form, oral form, physical form, or through digital communication. In this current period, where both men and women can work in the same position or same business, It is found that women are subjected to certain humiliating and abusive conduct in their office from their coworkers and employers. Women are destined to work in an insecure atmosphere which is a major discouragement and de-motivation for women's involvement in working at various fields. This has been a worldwide issue like a virus across culture, class, race, society and caste. The phrase "sexual harassment" was not used officially in any Indian legislation prior to 1997, but any activity related to sexual harassment of women was made illegal under several provisions of the Indian Penal Code. Therefore, in order to safeguard every women's basic rights in the society under Articles 14, 15, and 21 of the Indian constitution there was a need for stricter legislation.

So, "Sexual Harassment of Women at the Workplace Act, 2013" was enacted to safeguard the working women in their workplace. The objective of the Act was to make the workplace a safer place for women and to protect them from sexual harassment. It also acts as a forum for addressing the problems

SEXUAL HARASSMENT:-

Sexual harassment is a type of discrimination and violence in the society that mostly happens against women. To be on the wider side, the

victims are predominantly women and men are the perpetrators. It's not that men never go through any sexual harassment in the society. They do, but it's often that women are the victims. Studies say that it's 86% that men have always been the perpetrator. Sexual harassment in workplace can be classified into three types:-

1. Written/Verbal harassment

2. Physical harassment

3. Visual harassment

1. Written/Verbal Harassment- This is a common type of harassment that usually takes place in workplace. It mostly happens through sending emails with adultery jokes or some graphics related to race or religion. There are more such where people request for dates often or for sexual favours for promotion.

2. Physical Harassment- Physical harassment is not very easy to find cause it is most of the time subtle. Physical harassments can be like unwanted touching of a person or their clothing, gestures to convey curse words, making sexual facial expressions.

3. Visual harassment- It is a hardest harassment to spot cause only when you put your shoe in the victim's shoe you will understand. Visual harassment can be showing violent videos , drawing derogatory pictures, displaying pictures of a sexual nature.

Sexual harassment is a form of unwelcome sexual behaviour which is said to be offensive, humiliating and intimidating. It is severely against the law to harass someone sexually. It is a social issue which was kept unaddressed for a very long time, but not now. The society is very much aware of sexual harassment and even uneducated people are aware of what exactly is sexual harassment.

PROCEDURE TO FILE A COMPLAINT:-

The aggrieved women should make a written complaint within three months to the ICC (INTERNAL COMPLAINT COMMITTEE ON SEXUAL

HARASSMENT) from the date of tragedy and three months from the last such event in case of a series of such mishaps. As mentioned in the case TEJINDER KAUR VS. UOI, time limitation of complainants can be extended if the aggrieved women has got extenuating circumstances. If the aggrieved women is of physically or mentally unstable, any of legal heirs can file a complaint on behalf of her.

The committee will first have an inquiry with both the aggrieved women and the respondent. If any settlements is achieved , no further inquiry will be done. If not any settlement is achieved , a new investigation will be conducted. If both the sides of the parties are employees, natural justice will be applied and both will be given the chance to be heard. Committee exercises the same power as the Civil Court does. The committee has 90 days to finish the case.

RECENT AMENDMENTS:-

Sections 6, 7 and 24 of the Sexual Harassment of Women at Workplace Act, 2013 have been amended as follows:

The word "Local Complaints Committee" wherever they are given, the Amendment of the Sexual Harassment At Workplace Act in May 2016 :-

1. For the word "Local Committee" shall be substituted;
2. For the word "Internal Complaints Committee," wherever they are given, the word "Internal Committee" shall be substituted."

The sexual harassment committees are assigned not only to handle complaints, but also to work towards the prevention of such sexual harassment on women at workplace and to formulate number of other measures.

As the Internal Committees responsibilities have grown, they must increasingly concentrate on prevention and prohibition of Sexual Harassment :

- To Make sexual harassment as a no-tolerance policy.
- To teach the workers, managers, and committee how to find and respond to any inappropriate behaviour in the Workplace.
- To maintain an open-door policy where the employers and employees should be able to ask inquiries and voice their concerns.
- To be proactive in ensuring that Internal Committee strives to provide a safe and secure workplace for its workers.

CONSTITUTIONAL VALIDITY :-

The Legislation for rights of women have originated firstly from the Constitution of India; as all Indian laws are emerged with sanctity by constitution. The Constitution of India guarantees equality of status and opportunity to both men and women. The fundamental rights are precisely found in the Constitution of India. The relevant Articles of the Constitution of India which is related to the legal rights upon women, are:

(1) Article 14: This article defines about the Equality before Law or the equal protection of the law to every person.

(2) Article 15: 15(1) says about the prohibition of any discrimination on anyone on the basis of religion, race, sex, or place of birth.

(3) Article 15(3): It empowers the state to make any special provision or guidelines exclusively for women and children.

(4) Article 16: This article ensures equality of opportunity to be given to all the citizens in subject related to employment or opportunity to any office under the state

(5) Article 19: This Article Guarantees the two important freedoms such as

a) Freedom of speech and expression

b) Freedom to practice any profession or to carry out any occupation, trade or business-art.

CONCLUSION:-

The Prevention of Sexual Harassment Act prescribes that , failure by an employer to constitute an Internal Complaints committee is a punishable offence with the fine of up to Rupees Fifty Thousand. Also , when an employer is convicted for the same offence at second instance, It may be punishable with a fine of twice that amount, as well as liable to the cancellation or non-renewal of the business licenses, registrations or approvals by the government or local authorities.

Anyways, more than the penalties prescribed under the Legislation, a Company should notice about ensuing bad press associated with sexual harassment charges involving its employees, especially in this day of over developed technology and social media. Therefore , Every Company should prioritize creating a protective , supportive and non-toxic work environment to everyone especially women through various ways such as conducting periodical awareness and sensitization programmes.

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RELATED LEGISLATIONS :-

1. Industrial Employment (Standing Orders) Act, 1946.
2. Indian Penal Code, 1860.
3. The Indecent Representation of Women (Prohibition) Act, 1987.