



## **POLICY ON SEXUAL HARRASMENT**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act") has been made effective on April 23, 2013 by the Government of India (GOI). It was enacted to ensure a safe working environment for women. It provides for protection to women at their workplace from any form of sexual harassment and for redressal of any complaints they may have launched. The Act was formed on the basis of the guidelines laid down by the Supreme Court.

### **Prohibited conduct and definition of sexual harassment**

The act has been introduced to curb sexual harassment at workplace – ‘sexual harassment’ is defined as any advances to establish physical contact with a woman, a demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other form of physical, verbal or nonverbal conduct of sexual nature. The following circumstances amongst others constitute may also constitute as forms of sexual harassment, – implied or explicit promise of preferential/detrimental treatment at the workplace, implied or explicit threat about her present or future employment status, Interference with her work and /or creating an intimidating or offensive or hostile work environment for her, and humiliating treatment likely to affect her health or safety.

The Act will ensure that women are protected against sexual harassment at all work places, be it public or private, organized sector or even the unorganized sector, regardless of their age and status of employment. The act also covers students in schools and colleges, patients in hospital as well as a woman working in a dwelling place or a house.

The Act creates a mechanism for redressal of complaints and safeguards against false or malicious charges. Under the act, employers who employ 10 employees or more and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If, however, they still fail to form a Committee, they can be held liable for a greater fine. Every employer with a business or enterprise having more than 10 workers will have to constitute a committee known as ‘Internal Complaints Committee’(ICC) to look into all complaints of sexual harassment at the workplace. Further, in every district,

a public official called the District Officer will constitute a committee known as the 'Local Complaints Committee' (LCC) to receive complaints against establishments where there is no Internal Complaints Committee or there being a complaint against the employer himself. This committee would further handle all complaints of sexual harassment in the domestic sphere as well as those coming from the unorganized sector.

### Key Obligations of the Employer

#### #1 – Constitution of the Internal Complaints Committee

Every employer, with more than 10 employees, shall constitute an 'Internal Complaints Committee' at the workplace and wherein the offices or administrative units of workplace are located at different places, he will, constitute a committee in all such offices and administrative units.

#### Membership of the Internal Complaints Committee

It will consist of the following members (to be nominated by the employer):

☐☐A Presiding Officer who shall be a woman employed at a senior level at the workplace, unless there is no senior women employee at the office or any other administrative unit.

In that case the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation.

☐☐At least 2 members from amongst the employees either committed to cause of women or who have experience in social work or have legal knowledge.

☐☐One member from a Non-Governmental organisation or association committed to the cause of women and familiar with the issues relating to sexual harassment. This member shall not be part of the employer's enterprise. Provided that one-half of the total members must be women.

The Presiding Officer and Members of the Internal Committee hold office for 3 years from the date of the nomination as specified by the employer. The member from the NGO or association shall be paid such fees or allowance, by the employer, as may be prescribed. The details of the complaints are confidential and if any member of the Committee, be it the Presiding Officer, discloses any details of the same to the media or press or makes it public in any way, will be liable for immediate disqualification from the Committee. Further, if any member has been convicted or accused of any offence under any law, has been found guilty in any disciplinary proceeding/has a disciplinary proceeding pending against him as per any law or has abused his position in any manner, he/she shall be removed from the Committee.

The Act includes guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforces the right to gender equality of working women. This Act has been enacted with the objective of providing women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment.

The Sexual Harassment Act makes it mandatory for all employers in India to organize workshops and awareness programs at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programs for members of the Internal Complaints Committee.

For all establishments having less than 10 workers, or for a COMPLAINT AGAINST HER EMPLOYER, the aggrieved woman will approach the Local Complaints Committee which is a body to check instances of sexual harassment at the district level.

Every complaint must be given in writing to the Internal Complaint Committee within a period of 3 months, from the date of the incident. An extension of a period 3 months can be granted to the woman if she, due to certain circumstances, is unable to file the complaint or is prevented from doing so. If however, she is unable to lodge the complaint due to physical or mental incapacity or death; her legal heirs may do so.

## # 2 – Preparation of an Annual Report by the employer

The act casts a duty on employers to include information pertaining to the number of cases filed and disposed of by them in their Annual Report. Organisations which are not under a requirement to prepare an Annual Report have to furnish this information directly to the Local Complaints Committee, which will prepare an Annual Report of its own to be forwarded to the appropriate government.

What is the procedure followed by the complaint committee to resolve a complaint?

The following are the guidelines that need to be followed by the members of the ICC:

☐☐ When the ICC receives a complaint; it must seek to resolve the issue by way of conciliation if the complainant so wishes. However, no monetary settlement can be the basis of the conciliation. If there is a settlement, a report must be sent by Committee, to the employer to take action in accordance with the recommendations of the Committee.

☐☐ If however no conciliation can be met with, the ICC must start an inquiry into the complaint. All inquiries must be completed within 90 days. However, in case of a domestic worker, the LCC must transfer the complaint to the police, within 7 days of the complaint, for registering the case under section 509, or any other relevant section, of the Indian Penal Code, if according to them a prima facie case exists.

For the purposes of making an inquiry, the ICC shall have similar powers as a civil court – it can summon and enforce attendance of any person, examine him on oath, order production of documents, etc.

During the pendency of the inquiry interim relief may be granted to the aggrieved woman. The ICC may recommend the employer to

- o Transfer the aggrieved woman or the respondent to any other workplace.
- o Grant leave to the aggrieved woman up to a period of 3 months.
- o Grant such other relief as may be prescribed.

On completion of the inquiry, the committee must submit its recommendations to the employer, within 10 days. The employer must act on those recommendations within 60 days in accordance with the conclusions of the inquiry.

Actions that can be taken by the employer after inquiry

If the respondent is found not guilty, the inquiry will end. If, however, his guilt is proven, then the employer must:

Deduct from the salary or wages of the person who has engaged in sexual harassment, an appropriate sum which can be paid to the aggrieved woman (or to her legal heirs).

Take action for sexual harassment as misconduct in accordance with the service rules applicable to the respondent (in case of a government agency). In case of private organizations, the employer can take such actions as may be prescribed – currently, no rules have been framed explaining the actions that the employer can take.

False and malicious complaints

What can be done if a woman has filed a false complaint of sexual harassment against a colleague, a senior or a junior employee? If the ICC or LCC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with applicable service rules. However, an inquiry must be made in order to establish malicious intent. Also, mere inability to substantiate a complaint will not attract action under this provision.

### Consequences of non-compliance with the act

Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If any employer who has been convicted earlier of an offence subsequently commits a repeat offence he will be liable for twice the punishment, which may have been imposed on a first conviction. Further, his license for carrying on business may even be cancelled.

- **Presiding officer-K.Srividhya**

Grievance re-dressal committee members

1. Mr. Premnath

2. Mr. Narayanamoorthy