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The Sexual Harassment of Women
at Workplace
(Prevention, Prohibition and Redressal)
Act, 2013



The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha on September 3, 2012 and by the Rajya Sabha on February 26, 2013. The Bill got the assent of the President on 23 April 2013.

TEXT OF THE ACT

The introductory text of the Act is as follows:

“An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights 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;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.”

DEFINITIONS

- ❁ The Act defines sexual harassment as any one or more of the following unwelcome acts or behaviour (whether directly or by implication) as:-
 - 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

- ❁ The definition of “aggrieved woman”, who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

- ❁ While the “workplace” in the Vishaka guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including transportation.

MAJOR PROVISIONS

- Under sections 4 and 6 respectively, every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.

— The “Internal Complaints Committee” handles all complaints regarding sexual harassment in the organization.

It consists of a Presiding Officer who shall be a woman employed at a senior level at the workplace (if there is no woman at the senior level, the Presiding Officer will be nominated from any other workplace of the same employer or other department or organization); not less than two members amongst the employees who are committed to the cause of women or have had experience in social work or legal knowledge; or member from non-governmental organizations or associations. The presiding officer and every member of the Internal Committee shall hold office for a maximum of three years.

The Presiding Officer or member shall be removed from the committee if they have been convicted for an offense, found guilty in any disciplinary proceedings or has so abused his/her position.

— Districts have “Local Complaints Committee” which handles all complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than 10 workers or if the complaint is against the employer himself.

It consists of a Chairperson who is nominated from amongst eminent women in the field of social work; one member is to be nominated from amongst the women who work in a

municipality in the district and two members (one must be woman) is nominated from amongst non-governmental organizations or a person familiar with the issues relation to sexual harassment; and finally an officer concerned in dealing with socio-welfare of women and child development in the district will be a member of ex officio.

The Chairperson and every member shall be removed from the Local committee if they have been convicted for an offense, found guilty in any disciplinary proceedings or has so abused his/her position.

- The Committees are 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.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- Determination of Compensation to be paid to the aggrieved women will be decided by the committees by taking into consideration the following—
 - Mental Trauma, pain, suffering and emotional distress caused to the aggrieved woman;*
 - 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 installments.*

- ❁ Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business

PENAL CODE

- ❁ Upon the act's presidential approval, a section was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence.
- ❁ Penalties range from one to three years imprisonment and/or a fine.
- ❁ Additionally, with sexual harassment being a crime, employers are obligated to report offences.

CRITICISM

- ❁ The law requires that all companies and employers who have more than 10 employees, constitute an “Internal Complaints Committee” to which an aggrieved woman can take her complaint. This committee, which must be headed by a senior female employee, is supposed to try initially to get the complainant and accused to reach a settlement and only then launch an investigation in case if the mediation fails.
- ❁ Critics object to this provision requiring conciliation before an inquiry. This is “yet another way in which the dignity of women is undermined,” according to a report on women's safety by former Chief Justice J.S. Verma released earlier this year.

- ❁ If harassment is proved, the law leaves it up to the internal committee to decide a monetary fine to be paid by the perpetrator, depending on their “the income and financial status”. So, a low-level executive will likely pay a lower fine for harassment than a senior executive, says Albeena Shakil, a women's rights activist from New Delhi.
- ❁ The law doesn't define the range of financial penalties.
- ❁ Activists say the prescribed mechanism of filing complaints is too bureaucratic and could deter women from coming forward.
- ❁ Worse, they say, is a provision in the law that calls for punishment for making a false complaint. Women with legitimate grievances may keep quiet, fearing that they will not be able to prove their allegations and may instead be hounded for making false claims, says Suneeta Dhar, director at Delhi-based women's group Jagori.
- ❁ Finally, activists note that while the new law starts by advocating prevention of sexual harassment, it dilutes the responsibility of the employer in preventing it. Since the fine for an offence has to be paid by the employee, it doesn't give companies much incentive to take active steps to create a harassment-free environment at work, say activists.

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