

Protection of women from sexual harassment at work

The Sexual Harassment Act has been enacted with the objective of providing women with protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment. The act will work for Sensitization against discrimination on the basis of gender and for the protection against sexual harassment. The right to work with dignity is a universal human rights recognized by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.

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Further, gender discrimination and sexual harassment results in violation of the fundamental right of a woman to equality under Articles 14 and 15 of the Constitution of India also her right to life and to live with dignity under Article 21 of the Constitution of India. Part III of our constitution also gives right to practice any profession or to carry any occupation, trade or business which includes a right to a safe environment free from sexual harassment under Article 19(1) (g) of the Constitution of India.

The statute was enacted almost 16 years after the Supreme Court of India, in its landmark judgment in ***Vishaka vs. State of Rajasthan*** (1997) 6SCC 241), noted that there was an absence of enacted law to provide for effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplace. Therefore, the Hon'ble Supreme Court, in the exercise of its power under Article 32 of the Constitution of India, laid down guidelines and norms which had to be observed at all workplaces or other institutions, until a legislation was enacted for the same purpose.

The Supreme Court of India, in 1997, in the Vishaka Judgment, for the first time, acknowledged sexual harassment at the workplace as a human rights violation. Until the enactment of The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013, these guidelines were treated as Law declared by the Hon'ble Supreme Court under Article 141 of the Constitution. In the case of ***Medha Kotwal Lele and Others vs. Union of India and Others***, it was observed by the Hon'ble Supreme Court that even 15 years after the Vishaka Judgment, many women still struggle to have the most basic rights enforced at the workplace. The guidelines laid down in Vishaka Judgment were not being effectively implemented. Therefore, additional directions were given by the Apex Court in an attempt to ensure that Vishaka Judgment was given effect in letter and spirit. In this context there was enactment of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" was enacted along with Rules.

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL), ACT 2013

The ambit of the Sexual Harassment Act is very wide and is applicable to the organized sector as well as the unorganized sector. In view of the wide definition of 'workplace' there is need to understand the scope and ambit of the act example a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment - including transportation provided by the employer for the purpose of commuting to and from the place of employment. So there is need to understand the importance of each and every phrase which the act employs.

The definition of '*employee*' under the Sexual Harassment Act is fairly wide and 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.

Whereby "*employer*" means a person or entity;

- 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;
- 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;
- in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- 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;

The employer and the employee are basically defined to the "workplace", which basically means and includes—

- 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;
- 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;
- hospitals or nursing homes
- any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto
- any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey
- a dwelling place or a house;

We need to basically understand what actions and behaviour would amount to sexual harassment and has been included in its definition. Seeing how the problem of harassment has increased manifold, the makers of the act tried to inculcate different kinds of unwelcome

acts or behaviour (whether directly or by implication) to be categorised within the ambit of the punishment which have been mentioned below:

- physical contact and advances; or
- a demand or request for sexual favours; or
- making sexually coloured remarks; or
- showing pornography; or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

To make it more comprehensive, various circumstances are mentioned, which if those occur or are present in relation to or connected with any act or behaviour of sexual harassment, may amount to sexual harassment:

- implied or explicit promise of preferential treatment in her; or
- employment; or
- implied or explicit threat of detrimental treatment in her employment; or
- implied or explicit threat about her present or future employment status; or
- interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- humiliating treatment likely to affect her health or safety.

The act defines aggrieved woman as a person in relation to work place of any age , who alleges to have been subjected to any act of sexual harassment by the a person against whom the aggrieved woman has made a complaint, who is referred as respondent in the Act. There is duty casted upon every employer by the act that he should provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace. After coming of this act he should order for the formulation of the internal committee and also to organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act. There should be regular orientation programmes for the members of the Internal Committee in the manner as may be prescribed:

- Provide necessary facilities to the Internal Committee, for dealing with the complaint and conducting an inquiry;
- Assist in securing the attendance of respondent and witnesses before the Internal Committee;
- Make available such information to the Internal Committee, as it may require having regard to the complaint;
- 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;
- Cause to initiate action, under the Indian Penal Code(45 of 1860) 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;
- Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- Monitor the timely submission of reports by the Internal Committee.

The Act also makes the employer responsible to carry on the functions which are required to be performed in accordance with the act , it necessitates him to formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace, intended to promote gender sensitive safe spaces and removing underlying factors that contribute towards a hostile work environment against women .It mandates for him to carry out orientation programmes and seminars for members of the Internal Committee. He may also contact public forums like Panchayati Raj institutions, Gram Sabhas, Women's Group for awareness among the employees and also such other groups like Mother's Committee, adolescent groups, urban local bodies and any other body which may be considered necessary.

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INTERNAL COMPLAINTS COMMITTEE

The Sexual Harassment Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing at least 10 employees. It should be done by an order in writing. According to the Act Internal Committee shall consist of the following members to be nominated by the employer, namely:-

- 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.
 - ❖ 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.
- 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.
- 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.
- The Member appointed from amongst the non-governmental organisations or associations shall be entitled to;
 - ❖ an allowance of two hundred Rupees per day for holding the proceedings of the internal committee.
 - ❖ Reimbursement of travel cost incurred in travelling by train in three tier air condition or air condition bus or auto rickshaw or taxi or
 - ❖ The actual expense spent by him on travel whichever is less
- The employer shall be responsible for payment of allowances as referred to above Provided that at least one-half of the total Members so nominated shall be women.
- 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.

REMOVAL OF COMMITTEE MEMBERS

Where the Presiding Officer or any Member of the internal Committee:

- who publishes, communicates discloses to public, press and/or media in any manner the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation

and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be; or

- 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
- he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- 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.

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PROCEDURE FOR MAKING COMPLAINT

- Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:
 - ❖ Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee, shall render all reasonable assistance to the woman for making the complaint in writing.
 - ❖ Provided further that the Internal Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.
- At the time of filling the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the name and addresses of the witnesses.

WHERE THE AGGRIEVED WOMAN IS INCAPABLE OF FILLING A COMPLAINT

- Where an aggrieved woman is unable to file complaint on account of her physical incapacity, the complaint may be filed by:
 - ❖ Her relative or friend; or
 - ❖ Her co-worker; or
 - ❖ An officer of the National Commission for Women or the State Commission for Women; or
 - ❖ Any person who has knowledge of the incident with the written consent of the aggrieved woman.
- Where an aggrieved woman is unable to file complaint on account of her mental incapacity, complaint may be filed by:
 - ❖ Her relative or friend; or
 - ❖ A special educator; or
 - ❖ A qualified psychiatrist or psychologist; or
 - ❖ Any guardian or authority under whose care she is receiving treatment
 - ❖ Any person who has knowledge of the incident jointly with any of the aforementioned.
- Where the aggrieved woman is for any other reason unable to make a complaint, a complaint may be filed by any other person who has knowledge of the incident, with her consent.

- Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of the legal heir.

Conciliation

- The Internal Committee, may, before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.
- No monetary settlement shall be made as a basis of conciliation.
- Where a settlement has been arrived at as stated above the Internal Committee, shall record the settlement so arrived and forward the same to the employer to take action as specified in the recommendation.
- The Internal Committee, shall provide the copies of the settlement to the aggrieved woman and the respondent.
- Where a settlement is arrived at no further inquiry shall be conducted by the Internal Committee.

Inquiry

- The Internal Committee, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as stated herein below.
- Where the aggrieved woman informs the Internal Committee, that any term or condition of the settlement arrived at has not been complied with by the respondent, the Internal Committee shall proceed to make an inquiry into the complaint.
- For the purpose of making an inquiry, the Internal Committee, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908) when trying a suit in respect of the following matters, namely:-
 - ❖ summoning and enforcing the attendance of any person and examining him on oath;
 - ❖ requiring the discovery and production of documents; and
 - ❖ any other matter which may be prescribed.
- The inquiry shall be completed within a period of ninety days.

MANNER OF INQUIRY

- The Internal Committee, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent.
- Where no such rules exists the Internal Committee will proceed as under-
 - ❖ The Internal Committee will send one of the copies of the complaint received from the complainant to the Respondent within a period of seven working days.
 - ❖ The Respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding 10 working days from the receipt of the above-said documents.
 - ❖ The Committee shall make an inquiry into the complaint in accordance with the principles of natural justice.

- ❖ The committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or the respondent fails, without sufficient cause, to present himself or herself for three consecutive hearing convened by the Chairperson.
- ❖ Such termination or ex-parte order may not be passed without giving notice in writing, 15 days in advance to the party concerned.
- ❖ Parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the committee.
- ❖ In conducting the inquiry a minimum of three members of the committee including the chairperson shall be present.



ACTION DURING PENDENCY OF INQUIRY

- During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee, may recommend to the employer to-
 - ❖ Transfer the aggrieved woman or the respondent to any other workplace ;or
 - ❖ Grant leave to the aggrieved woman up to a period of three months.
 - ❖ The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
 - ❖ Restrain the Respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer.
- On the recommendation of the internal Committee the employer shall implement the recommendations made and send the report of such implementation to the Internal Committee.

INQUIRY REPORT

- On the completion of an inquiry under this Act, the Internal Committee shall provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry.
- The Report should also be made available to the concerned parties.
- The employer shall act upon the recommendation within sixty days of its receipt by him.

WHEN ALLEGATIONS STAND PROVED

Where the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent and where no such service rule has been made, it shall recommend to the employer to take such action which shall include;

- A written apology.
- Warning.
- Reprimand or censure.
- Withholding of pay rise or increments.
- Terminating the Respondent from service.
- Undergoing a counselling session.
- Carrying out community service.

They should deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine:

- In case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman.
- In case the respondent fails to pay the sum referred to, the Internal Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

QUANTUM OF COMPENSATION

- For the purpose of determining the sums to be paid to the aggrieved woman the Internal Committee shall have regard to:-
 - ❖ The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman.
 - ❖ The loss in the career opportunity due to the incident of sexual harassment.
 - ❖ Medical expenses incurred by the victim for physical or psychiatric treatment.
 - ❖ The income and financial status of the respondent.
 - ❖ Feasibility of such payment in lump sum or in instalment.

WHEN ALLEGATIONS STAND NOT PROVED

Where the Internal Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter. Where there has been proof of false and malicious complaints or the committee arrives at the conclusion that the complaint against the respondent is false or the aggrieved woman who made the complaint has no authenticity in her complaint, the committee may recommend the employer to take action against the woman or the person who made the complaint in accordance with the provision of the service rules applicable.

The malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended. Mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant. Where the Internal Committee, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

CONFIDENTIALITY OF PROCEEDINGS

The contents of the complaint filed, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee and the action taken by the employer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner. In order to disseminate the information about the justice secured by the victim shall be done with great caution without revealing her identity. In case

if any person is entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, breaches the confidentiality of the proceedings he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, the employer shall recover a sum of Rs. 5000/- as penalty from such person.

APPEALS

Any person aggrieved from the recommendations or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person without prejudice to provisions contained in any other law for the time being in force. Where no such service rules exist an appeal may be preferred to the Appellate Authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946). This appeal shall be preferred within a period of ninety days of the recommendations.

REPORTS

The Internal Committee, shall in each calendar year prepare, an annual report and submit the same to the employer and the District Officer which shall be completed with the following details:-

- Number of complaints of sexual harassment received in the year.
- Number of complaints disposed of in the year.
- Number of cases pending for more than 90 days.
- Number of workshops or awareness programs against sexual harassment carried out.
- Nature of action taken by the employer.
- The District Officer shall forward a brief report on the annual reports received to the State Government.

POWER OF STATE GOVERNMENT TO CALL FOR INFORMATION AND INSPECTION OF RECORDS

The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing:-

- Call upon any employer to furnish in writing such information relating to sexual harassment as it may require.
- Authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.
- Every employer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

PENALTY FOR NON COMPLIANCE WITH PROVISIONS OF THIS ACT

Where the employer fails to follow the rules or regulations prescribed by this act he should face the penalty. Where the employer fails to constitute an Internal Committee under sub-section (1) of section 4 or take action for the same in regarding the annual reports for the same he should liable to pay a fine which may extend to fifty thousand rupees. In case of

repetition of offence where the employer was previously convicted for any offence under this act he shall be liable to twice the punishment or will be charged with a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment also his licence should be cancelled.

COGNIZANCE OF OFFENCES BY COURT

No court shall take cognizance of any offence punishable under this Act unless on the complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act. Every offence under this Act shall be non-cognizable. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

We hope that unlike some of the other laws, the Sexual Harassment Act is implemented well, which in itself would go a long way in protecting the employees' interests and well-being in India.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.