

# **STATUTORY COMMISSIONS AND PROVISIONS FOR THE PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACES**

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*There are certain legislation that provides for the constitution of various commission for safe guarding the interests of the women at large. The societal circumstances in existence and the increase in number of cases of women harassment led to the birth of these statutory bodies. The prime objectives of these commissions are to protect the women interests in order to enhance the rate of women empowerment. The present study is an attempt to discuss the provisions provided under the acts for the women rights.*

**Keywords:** Act ,commission ,government, protection,right,

## **I. INTRODUCTION**

The present study provides for the women rights and the concerned authorities for providing the relief to the aggrieved women, It act as a knowledge provider for the women to make them aware about their rights and the related relevant legal provisions for the protection of their interests.

## **II. OBJECTIVES**

The study is carried out with the objective of compilation of information about the statutory safeguards available for the aggrieved women and the relevant concerned authorities which deal with the same. This will surely assist the women in combatting the workplace sexual harassment.

## **III. DISCUSSION**

### **4.1 The National Commission for Women Act, 1990**

With the passing of this act of 1990, the Central Govt. shall constitute the National Commission for Women to exercise powers given by the act and to perform functions provided under this act. The powers given to the commission includes the power to investigate and examine the matters related with women rights as provided by the constitution. The power also includes in commission's jurisdiction to suggest for any amendment in the present law that affects women's interest and to review the constitutional provisions meant for women

National Commission for Women prescribed general Code of Conduct at employer's place which are as follows: It shall be the duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.

- (i) Sexual harassment will include such unwelcome sexually determined behavior by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as
- (ii) Eve-teasing
- (iii) Unsavory remarks
- (iv) Jokes causing or likely to cause awkwardness or embarrassment
- (v) Innuendos and taunts
- (vi) Gender based insults or sexist remarks
- (vii) Unwelcome sexual overt one in any manner such as over telephone (obnoxious telephone calls and the like) Touching or brushing against any part of the body and the like.
- (viii) Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
- (ix) Forcible physical touch or molestation
- (x) Physical confinement against one's will and any other act likely to violate one's privacy and includes any act or conduct by a person in authority of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of sex.

## 4.2 Explanation

Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

- i) It can be humiliating and may constitute health and safety problem or
- ii) It is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including recruitment or promotion or advancement or when it creates a hostile environment, or
- iii) It would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

## 4.3 EVE-TEASING

Eve-teasing will include any person willfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any work, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such women or intrudes upon the privacy of a woman employee.

**4.4 Sexual harassment** of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee's full utilization of employment benefits or opportunities. It also includes behavior that covertly or overtly uses the power inherent in the status of the employer or the Head of the Institution or Management to affect negatively an employee's work experience or career opportunities

and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment.

**4.5** It shall be the duty of the employer to prevent or deter the committing of any act of sexual harassment at the work place.

**4.6** All employers should take appropriate steps to prevent sexual harassment of any nature. Express prohibition of sexual harassment should be notified at the work place and also published for the general information of the employees and evaluated in an appropriate manner periodically.

**4.7** Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at the work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment in that organization.

**4.8** Women employees should not be treated as sex objects.

**4.9** No male employee shall outrage or insult the modesty of a female employee at the work place.

**4.10** No male employee shall make any type of sexual advances to woman colleagues or woman subordinates.

**4.11** The Head of the Organisation shall constitute a Complaints Committee as specified in the judgement of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such complaints committee should involve a third party either a nongovernmental organization or other body who is familiar with the issue of sexual harassment.

#### **4.12 Conducting Enquiry by the Complaints Committee:**

- i. Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
- ii. The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravener and the complaint shall be addressed to the Complaints Committee.
- iii. If the complainant feels that she disclose her identity for any particular reason the complainant shall address the complaint to the Head of the Organization and hand over the same in person or in a sealed cover. Upon receipt of such complaint the Head of the Organization shall retain the original complaint with himself and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complainant and other details which might disclose the identity of the complainant.

**4.13** The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.

**4.14** The Complaints Committee shall after examination of the complaint sending the penalty to be imposed.

**4.15** The Head of the Organization, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.

**4.16** The management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

#### **4.17 Disciplinary Action**

Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

#### **18. Workers' Initiative**

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate form and it should be affirmatively discussed in periodical employer-employee-meetings.

#### **19. Third Party Harassment**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and the persons incharge shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

#### **20. Annual Report**

The Complaints Committee shall prepare an annual report giving a full account of its activities during the previous year and forward a copy thereof to the Head of the Organisation concerned who shall forward the same to the government department concerned with its comments.

#### **Savings**

Nothing contained in this code shall prejudice any right available to the employee or prevent any person from seeking any legal remedy under the National Commission for Women Act 1990, Protection of Human Rights Commission Act. 1993 or under any other law for the time being in force. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

## Protection of Human Rights Act, 1993

The National Human Rights Commission -

The National Human Rights Commission is constituted by the Central Government to exercise the powers conferred upon, and to perform the functions assigned to it under the Act. The Commission consists of:

- (a) A Chairperson who has been the Chief Justice of the Supreme Court;
- (b) One Member who is, or has been the Judge of the Supreme Court;
- (c) One Member, who is, or has been the Chief Justice of a High Court;
- (d) Two Members to be appointed amongst persons having knowledge of, or practical experience in, matters relating to human rights.

Besides these, the Chairperson of National Commission for Minorities, the National Commission for the Scheduled Castes and Scheduled Tribes and the National Commission for women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of Section 12.

The Commission shall perform all or any of the following functions, namely:

- (a) Inquire, suo motu or on a petition presented to it by a victim or any other person on his behalf, into complaint of:
  - (i) Violation of human rights or abetment thereof; or
  - (ii) Negligence in the prevention of such violation by a public servant;
- (b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) Visit under intimation to the State Government any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of inmates and make recommendations therein;
- (d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- (e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- (f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- (g) Undertake and promote research in the field of human rights.
- (h) Spread human rights literacy among various sections of the society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- (i) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and
- (j) Such other functions as it may consider necessary for the promotion of human rights.

While inquiring into complaints under this Act, the Commission possesses all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), and in particular in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses or documents;
- (f) Any other matter which may be prescribed.

The National Human Rights Commission is required to submit an annual report to the Central Government and to the State Government concerned and may at any time submit special reports on any matter which, in its opinion, is of such urgency or importance that it should not be deferred till submission of the annual report. After the annual report is submitted by the Commission, the Central Government and the State Government, as the case may be, shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State legislature respectively, as the case may be, along with a memorandum of action taken or proposed to be taken on the recommendations of the Commission and the reasons for non-acceptance of the recommendations, if any. During the period, 1994-95, custodial deaths, rape and torture remained one of the central preoccupation of the Commission.

The National Human Rights Commission has rendered a signal service for the cause of observance of human rights, especially in the field of civil liberties. For example its work in its direction to all District Magistrates and Superintendents of Police to report to the Commission all incidents of custodial death or rape within twenty-four hours has made a very salutary impact in preventing such incidents. Moreover, it is a sort of forewarning to the Police officers that if they misuse their powers or commit excesses, they may be penalized for this. Besides this the Commission has handled some cases of alleged custodial death in such an effective manner that it has inspired the confidence of the people.

To quote only one more of the many cases handled by the Commission reference may be made to the Alleged Rape in Custody by an Assistant Sub-Inspector of Delhi Police (July, 1994). According to the case reported in the annual report of the Commission for the year (1994-95), in July, 1994, pursuant to its circular of 14<sup>th</sup> December, 1993, the Commission received a report from Dy. Commissioner of Police, South District, New Delhi about a custodial rape by an ASI of the Delhi Police Force. The victim had been brought to the police station by another ASI, as she had got lost on her way to her parents home but no report was made in the daily diary of the police station of the victim having been taken to the police, nor was due care taken to ensure the return of the victim to her family. The ASI who brought the victim to the police station was accordingly placed under suspension. The victim was raped by another ASI who took her to his house in the residential quarters of Pharganj Police Station. The ASI who committed the rape was arrested and the case was sent to Court for trial. The Commission also received a complaint and a report on this incident from the People's Union for Democratic Rights (PUDR), Delhi.

The Commission, on a perusal of a report of the Government of NCTD, and also the report of the PUDR, directed the Government to explain as to why the woman was detained at the police station for the night, how it

was that there was no supporting entry for her detention at the police station, and what steps had been taken or were proposed to be taken to ensure that women were not called to and detained at the police station for investigation particularly at night. The Government of NCTD subsequently reported that there had been a lapse on the part of duty officers both at P.S. Hauz Khas and at P.S. there had been a lapse on the part of duty officers both at P.S. Hauz Khas and at P.S. Okhla for not recording the victims presence in the police station and also not for informing her family members of her whereabouts. Departmental enquiry into the lapses has also been ordered against the concerned police officials. Instructions not to call women for interrogation at the night, and to depute women police officers if a woman is called for interrogation to a police station at an odd hour have been reiterated by the Government NCTD for strict compliance by all concerned officers.

Case such as the above handled by the Commission have led to the evolution of the rule that women should not be called at police station for interrogation or otherwise at night and in case it is urgent and necessary there should be arrangement of lady police officers.

According to Section 21 (1) of the Protection of Human Rights Act, 1993, a State Government may constitute a body to be known as the... (the name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned, to State Commission under Chapter V of the Act. The wording of this provision, especially the word 'may' indicate that it is not compulsory for the States to establish State Human Rights Commission. Thus it depends upon the discretion of the State. While under Section 3 of the Act, it is compulsory and mandatory for the Central Government to constitute a body to be known as the National Human Rights Commission for Section 3 uses the words "shall constitute", it is simply optional under Section 21 (1) for the State to constitute a State Human Rights Commission. This is a great defect and weakness of the Act. Since most of the violations of human rights take place in State territories, it should have been compulsory and mandatory for the States to establish State Human Rights Commissions. It is because of this flaw in the Act that many States have yet not established State Human Rights Commissions. Only a few States, namely West Bengal, Assam, Madhya Pradesh, Tamil Nadu and Himachal Pradesh have so far established State Human Rights Commission by the end of March, 1997.

## **National Commission for Minorities Act, 1992**

Under this Act, the Central Government is empowered to set up the National Commission for Minorities to perform various functions given by the act. The commission has the power of a civil court while performing its functions. The major functions of the commission are:

- To appraise the progress of the development of the minorities under the Union and States.
- To look into the complaints received for the infringement of the rights of minorities people.
- To take the matter of complaint before the appropriate authority.
- To have feed back of the working of the constitutional safeguards and those provided by the Legislature of states.
- To forward periodical or special reports on any matter related with the minorities and in particular the problems arrived to them.

In India, Sikhs, Muslims, Christians and Buddhists people are minorities communities. These all are represented by respectable representative.

## V. CONCLUSION

There are ample statutory provisions for the control and regulation of workplace sexual harassment. The strict will power for the implementation of these provisions is need of the time in order to effectively minimization of the workplace sexual harassment. The parliamentarians legislate on the workplace sexual harassment with an objective of eradication of the curse of women harassment. But the executive authorities must also be responsible and accountable for the implementation of the legal provisions in hand.

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