

*Sexual
Harassment
at
Workplace*

Meeting All Your Legal Needs



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SEXUAL HARASSMENT AT WORKPLACE

INTRODUCTION

As provided in the Supreme Court guidelines (*Vishakha & Ors vs. State of Rajasthan*)¹, sexual harassment includes such unwelcome sexually determined behaviour as: Physical contact, a demand or request for sexual favour, sexually coloured remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, for example, leering, telling dirty jokes, making sexual remarks about a person's body, etc. It moves into the harassment domain when it is not consensual. Sexual harassment is commonly called sexual abuse too. Since there were just the guidelines dealing with the issue, thus, an Act was passed namely "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".

Sexual harassment at workplace...means something which goes against to the dignity of the woman and outrages her modesty .and Right to work in a safe environment is a constitutional right governed under Article 14 & 21...of the Constitution of India.²

In India it is the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 "Act", which deals with the sexual harassment at workplace. The objectives of the said law are as under:-

- The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.
- The Act seeks to provide a secure and enabling environment for women employees, including domestic workers, against sexual harassment at the workplace. The Act makes it mandatory for all workplaces, including homes, universities, hospitals, government and non-government offices, factories, other formal and informal work places to constitute an internal committee for redressal of complaints.

¹ (JT 1997 (7) SC 384)

² Equality before Law & Protection of Life and Personal Liberty

1. TO WHOM IT APPLIES

It applies to all the employers and workplaces as defined under the Act.

EMPLOYER shall mean

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

WORKPLACE shall include

- (i) any department, organization, 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 organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational,

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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 provided by the employer for undertaking such journey;
- (vi) a dwelling place or a house;

2. WHAT AMOUNTS TO SEXUAL HARASSMENT

Sexual harassment includes any one or more of the following unwelcome acts or behaviour (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:

The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: --

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

3. REDRESSAL MECHANISMS

The Indian legislation provides a two tier system. Complaining to

- a) the Internal Complaint Committee “**ICC**” formed by the employer; or
- b) Local Complaint Committee “**LCC**” formed by the District Officer

All workplaces employing 10 or more than 10 workers are mandated under the Act to constitute an ICC.

Complaints from workplaces employing less than 10 workers or when the complaint is against the employer will be looked into by the LCC. A District Officer notified under the Act will constitute the LCC at the district level. LCC will also look into complaints from domestic workers.

The Act has a provision for conciliation. The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent, however this option will be used only at the request of the woman. The Act also provides that monetary settlement shall not be made a basis of conciliation. Further, if any of the conditions of the settlement is not complied with by the respondent, the complainant can go back to the Committee who will proceed to make an inquiry.

4. OBLIGATIONS OF THE EMPLOYER

The Act casts a responsibility on every employer to create an environment which is free from sexual harassment. Employers are required to organize workshops and awareness programmes at regular intervals for sensitizing the employees about the provision of this legislation and display notices regarding the constitution of Internal Committee, penal consequences of sexual harassment etc. Additionally, an employer has the following obligations:

Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the Internal Complaints Committee

Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

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Display at any conspicuous place in the workplace, the penal consequences of sexual harassments: and the order constituting, the Internal Complaint Committee;

Organise workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

Make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under the Act;

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 such misconduct;

Monitor the timely submission of reports by the Internal Committee.

5. RIGHTS OF THE EMPLOYEE

The Act deals with the Right of the employee which are being defined hereunder;

A Safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.

Display at any conspicuous place in the workplace, the repercussions of the sexual harassment.

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Provide assistance to the woman if she chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force

Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry.

6. PENALTIES FOR NON-COMPLIANCE

An employer will be liable to a fine of Rs 50,000 in case of violation of his duties under the Act and in case of subsequent violations the amount of fine will be double together with penalty in the form of cancelation of his licence, withdrawal or non-withdrawal of the registration required for carrying out his activity.

7. FORMATION OF INTERNAL COMPLAINTS COMMITTEE

The ICC will be a 4 member committee under the Chairpersonship of a senior woman employee and will include 2 members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge and includes a third party member (NGO etc) as well.

8. PROCEDURE FOR FILING COMPLAINT

A complaint of sexual harassment can be filed within a time limit of 3 months. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same.

9. INVESTIGATION PROCEDURE OF THE COMMITTEE

The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.

10. EXTERNAL COMMITTEE MEMBER

ICC which is being constituted under this Act shall have one member from amongst the non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Moreover, at least one- half of the total members so nominated shall be women.

The Member of the ICC who is being appointed from the non-governmental organizations or associations shall be paid such fees or allowance for holding the proceedings of the Internal Committee, by the employer , as may be prescribed.

11. HOW TO RECORD INVESTIGATIONS

For the purpose of making an investigation into the matter, the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the code of civil Procedure,1908 when trying a suit in respect of the following matters, namely:--

- a) Summoning and enforcing the attendance of any person and examining him on oath;
- b) Requiring the discovery and production of documents ;and
- c) Any other matter which may be prescribed.

12. HOW & WHEN TO INFORM POLICE

In case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code (45 of 1860).]

13. CONFIDENTIALITY OF COMPLAINT

The Act prohibits disclosure of the identity and addresses of the aggrieved woman, respondent and witnesses. However, information regarding the justice secured to any victim of sexual harassment under this Act without disclosing the identity can be disseminated.

14. DISCIPLINARY ACTION

In case the complaint has been found proved, then the Committee [ICC or LCC, as the case may be] can recommend action in accordance with the provision of service rules applicable to the respondent or as per the rules which may be prescribed, where such service rules do not exist. The committee can also recommend deduction of an appropriate sum from the salary of the respondent or ask respondent to pay the sum depending upon the facts and circumstances of the case. If respondent fails to pay such sum, district officer may be asked to recover such sum as an arrear of land revenue.

In case the allegation against the respondent has not been proved then the Committee can write to the employer/district officer that no action needs to be taken in the matter.

15. FALSE / MALICIOUS COMPLAINTS

In case of malicious or false complaint then the Act provides for a penalty according to the Service Rules. However, this clause has a safeguard in the form of an enquiry prior to establishing the malicious intent. Also, mere inability to prove the malicious intent will not attract penalty under this provision.

16. PUNISHMENTS

Whosoever does any shameful act which amounts to sexual Harassment at workplace will be punished under section 509 of the Indian Penal Code with a simple imprisonment for a term which may extend to three years, or with fine , or with both.

17. HOW TO FILE ANNUAL RETURNS

The Internal Committee or Local Committee , as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed , an annual report and submit the same to the employer and the District Officer.

The District Officer shall forward a brief report on the annual reports received to the State Government.

The employer shall include in its report the number of cases filed, if any and their disposal under this Act in the annual report of his organization or where no such report is required to be prepared , intimate such number of cases, if any, to the District Officer.

18. HOW TO RECORD COMMITTEE MEETINGS

All the proceeding of the committee shall be recorded in writing. The record of the proceeding and the statements of witnesses shall be endorsed by the persons concerned in token authenticity thereof.

All persons heard by the committee as well as observers/ nominees, shall take and observe an oath of secrecy about the proceedings to protect the dignity of the complainant and the defendant. Any violation of the oath of secrecy may invite penalties

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