

Sexual Harassment at Workplace – Rules & Regulations

The #MeToo movement has gathered momentum across the world with many celebrities coming out about sexual misconduct by men in the workplace. With women constituting about half of the global population, it's important to ensure they have safeguards for protecting their rights and status at workplaces. In this direction, the Government of India has implemented the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. In this article, we look at the rules and regulations that prevent sexual harassment at workplace in detail.

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What is Sexual Harassment at Workplace?

According to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, any of the following 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:

Implied or explicit promise of preferential treatment in her employment.

Implied or explicit threat of detrimental treatment in her employment.

Interferes with her work or creating an intimidating or offensive or hostile work environment for her.

Humiliating treatment likely to affect her health or safety.

Sexual harassment includes unwelcome sexually determined behaviour such as:

Physical contact.

Demand or request for sexual favours.

Sexually coloured remarks.

Showing pornography.

Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Duties and Responsibilities of Employers

Under the Sexual Harassment of Women at Workplace Act, 2013, all employers have the following duties and responsibilities:

Provide 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 penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4 of the Act providing that every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee": Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices;

Organise workshops and awareness programmes at regular intervals for sensitising 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 enquiry;

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 sub-section (1) of section 9;

Provide assistance to the woman if she so 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;

Cause to initiate action, under the Indian Penal Code, 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.

Formation of Internal Complaint Committee

Under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, all employers are required to constitute an Internal Complaint Committee at a workplace by an order in writing. In case the employer has multiple branches or factories or offices, an Internal Committee must be constituted at all administrative units or offices.

The Internal Committee must consist of the following members, nominated by the employer:

A Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees.

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 Internal Complaint Committee must have at least one-half of the total Members as women at all times. The Presiding Officer and every Member of the Internal Committee can hold office for a period not exceeding three years, from the date of their nomination.

Powers of Internal Complaint Committee

An Internal Complaint Committee constituted under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 will have the same powers as vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters:

Summoning and enforcing the attendance of any person and examining him on oath.

Requiring the discovery and production of documents.

Any other matter which may be prescribed.

The Internal Complaint Committee could recommend to the employer, the following actions:

Grant such other relief to the aggrieved woman as may be prescribed.

Transfer the aggrieved woman or the respondent to any other workplace.

Grant leave to the aggrieved woman upto a period of three months.

Procedure for Filing Complaint

A complaint on sexual harassment at the workplace must be made by the aggrieved woman within a period of three months from the date of occurrence of an incident. In case of a series of an incident, within a period of three months from the date of last incident.

The complaint must be made in writing and submitted to the Internal Complaint Committee and be sent either by post or given in person. The Internal Complaint Committee also has the powers to extend the time-limit for reporting by not more than three months, if it is satisfied that the circumstances were such which prevented the employee from filing a complaint within the three month period.

If an aggrieved woman is unable to make a written complaint by herself on account of her physical incapacity, a complaint can be filed by:

Her relative or friend.

Her co-worker.

An officer of the National Commission for Women or State Women's Commission.

Any person who has knowledge of the incident, with the written consent of the aggrieved woman.

If an aggrieved woman is unable to make a written complaint by herself on account of her mental incapacity, a complaint can be filed by:

Her relative or friend.

A special educator.

A qualified psychiatrist or psychologist.

The guardian or authority under whose care she is receiving treatment or care.

Any person who has knowledge of the incident jointly with her relative or friend or a special education or qualified psychiatrist or psychologist or guardian or authority under whose care she is receiving treatment or care.

Finally, if an aggrieved woman is unable to make a written complaint by herself on account of her mental incapacity or physical incapacity or death, a complaint can be filed by her legal heir.

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

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.

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 (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute.[4][not in citation given][5] Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013. The government has threatened to take stern action against employers who fail to comply with this law.

Preamble and background

The introductory text of the Act is:

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.

Functioning

What is this Act about?

The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 makes it illegal to sexually harass women in the workplace. It talks about the different ways in which someone can be sexually harassed and how they can complain against this kind of behaviour.

Is this Act only for women?

Yes, this Act is only for women who are sexually harassed in workplaces.

Is this Act only for working women?

No, this Act is for any woman who is harassed in any workplace. It is not necessary for the woman to be working at the workplace in which she is harassed. A workplace can be any office, whether government or private.

There is no sexual harassment at my office. Do I still have to follow the instructions regarding setting up an Internal Complaints Committee?

Yes, even if there are no cases of sexual harassment at the moment, it is still necessary for the committee to be set up (if you employ more than 10 workers) and for all rules to be followed.

Am I not allowed to approach the police and courts because of this Act?

No, the Act gives you a choice between dealing with the offender within the office or approaching a court. If you wish, you can file a criminal complaint instead of approaching your Internal/Local Complaints Committee.

Background and provisions

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 realisation 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 uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishakav. State of Rajasthan (1997). Article 19 g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011.[13][14] In May 2012, the Union Cabinet approved an amendment to include domestic workers.[15] The amended Bill was finally passed by the Lok Sabha on 3 September 2012.[16] The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013.

Major Features

The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.

The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.

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 the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.

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.

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 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.

The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.

The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations.

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.[19]

Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.

Penal Code

Through the Criminal Law (Amendment) Act, 2013, Section 354 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

Brinda Karat, serving in the Rajya Sabha as a Communist Party of India (Marxist) member for West Bengal initially complained that the Bill does not cover women in the armed forces and excludes women agricultural workers, "a gross injustice to agricultural workers who are the single largest female component of work force in the country." [11] However, the final bill includes the clause "No woman

shall be subjected to sexual harassment at any workplace" (clause 3.1), and is considered to have addressed those concerns.[21] In the May 2012 draft Bill, the burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted, which has raised concerns about women being even more afraid of reporting offences.[20] Before seeing the final version of the bill, lawyer and activist Vrinda Grover said, "I hope the Bill does not have provisions for penalizing the complainant for false complaints. This is the most under-reported crime. Such provision will deter a woman to come forward and complain." Zakia Soman, a women's rights campaigner at ActionAid India said that "it helps to have a law and we welcome it, but the crux will lie in its implementation once it is enacted."

Manoj Mitta of The Times of India complained that Bill does not protect men, saying it "is based on the premise that only female employees needed to be safeguarded." Nishith Desai Associates, a law group, wrote a detailed analysis that included concerns about the role of the employer in sexual harassment cases. They called out the fact that there is no stipulated liability for employers in cases of employee-to-employee harassment, something upheld in many other countries. They also viewed the provision that employers are obligated to address grievances in a timely manner at the workplace as problematic because of potentially uncooperative employees. Furthermore, the law requires a third-party non-governmental organisation to be involved, which could make employers less comfortable in reporting grievances, due to confidentiality concerns.

Compliance to this statute has so far been left to the vagaries of the employers and government has not taken any significant step to enforce the law so far. For example, 6 months after the law came into effect, the state in UP remained dreadful as women could not participate in the workforce due to sexual harassment.

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