

India's Law on Prevention of Sexual Harassment at Workplace

About the book

A stitch in time saves nine. And especially if it is in relation to measures for prevention of sexual harassment at the workplace.

Studies reveal that almost 3 out of every 5 (working) women have faced some form of sexual harassment in their lives! Isn't that alarming? Although the law preventing sexual harassment at workplace has been in force for over 3 years, there still remains a lack of clarity on the objective of the statute, Acts that constitute sexual harassment, obligations of the employer, remedies available to the victims, process for investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment.

Any tool would be useless if the person operating is unaware of the manner in which it to be used. The objective of this publication is to serve as a ready reckoner to the stakeholders. We have also attempted to provide an insight into the relevant provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and other relevant laws in India dealing with this topic.

The publication provides a general background on what constitutes sexual harassment and when and where to draw the line. It should enable female employees to understand their rights and the remedies available to them if faced with an act of sexual harassment. We have also outlined the employer's obligations and the steps to be adopted by the employer in redressing grievances pertaining to sexual harassment.

We hope you find this publication relevant and informative.

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India's Law on Prevention of Sexual Harassment at Workplace



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By
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Published by Shri Chetan Shah, President for Bombay Chartered Accountants' Society, 7, Jolly Bhavan No. 2, New Marine Lines, Mumbai – 400 020. Tel.: 6137 7600 • Fax : 6137 7666

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Finesse Graphics & Prints Pvt. Ltd.

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Foreword

Corporate & Allied Laws Committee of the Bombay Chartered Accountants' Society (BCAS) is pleased to present to you a set of 5 monographs – short “HANDY” publications on some important topics, mentioned below, for the benefit of members and public at large.

India is the largest democracy in the world with the freedom of speech and expression granted by the Constitution of India. In the recent past, **Freedom and Restrictions on speech and expression in social media** has gained momentum, especially due to wide and speedy reach of social media across the globe and its impact on public at large. BCAS has come out with an analysis of the provisions of section 66-A of the Information Technology Act, 2000 vis-à-vis the Supreme Court's stand on the constitutionality of this section, as a monograph. Ms. Alankrita Singh, a student of National Law University, Jodhpur, Rajasthan, has authored this monograph and CA K. C. Narang, Past President of BCAS has reviewed the same and provided valuable guidance.

Inequalities amongst various sections of the society and rampant use/consumption of the natural resources by mankind are some of the bye-products of today's developed and/or developing world. Philanthropy has been an integral part of Indian culture at personal level to somewhat address the problem of inequalities. Some of the corporate houses had *suo motu* taken certain initiatives in this direction. To inculcate the social responsibilities at corporate level at large, the provisions relating to **Corporate Social Responsibility** have been introduced in Companies Act, 2013. India has been the first ever country to legislate such provisions. CA Zubin Billimoria has dealt with the relevant topic in detail in this monograph.

In the past, an insider having access to unpublished price sensitive information of a listed entity has taken undue advantage of the same for personal benefit. To curb this practice, the law relating to **Prohibition of Insider Trading** has evolved. In India, SEBI has been tightening the relevant norms. BCAS is happy to present a handy booklet on the subject including some of the case laws, authored by CA, CS Sanjeev Shah and CS Ruchi Shah, and reviewed by Adv. Nishchal Joshipura. This monograph also analyses the latest regulations on Prohibition of Insider Trading issued by SEBI.

Fair competition is essential for development of a healthy market, and to save the economy from the evils of monopoly. The

Competition Law replaced MRTP Act to *inter alia* regulate and restrict anti-competitive agreements, abuse of dominant position and combinations (i.e., mergers, acquisitions, takeovers, etc.). Mr. Varun Thakur, a student from National Law University, Jodhpur, has contributed to prepare a booklet on this topic, and CS Surendra U. Kanstiya has reviewed the same.

In India, women have been entering formal labour workforce in an unprecedented numbers and are extremely valuable resources. There have been instances where women have become victims of sexual harassment and abuse at their workplace. Sexual harassment is considered as a violation of a woman's fundamental right to equality, which right is guaranteed by the Constitution of India. While pronouncing a landmark judgment in 1992, the Hon'ble Supreme Court of India laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women (referred to as Vishakha guidelines). After around 16 years, the said guidelines were codified into The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Adv. Preetha S. and Adv. Vikram Shroff have authored a booklet on **India's Law on Prevention of Sexual Harassment at Workplace** as part of this monograph series.

All the authors and the reviewers have spared their valuable time out of their busy schedules and made the monographs lucid and understandable in simple language. We sincerely appreciate their contribution. We are grateful to Nishith Desai Associates for extending their co-operation instantaneously for review of monograph on **Prohibition of Insider Trading** and providing the monograph on **India's Law on Prevention of Sexual Harassment at Workplace**. We take this opportunity to express our gratitude towards all the reviewers by providing their guidance. We also thank CA Jayant Thakur and CA Preeti Oza from the Corporate and Allied Laws Committee of BCAS to undertake this initiative.

We believe that a set of the aforesaid 5 monographs will be very useful to all.

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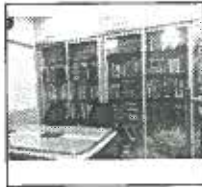
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Chapter 1

India's Law on Prevention of Sexual Harassment at Workplace

1. Introduction

Gender equality in all dimensions is a basic human right and the Constitution of India (“**Constitution**”) guarantees all its citizens equality of status and opportunity.¹ Sexual harassment is considered as a violation of a woman’s fundamental right to equality, which right is guaranteed by Articles 14 and 15 of the Constitution. Workplace sexual harassment creates an insecure and hostile work environment, thereby discouraging women’s participation in work and adversely affecting their social and economic growth.² The Constitution also provides every citizen the ‘right to practice or carry out any occupation, trade or business’³, which includes the right to a safe environment, free from all forms of harassment.

India’s first legislation specifically addressing the issue of workplace sexual harassment was enacted in 2013. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**Prevention of Workplace Sexual Harassment Act**”) was made effective from December 9, 2013 by the Ministry of Women and Child Development, India. The Government has also notified rules under the Prevention of Workplace Sexual Harassment Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“**Prevention of Workplace Sexual Harassment Rules**”).

The Prevention of Workplace Sexual Harassment Act has been enacted with the objective of preventing and protecting women against sexual harassment at workplace and for the effective redressal of complaints of sexual harassment. The statute seeks to fill the legislative void on the subject and provide every woman,

1. Articles 14, 15 and 19 of the Constitution
2. Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
3. Article 19(1)(g)

irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment.

The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 (“**Criminal Law Amendment Act**”) which criminalised offences such as sexual harassment, stalking and voyeurism.

In this primer, we have attempted to provide an overview of the Prevention of Workplace Sexual Harassment Act and certain other laws in India pertaining to workplace sexual harassment.



Chapter 2

Evolution of the Law on Workplace Sexual Harassment

The Prevention of Workplace Sexual Harassment Act and the Prevention of Workplace Sexual Harassment Rules have been enacted 16 years after the Supreme Court of India's landmark judgement in *Vishaka and Others v. State of Rajasthan*⁴ (“**Vishaka Judgment**”). The Supreme Court, in the Vishaka Judgment, laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women (“**Guidelines**”).

(i) *The Vishaka Judgment*

In 1992, Bhanwari Devi, a woman employed with the rural development programme of the Government of Rajasthan was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage.⁵ This incident revealed the hazards that working women were exposed to on a day-to-day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka.

The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy, and acknowledged workplace sexual harassment as a human rights violation. In framing the Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject has been drawn-up and

4. 1997 (7) SCC 323

5. Indira Jaising, Law Relating to Sexual Harassment at the Workplace (2014)

enacted, would have the effect of law, mandatorily to be followed by organisations, both in the private and Government sector.

LEGISLATIVE TIMELINE

2007	Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 ("Bill") approved by the Union Cabinet.
2010	The Bill was introduced in the Lok Sabha.
2012	The Bill was amended and re-introduced in the Lok Sabha.
September 3, 2012	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was passed by the Lok Sabha
February 26, 2013	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was passed by the Rajya Sabha.
April 23, 2013	The Prevention of Workplace Sexual Harassment Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013.
December 9, 2013	The Indian Ministry of Women and Child Development notified: <ul style="list-style-type: none"> • December 9, 2013 as the effective date of the Prevention of Workplace Sexual Harassment Act; and • The Prevention of Workplace Sexual Harassment Rules



Chapter 3

Key Provisions under the Prevention of Workplace Sexual Harassment Act

(i) Applicability and Scope

The Prevention of Workplace Sexual Harassment Act extends to the 'whole of India' and stipulates that a woman shall not be subjected to sexual harassment at her workplace.⁶ It is pertinent to note that the statute protects only women and is not intended to be a gender neutral legislation. As per the statute, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.⁷

Further, the Prevention of Workplace Sexual Harassment Act applies to both the organised and unorganized sectors in India. The statute, *inter alia*, applies to Government bodies, private and public sector organisations, non-governmental organisations, organisations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house.⁸

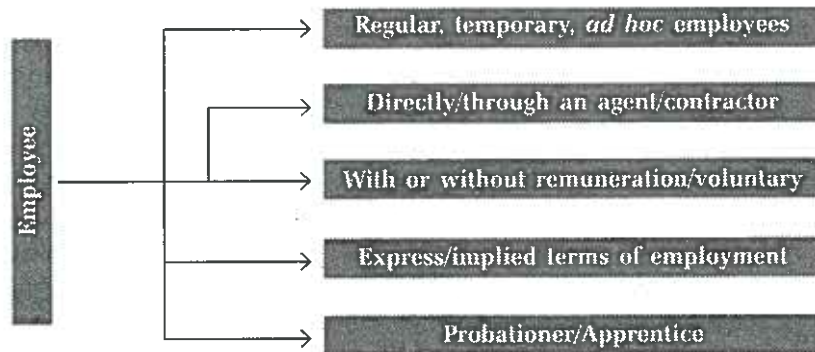
(ii) Sexual Harassment – Meaning

The Prevention of Workplace Sexual Harassment Act defines 'sexual harassment' in line with the Supreme Court's definition in the Vishaka Judgment. As per the statute, 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.⁹

6. Section 3 of the Prevention of Workplace Sexual Harassment Act
 7. Section 2(a) of the Prevention of Workplace Sexual Harassment Act
 8. Section 2(o) of the Prevention of Workplace Sexual Harassment Act
 9. Section 2(n) of the Prevention of Workplace Sexual Harassment Act

Presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment; threat of detrimental treatment in employment; threat about present or future employment; interference with work or creating an intimidating or offensive or hostile work environment; or humiliating treatment likely to affect the lady employee's health or safety could also amount to sexual harassment.¹⁰

(iii) Employee



The definition of an 'employee' under the Prevention of Workplace Sexual Harassment Act is fairly wide and covers regular, temporary, *ad hoc* employees, individuals engaged on daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.¹¹

(iv) Workplace

Recognising that sexual harassment of women may not necessarily be limited to the primary place of employment, the Prevention of Workplace Sexual Harassment Act has introduced the concept of an 'extended workplace'. As per the statute, 'workplace' includes any

10. Section 3(2) of the Prevention of Workplace Sexual Harassment Act

11. Section 2(f) of the Prevention of Workplace Sexual Harassment Act

place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.¹²

(v) Complaints Committee

An important feature of the Prevention of Workplace Sexual Harassment Act is that it envisages the setting up of grievance redressal forums for both organised and unorganised sectors.

A. Internal Complaints Committee

The Prevention of Workplace Sexual Harassment Act requires an employer to set up an 'internal complaints committee' ("ICC") at each office or branch, of an organisation employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.¹³

B. Constitution of the ICC

Presiding Officer	Woman employed at a senior level at the workplace from amongst the employees.
Members	Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
External member	From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.

Not less than half of the ICC Members shall be women

The term of the ICC Members shall not exceed 3 years

A minimum of 3 Members of the ICC including the Presiding Officer are to be present for conducting the inquiry.

C. Local Complaints Committee

At the district level, the Government is required to set up a 'local complaints committee' ("LCC") to investigate and redress

12. Section 2(o) of the Prevention of Workplace Sexual Harassment Act

13. Section 4 of the Prevention of Workplace Sexual Harassment Act

complaints of sexual harassment from the unorganised sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.¹⁴

D. Powers of the ICC/LCC

The Prevention of Workplace Sexual Harassment Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, 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:

- i. Summoning and enforcing the attendance of any person and examining him on oath;
- ii. Requiring the discovery and production of documents; and
- iii. Any other matter which may be prescribed.¹⁵

(vi) Complaint Mechanism

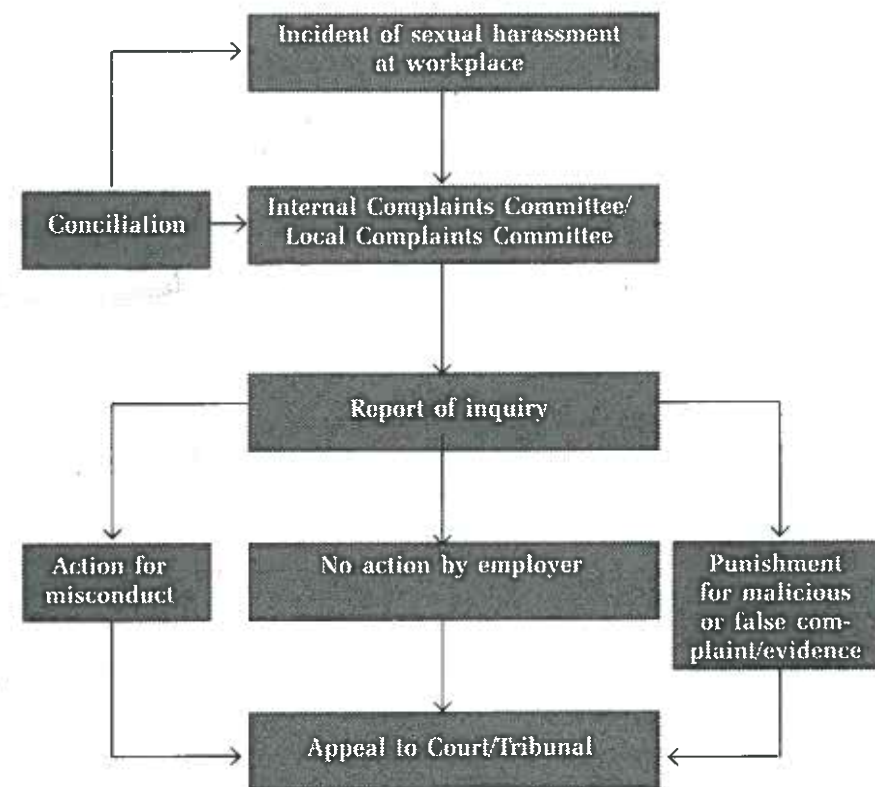
An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. The ICC/ LCC can extend the timeline for filing the complaint, for reasons to be recorded in writing, by a period of 3 months. The law also makes provisions for friends, relatives, co-workers, psychologists, psychiatrists, etc. to file the complaint in situations where the aggrieved employee is unable to make the complaint on account of physical incapacity, mental incapacity or death.¹⁶

(vii) Redressal Process

Please refer to the flowchart below which provides an overview of the process to be followed by the aggrieved employee to make the complaint and by the ICC/LCC to inquire into the complaint. An

14. Section 5 of the Prevention of Workplace Sexual Harassment Act
 15. Section 11(3) of the Prevention of Workplace Sexual Harassment Act
 16. Section 6 of the Prevention of Workplace Sexual Harassment Act

aggrieved woman is allowed to request for conciliation in order to settle the matter although monetary settlement should not be made as a basis of conciliation.¹⁷



Timelines

Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident. Timeline extendable by another 3 months.

Upon receipt of the complaint, 1 copy of the complaint is to be sent to the respondent within 7 days.

Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.

17. Section 10 of the Prevention of Workplace Sexual Harassment Act

The Inquiry has to be completed within a total of 90 days from the receipt of the complaint.

The Inquiry report has to be issued within 10 days from the date of completion of inquiry.

The employer is required to act on the recommendations of the ICC/LCC within 60 days of receipt of the Inquiry report.

Appeal against the decision of the committee is allowed within 90 days from the date of recommendations.

(viii) Interim Reliefs

The ICC/LCC is also empowered to, at the request of the complainant, recommend to the employer interim measures such as:

- i. Transfer of the aggrieved woman or the respondent to any other workplace
- ii. Granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/contractual leave entitlement
- iii. Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

(ix) Punishment and Compensation

The statute prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. Punishment prescribed under the service rules of the organization;
- ii. If the organisation does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and

- iii. Deduction of compensation payable to the aggrieved woman from the wages of the respondent.¹⁸

The statute also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. The mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. The loss in career opportunity due to the incident of sexual harassment;
- iii. Medical expenses incurred by the victim for physical/psychiatric treatment;
- iv. The income and status of the alleged perpetrator; and
- v. Feasibility of such payment in lump sum or in installments.¹⁹

In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(x) Frivolous Complaints

In order to ensure that the protections envisaged under the Prevention of Workplace Sexual Harassment Act are not misused, provisions for action against “false or malicious” complainants have been included in the statute. The statute provides that if the ICC/LCC concludes that the allegation is false or malicious or the complaint has been made knowing it to be untrue or forged or misleading information has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation can be taken against such complainant. Where the organisation does not have service rules, the statute provides that disciplinary action such as written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service may be taken.

18. Section 13 of the Prevention of Workplace Sexual Harassment Act

19. Section 15 of the Prevention of Workplace Sexual Harassment Act

The statute further clarifies that the mere inability to substantiate a complaint or provide adequate proof need not mean that the complaint is false or malicious.²⁰

(xi) Confidentiality

Recognising the sensitivity attached to matters pertaining to sexual harassment, the Prevention of Workplace Sexual Harassment Act attaches significant importance to ensuring that the complaint and connected information are kept confidential. The statute specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005. The statute further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC/LCC and the action taken to the public, press and media in any manner. That said, the statute allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in the identification of the complainant or the witnesses.²¹ Disclosure of the justice secured could not only deter other individuals from engaging in acts of sexual harassment, but also instil in the minds of employees and public that the employer is serious about providing a safe work environment and harbours zero tolerance for any form of sexual harassment at the workplace.²²

Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000.²³

20. Section 14 of the Prevention of Workplace Sexual Harassment Act

21. Section 16 of the Prevention of Workplace Sexual Harassment Act

22. Shivangi Prasad and Attreyi Mukherjee, Handbook on the law of Sexual Harassment at Workplace 179 (2015)

23. Section 17 of the Prevention of Workplace Sexual Harassment Act and Rule 12 of the Prevention of Sexual Harassment Rules

(xii) Consequences of non-compliance

If an employer fails to constitute an ICC or does not comply with the requirements prescribed under the Prevention of Workplace Sexual Harassment Act, a monetary penalty of up to INR 50,000 (approx. US\$ 900) may be imposed. A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licences. It is however unclear as to which business licences are being referred to in this case.²⁴ It is also pertinent to note that all offences under Prevention of Workplace Sexual Harassment Act are non-cognizable.²⁵

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24. Section 26 of the Prevention of Workplace Sexual Harassment Act

25. Section 27 of the Prevention of Workplace Sexual Harassment Act

Chapter 4 Employer's Duties and Obligations

The Prevention of Workplace Sexual Harassment Act, in addition to requiring an employer to set up an ICC and ensure redressal of grievances of workplace harassment in a time bound manner, casts certain obligations upon the employer to, *inter alia*,

- i. Provide a safe working environment;
- ii. Formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace;
- iii. Display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the ICC;
- iv. Declare the names and contact details of all members of the ICC;
- v. Organise workshops and awareness programmes at regular intervals for sensitising employees on the issues and implications of workplace sexual harassment and organising orientation programmes for members of the ICC;
- vi. Provide necessary facilities to the ICC for dealing with the complaint and conducting an inquiry;
- vii. Cause to initiate action, under the Indian Penal Code, 1860 ("IPC") or any other law 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;
- viii. Provide assistance to the aggrieved woman if she so chooses to file a complaint in relation to the offence under the IPC or any other law for the time being in force;
- ix. Treat sexual harassment as a misconduct under the service rules and initiate action for misconduct;
- x. Prepare an annual report with details on the number of cases filed and their disposal and submit the same to the District Officer;
- xi. Monitor the timely submission of reports by the ICC.²⁶

26. Veena Gopalakrishnan and Vikram Shroff, India's New Law on Prohibition of sexual harassment at the work place: Employer's Duties and Responsibilities, The Chamber's Journal, March 2014 Vol. II No. 6, 31

Chapter 5 Examples of Conduct Amounting to Sexual Harassment

Whether a particular act or conduct could amount to sexual harassment is dependent on the specifics of the act and the circumstances; the following is an indicative list of conduct that could be considered as amounting to sexual harassment:

- i. Unwanted sexual advances or propositions
- ii. Offering employment benefits in exchange for sexual favours
- iii. Leering
- iv. Making sexual gestures
- v. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters
- vi. Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes
- vii. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations
- viii. Physical conduct such as unwanted touching, assault, impeding or blocking movements
- ix. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment
- x. Eve-teasing
- xi. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment
- xii. Subtle innuendoes or open taunting regarding perfection, imperfection or characteristics of physical appearance of a person's body or shape

- xiii. Gender based insults and/or sexist remarks
- xiv. Displaying pornographic or other sexually offensive or derogatory material
- xv. Forcible invitations for dates
- xvi. Forcible physical touch or physical assault or molestation
- xvii. Suggesting or implying that failure to accept a request for a date or sexual favours would adversely affect the individual in respect to performance evaluation or promotion
- xviii. Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work
- xix. Any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit 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 such individual providing or refusing sexual favours
- xx. Physical confinement against one's will and any other act likely to violate one's privacy.

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Chapter 6 Other Laws Pertaining to Workplace Sexual Harassment

(i) Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (“**Standing Orders Act**”) is a Central enactment which, *inter alia*, requires an employer to define and publish uniform conditions of employment in the form of Standing Orders. As per the statute, the Standing Orders should contain terms of employment including, hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays and termination or suspension/dismissal of employees.

At the first instance, the Standing Orders Act is applicable to ‘industrial establishments’ employing a minimum of 100 workmen.²⁷ The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable.

The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (“**Standing Orders Rules**”) prescribe a list of acts constituting ‘misconduct’ and specifically includes sexual harassment. The Model Standing Orders not only define ‘sexual harassment’ in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that ‘sexual harassment’ is not limited to women under the Standing Orders Rules.

(ii) Indian Penal Code, 1860

Conduct that may be construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC. Listed out below are

27. Certain State Governments, such as the Governments of Maharashtra and Karnataka, have enhanced the scope of the statute and made it applicable to establishments employing 50 or more employees. Further, in Maharashtra, the Bombay Shops and Establishments Act, 1948 specifically extends the applicability of the Standing Orders Act to all shops and commercial establishments.

the key offences under the IPC that could be triggered in a case of sexual harassment.

Section #	Offence	Punishment	Cognizable/ Non-Cognizable
354	<u>Outraging the modesty of a woman</u> Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged.	Simple / Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine.	Cognizable
354-A	<u>Sexual harassment by a man</u> (i) Physical contact and advances involving unwelcome and explicit sexual overtures; (ii) Demand or request for sexual favours;	Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.	Cognizable
	(iii) Showing pornography against the will of a woman; or (iv) Making sexually coloured remarks.	Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.	
354-B	<u>Assault or use of criminal force to woman with intent to disrobe</u> Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.	Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years, and fine.	Cognizable

Section #	Offence	Punishment	Cognizable/ Non-Cognizable
354-C	<u>Voyeurism</u> Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.	First conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine. Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.	Cognizable
354-D	<u>Stalking</u> Following a woman and contacting, or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or Monitoring the use by a woman of the internet, e-mail or any other form of electronic communication.	First conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine. Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which may extend to five years, and fine.	Cognizable
509	<u>Insulting the modesty of a woman</u> Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.	Simple imprisonment for a term which may extend to three years, and fine.	Cognizable

Chapter 7

Frequently Asked Questions

(i) When does an act amount to 'sexual harassment' under the Prevention of Workplace Sexual Harassment Act?

Any act against a woman which is impliedly/explicitly sexual in nature and is unwelcome and occurs at the workplace, shall constitute sexual harassment under the statute. This would include acts such as staring, leering, obscene gestures, howling, kissing, smacking lips, showing sexually obscene/suggestive signs objects or pictures, indecent comments, dirty jokes, commenting on a woman's dress or body, using position of power for sexual favours, unwelcome touching, patting, brushing against the body, blocking, using force, assaulting, using unwanted innuendoes, passing sexual comments or telling sexual stories, asking about one's sexual fantasies, interests etc, showing pornography or any other unwelcome behaviour.

(ii) Can both men and women be victims of workplace sexual harassment?

While both men and women can be victims of sexual harassment, the Prevention of Workplace Sexual Harassment Act protects only women.

(iii) Is it sexual harassment if the harassment is only verbal?

Verbal harassment can constitute sexual harassment. Words can be just as offensive as physical acts and contact. Sexually coloured jokes, comments and stories can be sexually harassing and can create a hostile work environment.

(iv) Is the employer responsible if an employee is sexually harassed at a company – sponsored event outside of working hours?

The Prevention of Workplace Sexual Harassment Act introduces the concept of 'extended workplace' covering under its ambit 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. Hence any form of sexual harassment at a company- sponsored event would also be within the scope of the statute.

(v) When is an establishment required to constitute an ICC?

Every establishment having 10 or more employees is required to constitute an ICC.

(vi) Is an ICC required to be constituted at every branch/ office?

Yes, an ICC is required to be set up at every branch/ office of the company wherein at least 10 employees are employed.

(vii) Can the complaint be filed with and inquired by the HR manager of the company?

No, the complaint needs to be filed with and inquired into by the ICC.

(viii) Is there a time limit for filing a complaint of sexual harassment?

A complaint of sexual harassment needs to be filed within 3 months of the date of incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. However, the ICC or the LCC may as the case may be, extend the time limit, however not exceeding 3 months, for reasons to be recorded in writing if it is satisfied that the circumstances were such that the victim was unable to file a complaint within the said period.

(ix) Can a complaint of sexual harassment be conciliated between the parties?

Yes, but no monetary settlement shall be allowed.



Chapter 8

Sexual Harassment Committee

– Time for a change!

India's new sexual harassment law is now three years old. And that should serve as a reminder to start the process to change the members of your Internal Complaints Committee (ICC).

India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Sexual Harassment Act) was notified in December 2013. The law has been a catalyst in creating greater awareness of the issue of sexual harassment at the workplace. It has also given huge confidence to female employees to report any adverse incidents. Progressive employers on their part have gone to great lengths to implement the law, not just in form but also in spirit.

The Sexual Harassment Act requires the employer to constitute an ICC at every office location having a minimum of 10 employees. The law prescribes the details on how the members of the ICC need to be nominated by the employer based on their seniority, experience and familiarity with issues relating to sexual harassment.

The law allows the Presiding Officer and other members of the ICC to hold office for up to 3 years. Assuming most employers set up their ICC in or after December 2013, as per the Sexual Harassment Act, its time they initiate the process of replacing the members of their ICC.

Accordingly, in the next couple of months, employers should identify and start training the new members. The training should be in terms of the provisions of law, requirements of the employer's anti-harassment policy and charter, investigation process and timelines, manner of collecting and documenting evidence, ways of examining the parties (including witnesses), drafting the report and its conclusion, types of penalties that may be levied, etc. Employers should also focus on helping their new members develop soft skills in terms of dealing with the complainant and the respondent. To the extent the existing ICC has undergone a training programme, a similar initiative should also be extended to the new members.

Subject to complying with confidentiality obligations, the employer may also request the existing ICC to include the new members as 'observers' in some of the ongoing matters being investigated by the ICC, as part of their training.

But this change is unlikely to be an easy process. While some employers and their ICCs are still getting familiar with the requirements of the Sexual Harassment Act, its already time to change the members. In a way, the process followed by employers in December 2013 will need to be repeated.

Some of the questions that are likely to arise while implementing the change are:

- a. Does the employer need to change the entire ICC at one go or gradually, especially to retain continuity?
- b. Can the employer extend the term of an existing member of the ICC to another 3 years?
- c. What happens if the employer is unable to identify an appropriate Presiding Officer of the ICC, given the importance of such a role?
- d. Does the employer also need to change the external member on the ICC who may be appointed from a non-governmental organisation or association committed to the cause of women?
- e. What happens to complaints that are being investigated by the existing ICC and likely to continue for some more time?
- f. What if another complaint is received in relation to a matter that has been previously investigated and closed by the existing ICC? g. Can there be two ICCs constituted in parallel - the current ICC to complete investigations relating to existing complaints while the other for any new complaints?
- h. How will the new ICC prepare the annual report if they are not familiar with the previous complaints?

All answers may not be easily available at this stage. There may also be a need to consider some of these questions on a case-by-case basis given the sensitivities involved. At the end of the day, while taking any decision, employers must ensure that the intent

and principles of the Sexual Harassment Act are adhered to and the interest of women remains secured at all times. Incidentally, the guidelines issued by the Supreme Court of India in 1997 in the case of Vishaka v. State of Rajasthan did not prescribe such a three year period and hence these questions did not arise previously.

The Bombay High Court has recently ruled that it would not interfere with an order of punishment passed by the ICC in relation to a sexual harassment complaint, unless the order is shockingly disproportionate. This judgment reaffirms the importance and powers of the ICC that is required to be formed under the Sexual Harassment Act. Given the sensitivities surrounding sexual harassment allegations, it is important that the ICC is trained to deal with such cases in a fair, proper and dispassionate manner and based on the principles of natural justice. It is also necessary for the ICC to ensure that it completes the investigation and issues its order within the time frame set under the law.

This judgment also clarifies the already enshrined principles of judicial restraint by the courts. The interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of natural justice. Once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.

This time though, employers are not alone - the government, on its part, faces similar issues and questions as mentioned above. Members of the Local Complaints Committee set up by the District Officers in each district, are also subjected to the same timeline of 3 years.



Annexure I

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

[Act No. 14 of 2013]

Preamble

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.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India, as follows.

CHAPTER I PRELIMINARY

1. **Short title, extent and commencement -**
 - i. This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
 - ii. It extends to the whole of India.

- iii. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. **Definitions - In this Act, unless the context otherwise requires**
- i. **"Aggrieved woman"** means
- a. In relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
 - b. In relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;
- ii. **"Appropriate Government"** means.
- a. In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly.
 - i) By the Central Government or the Union Territory administration, the Central Government;
 - ii) By the State Government, the State Government;
 - b. in relation to any workplace not covered under subclause (i) and falling within its territory, the State Government;
- iii. **"Chairperson"** means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;
- iv. **"District Officer"** means an officer notified under section 5;
- v. **"Domestic worker"** means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

- vi. **"Employee"** 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 coworker, a contract worker, probationer, trainee, apprentice or called by any other such name;
- vii. **"Employer"** means.
- a. 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;
 - b. 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;
 - c. In relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
 - d. 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;
- viii. **"Internal Committee"** means an Internal Complaints Committee constituted under section 4;

- ix. **"Local Committee"** means the Local Complaints Committee constituted under section 6;
- x. **"Member"** means a Member of the internal Committee or the Local Committee, as the case may be;
- xi. **"Prescribed"** means prescribed by rules made under this Act;
- xii. **"Presiding Officer"** means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;
- xiii. **"Respondent"** means a person against whom the aggrieved woman has made a complaint under section 9;
- xiv. **"Sexual harassment"** includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely—
 - a. Physical contact and advances; or
 - b. A demand or request for sexual favours; or
 - c. Making sexually coloured remarks; or
 - d. Showing pornography; or
 - e. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature:
- xv. **"Workplace"** includes.—
 - a. 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;
 - b. 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;

- c. Hospitals or nursing homes;
 - d. Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
 - e. 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;
 - f. A dwelling place or a house;
 - xvi. **"Unorganised sector"** in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.
- 3. Prevention of sexual harassment.**
- i. No woman shall be subjected to sexual harassment at any workplace.
 - ii. 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.—
 - a. Implied or explicit promise of preferential treatment in her employment; or
 - b. Implied or explicit threat of detrimental treatment in her employment; or
 - c. Implied or explicit threat about her present or future employment status; or
 - d. Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 - e. Humiliating treatment likely to affect her health or safety.

CHAPTER II CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. Constitution of Internal Complaints Committee.-

- i. 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.

- ii. The Internal Committee shall consist of the following members to be nominated by the employer, namely:

- a. 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 referred to in sub-section (1):

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;

- b. 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;
- c. 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:

Provided that at least one-half of the total Members so nominated shall be women.

- iii. 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.
- iv. The Member appointed from amongst the non-Governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.
- v. Where the Presiding Officer or any Member of the internal Committee.
- a. Contravenes the provisions of Section 16; or
- b. 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
- c. He has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- d. 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 in accordance with the provisions of this section.

CHAPTER III CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. Notification of District Officer

The Appropriate Government may notify a District Magistrate or Additional District Magistrate or the collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

6. Constitution and jurisdiction of Local Complaints Committee

- i. Every District Officer shall constitute in the district concerned, a committee to be known as the "Local

Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

- ii. The District Officer shall designate one nodal officer in every block, taluk and tahsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.
- iii. The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

7. **Composition, tenure and other terms and conditions of Local Complaints Committee**

- i. The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely.
 - a. Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
 - b. One Member to be nominated from amongst the women working in block, taluk or tahsil or ward or municipality in the district;
 - c. Two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time-to-time;

- d. The concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex-officio.
- ii. The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.
- iii. Where the Chairperson or any Member of the Local Complaints Committee.
 - a. Contravenes the provisions of Section 16; or
 - b. 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
 - c. Has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - d. Has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson 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 in accordance with the provisions of this section.
- iv. The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

8. **Grants and audit**

- i. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in subsection (4) of section 7.

- ii. The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.
- iii. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in subsection (4) of Section 7.
- iv. The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV COMPLAINT

9. Complaint of sexual harassment

- i. 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 or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local 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.

- ii. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death

or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

10. Conciliation

- i. The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

- ii. Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
- iii. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under subsection (2) to the aggrieved woman and the respondent.
- iv. Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. Inquiry into complaint

- i. Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, 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 may be prescribed or 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, 1860 (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may

be, that any term or condition of the settlement arrived at under sub-section (2) of Section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

- ii. Notwithstanding anything contained in Section 509 of the Indian Penal Code, 1860 (45 of 1860), the Court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent having regard to the provisions of Section 15.
- iii. For the purpose of making an inquiry under sub-section (1), 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 (5 of 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.
- iv. The inquiry under sub-section (1) shall be completed within a period of ninety days.

CHAPTER V INQUIRY INTO COMPLAINT

12. Action during pendency of inquiry

- i. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the

Local Committee, as the case may be, may recommend to the employer to.

- a. Transfer the aggrieved woman or the respondent to any other workplace; or
 - b. Grant leave to the aggrieved woman up to a period of three months; or
 - c. Grant such other relief to the aggrieved woman as may be prescribed.
- ii. The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
 - iii. On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

13. Inquiry report

- i. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.
- ii. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
- iii. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be.
 - a. To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules

applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

- b. To 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 accordance with the provisions of Section 15:

Provided that 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:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

- iv. The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

14. Punishment for false or malicious complaint and false evidence

- i. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of Section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that 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.

- ii. Where the Internal Committee or the Local Committee, as the case may be, 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 or the District Officer, as the case may be, 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.

15. Determination of compensation

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of Section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to:

- i. The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- ii. The loss in the career opportunity due to the incident of sexual harassment;
- iii. Medical expenses incurred by the victim for physical or psychiatric treatment;
- iv. The income and financial status of the respondent;
- v. Feasibility of such payment in lump sum or in instalments.

16. Prohibition of publication or making known contents of complaint and inquiry proceedings

Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), 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, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Penalty for publication or making known contents of complaint and inquiry proceedings

Where any person 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, contravenes the provisions of Section 16, 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, in such manner as may be prescribed.

18. Appeal

- i. Any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clause (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 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 or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.
- ii. The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

CHAPTER VI DUTIES OF EMPLOYERS

19. Duties of employer

Every employer shall:

- i. Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- ii. Display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (1) of Section 4;
- iii. 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;
- iv. 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;
- v. Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- vi. 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 subsection (1) of Section 9;
- vii. 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;
- viii. Cause to initiate action, under the Indian Penal Code,1860 (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;

- ix. Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- x. Monitor the timely submission of reports by the Internal Committee.

CHAPTER VII DUTIES AND POWERS OF DISTRICT OFFICER

20. Duties and powers of District Officer

The District Officer shall;

- i. Monitor the timely submission of reports furnished by the Local Committee;
- ii. Take such measures as may be necessary for engaging non-Governmental organisations for creation of awareness on sexual harassment and the rights of the women.

CHAPTER VIII MISCELLANEOUS

21. Committee to submit annual report

- i. The Internal Committee or the 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.
- ii. The District Officer shall forward a brief report on the annual reports received under sub section (1) to the State Government.

22. Employer to include information in annual report

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 organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

23. Appropriate Government to monitor implementation and maintain data

The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed

and disposed of in respect of all cases of sexual harassment at workplace.

24. Appropriate Government to take measures to publicise the Act

The appropriate Government may, subject to the availability of financial and other resources.

- i. Develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace.
- ii. Formulate orientation and training programmes for the members of the Local Complaints Committee.

25. Power to call for information and inspection of records

- i. 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:
 - a. Call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
 - b. Authorize 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.
- ii. Every employer and District Officer 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.

26. Penalty for non-compliance with provisions of Act

- i. Where the employer fails to.
 - a. Constitute an Internal Committee under sub-section (1) of Section 4;
 - b. Take action under Sections 13, 14 and 22; and

- c. Contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder, he shall be punishable with fine which may extend to fifty thousand rupees.
- ii. If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to
 - a. Twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case 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 cognisance of the same while awarding the punishment;
 - b. Cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

27. Cognisance of offence by courts

- i. No Court shall take cognisance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.
- ii. 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.
- iii. Every offence under this Act shall be non-cognisable.

28. Act not in derogation of any other law

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.

29. Power of appropriate Government to make rules

- i. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- ii. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - a. The fees or allowances to be paid to the Members under sub-section (4) of Section 4;
 - b. Nomination of members under clause (c) of subsection (1) of Section 7;
 - c. The fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of Section 7;
 - d. The person who may make complaint under sub-section (2) of Section 9;
 - e. The manner of inquiry under sub-section (1) of Section 11;
 - f. The powers for making an inquiry under clause (c) of sub-section (2) of Section 11;
 - g. The relief to be recommended under clause (c) of subsection (1) of Section 12;
 - h. The manner of action to be taken under clause (i) of subsection (3) of Section 13;
 - i. The manner of action to be taken under sub-sections (1) and (2) of Section 14;
 - j. The manner of action to be taken under Section 17;
 - k. The manner of appeal under sub-section (1) of section 18;
 - l. The manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of Section 19; and

- m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of Section 21.
- iii. Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- iv. Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

30. Power to remove difficulties

- i. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

- ii. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Annexure II

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

Preamble

In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement**
 - i. These rules may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
 - ii. They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions – In these rules, unless the context otherwise requires**
 - i. “Act” means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);
 - ii. “Complaint” means the complaint made under Section 9;
 - iii. “Complaints Committee” means the Internal Committee or the Local Committee, as the case may be;
 - iv. “Incident” means an incident of sexual harassment as defined in clause (n) of Section 2;
 - v. “Section” means a section of the Act;
 - vi. “Special educator” means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;
 - vii. Words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Fees or allowances for Member of Internal Committee

- i. The Member appointed from amongst non-Government organisations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and autorickshaw or taxi, or the actual amount spent by him on travel, whichever is less.
- ii. The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. Person familiar with issues relating to sexual harassment

Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of Section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following:

- i. A social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;
- ii. A person who is familiar with labour, service, civil or criminal law.

5. Fees or allowances for Chairperson and Members of Local Committee

- i. The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.
- ii. The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of Section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and autorickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

- iii. The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).

6. Complaint of sexual harassment

For the purpose of sub-section (2) of Section 9.

- i. Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by:
 - a. Her relative or friend; or
 - b. Her co-worker; or
 - c. An officer of the National Commission for Women or State Women's Commission; or
 - d. Any person who has knowledge of the incident, with the written consent of the aggrieved woman.
- ii. Where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by:
 - a. Her relative of friend; or
 - b. A special educator; or
 - c. A qualified psychiatrist or psychologist; or
 - d. The guardian or authority under whose care she is receiving treatment or care; or
 - e. Any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
- iii. Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;
- iv. 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 her legal heir.

7. Manner of inquiry into complaint

- i. Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.
- ii. On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.
- iii. 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 ten working days from the date of receipt of the documents specified under sub-rule (1).
- iv. The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
- v. The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex-parte* decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or *ex-parte* order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.
- vi. The 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 Complaints Committee.
- vii. In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

8. Other relief to complainant during pendency of inquiry

The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to -

- i. 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;
- ii. Restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

9. Manner of taking action for sexual harassment

Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

10. Action for false or malicious complaint or false evidence

Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of Rule 9.

11. Appeal

Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

12. Penalty for contravention of provisions of Section 16

Subject to the provisions of Section 17, if any person contravenes the provisions of Section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

13. Manner to organise workshops, etc.

Subject to the provisions of Section 19, every employer shall;

- i. 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 remove underlying factors that contribute towards a hostile work environment against women;
- ii. Carry out orientation programmes and seminars for the Members of the Internal Committee;
- iii. Carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;
- iv. Conduct capacity building and skill building programmes for the Members of the Internal Committee;
- v. Declare the names and contact details of all the Members of the Internal Committee;
- vi. Use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

14. Preparation of annual report

The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details.-

- i. Number of complaints of sexual harassment received in the year;
- ii. Number of complaints disposed off during the year;
- iii. Number of cases pending for more than ninety days;
- iv. Number of workshops or awareness programme against sexual harassment carried out;
- v. Nature of action taken by the employer or District Officer.

**Annexure III**

**Case Law Analysis of Vidya Akhave v. Union of India and Ors.
Workplace Sexual Harassment Complaint
Court Decides Not To Interfere With Decision of
Internal Committee Set Up By Employer**

- Court does not interfere with the order of punishment by Disciplinary Authority unless it is shockingly disproportionate to the act of misconduct.
- Court does not re-appreciate evidence once the Committee has conducted a domestic enquiry.
- Employer to have proper mechanism for prevention and redressal of sexual harassment complaints and to create greater awareness regarding gender sensitization at workplaces.

The Bombay High Court ("Court") ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee ("ICC") in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

The Court passed this judgment in the case of Vidya Akhave ("Petitioner") v. Union of India and Ors¹ in relation to the new Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 of India ("Sexual Harassment Act").

The Court observed that the employer must sufficiently comply with the duties cast upon it under the Sexual Harassment Act. The Court also stated that (a) an employer must provide for an effective mechanism for prevention of sexual harassment of women at workplace; (b) male employees must be sensitized towards the concerns of female employees and (c) the ICC must deal with complaints of sexual harassment in an expedited manner.

Facts:

The employee (petitioner) was employed with an Indian government owned development bank. She had filed a complaint of sexual harassment against the General Manager, who was her immediate superior officer ("Supervisor"). However, no action was taken by the employer. Thereafter, the employee filed another complaint seeking establishment of an ICC as was necessary to be set up, as per the law laid down by the Supreme Court of India in the case of Vishakha v. State of Rajasthan².

¹ Writ Petition 796 of 2015

² AIR 1996 SC 1

As for the incidents that took place before February/March 2012, the limitation period of three months prescribed under the Sexual Harassment Act had expired and thus, were not taken into account by the ICC. However, the Human Resource department could take separate action based on those instances, which would be beyond the scope of the Sexual Harassment Act. Based on the ICC's report, the Disciplinary Authority passed an order, by which the Supervisor was (a) demoted to a lower rank by two ranks; (b) transferred to another city and (c) received a pay cut as per his lower rank ("Order").

Contentions:

The employee however challenged the validity of the Order before the Court under Article 226 of the Constitution of India ("Constitution"). The employee contended that a higher punishment should be imposed on the Supervisor. Also, the employee challenged the validity of the observations of the ICC as it had not adequately taken on record all evidences. Also, the Supervisor had not been declared guilty under the Sexual Harassment Act and a mere condemnatory statement was made by the Disciplinary Authority against the Supervisor. As for expiration of the period of limitation, the employee argued that because the Supervisor was her immediate superior, she was under reasonable apprehension to file a complaint as it would endanger her career.

The Supervisor argued that the penalty imposed was harsh enough as a result of which the Supervisor had suffered psychologically and financially. It was contended that the Supervisor had to stay apart from his family, as he had to shift to another city. It was further contended that it was not open to the Court to re-appreciate the evidence once the Disciplinary Committee had considered it and ruled over it. Lastly, it was contended that the Court cannot look into the proportionality of the Order passed by a Disciplinary Committee.

Judgment:

The Court referred to its decision in *Om Kumar v. Union of India*³ and reaffirmed the principles of judicial restraint to be exercised by courts under Article 226 of the Constitution. The Court held that unless the Order is shockingly disproportionate to the act of the delinquent employee, it will be circumspect in interfering with the Order. Reiterating the decision of *Om Kumar*, the Court held that interference is warranted only when there is non-compliance of the principles of administrative law, *Wednesbury Principles* and doctrine of proportionality by the Disciplinary Authority.

³ (2001) 2 SCC 386

As for compliance with the *Wednesbury Principles*, interference was held to be not permissible unless any of the following conditions were satisfied: (a) the Order was contrary to law, (b) relevant factors were not considered, (c) irrelevant factors were considered and (d) no reasonable person would have taken such a decision.

Under the principle of proportionality, the Court stated that it would have to be seen whether the legislature and administrative authority maintained a proper balance between the adverse effects which the legislation or order may have on the rights, liberties or interests of persons, keeping in mind the purpose which they were intended to serve. The Court also observed that the inquiry by the Disciplinary Authority was conducted dispassionately and all evidences were appropriately considered and ruled upon in a fair and proper manner. Therefore, the Court was not entitled to give a second opinion merely because it had the discretion to do so.

However, the Court felt that there was a need to have an effective mechanism in place at workplaces for addressing issues of sexual harassment of women. The Court also observed that male employees must be made aware of concerns of female employees by undertaking an exercise of gender sensitization as more and more women were becoming part of the national workforce and contributing to the national economy. The Court also remarked as to how many companies, corporations and government undertakings have not complied with the Sexual Harassment Act and do not have an adequate mechanism to deal with issues of sexual harassment.

Analysis

This judgment reaffirms the importance and powers of the ICC that is required to be formed under the Sexual Harassment Act. Given the sensitivities surrounding sexual harassment allegations, it is important that the ICC is trained to deal with such cases in a fair, proper and dispassionate manner and based on the principles of natural justice. It is also necessary for the ICC to ensure that it completes the investigation and issues its order within the time frame set under the law.

The judgment also clarifies the already enshrined principles of judicial restraint by the courts. The interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of natural justice. Once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.



NOTES

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