



Seminar on

**LAWS AGAINST SEXUAL HARASSMENT
AT WORK PLACE: ISSUES & CONCERNS**

24 April 2014

Bangalore

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

Sexual harassment is categorized as a serious criminal offence and violation of fundamental rights which can destroy human dignity and freedom. In an effort to promote the well being of women employees at the work place, every employer should now mandatorily have strict guidelines against sexual harassment. President Pranab Mukherjee has accorded his assent to the bill under which, cases of sexual harassment at workplace will have to be dealt and disposed off by an in-house committees within 90 days failing which a penalty will be imposed.

On 9th December, 2013 “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013” [“Act”] has come into force. The Act is based on the Supreme Court guidelines in the case of *Vishakha vs. State of Rajasthan [1997 JT (7) 384]*. Vishakha guidelines, as laid down by the Supreme Court put the onus of a safe working environment on the employer. The guidelines also state that it shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or redressal of acts of sexual harassment by taking all steps required. The guidelines also lay down a grievance redressal mechanism that mandates all companies, whether operating in the public or private sector, to set up Complaints Committee within the organisation to look into such offences.

The new law brings in its ambit even domestic workers in both organized and unorganized sectors. The Act makes it the duty of every employer to provide a safe work environment which shall include safety from all the persons with whom a woman comes into contact at the workplace; organize workshops and awareness programmes; provide assistance to the woman if she so chooses to file a criminal complaint; initiate criminal action against the perpetrator and treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.

I. Definitions

1. What is harassment?

It is the application of aggressive pressure or intimidation.

- Covers wide range of behaviors of offensive nature;
- Characteristically it is repetitive.

2. "Sexual Harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely –

- physical contact and advances; or
- demand or request for sexual favours; or
- making sexually coloured remarks; or
- showing pornography, or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature

3. "Employer" means:

- Local authority or head of the department / organization / establishment / undertaking / enterprise / institution / office / unit / branch of the appropriate Government or local authority.
- Any person responsible for the management, supervision and control of the Workplace
- The person discharging contractual obligations with respect to his / her employees.
- A household who employs or benefits from employment of domestic worker irrespective of number, time period or type of such worker employed or nature of employment or activities performed by the domestic worker.

4. "Workplace" includes:

- Organisations, department, office, branch, unit etc. in the public and private sector.
- Any place visited by the employee during the course of employment including the transportation provided by the employer for undertaking such journey.
- Unorganized sectors including dwelling place or a house.

5. "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 co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

6. “Aggrieved Woman” shall mean

- 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
- In relation to a dwelling place or house a woman of any age who is employed in such a dwelling place or house

7. “Respondent” means a person against whom the aggrieved woman has made a complaint.

II. Internal Complaints Committee (ICC) and Local Complaints Committee (LCC)

1. Constitution of ICC

Every Employer shall, by an order in writing, constitute an Internal Complaints Committee (ICC) in all administrative units and offices [Section 4(2)].

The Committee shall consist of:

- (a) Presiding Officer (Woman at a senior level in the organization).
- (b) Not less than two members from amongst the employees preferably with experience in social work or legal knowledge.
- (c) One member from NGO / persons familiar with issues of sexual harassment.
- (d) 50% of total members shall be women.

2. Constitution of LCC

Every District Officer [defined in Section 5] shall constitute a Local Complaints Committee to receive complaints where ICC has not been constituted in workplaces less than ten workers or if the complaint is on “Employer” himself.

The LCC shall consist of:

- (a) Chairperson from amongst eminent women in field of social work
- (b) One person working from municipality (Woman)
- (c) 2 persons (at least 1 woman) from an NGO / associations committed to the cause of women and having legal knowledge (preferably one with law background)

3. Powers of ICC

- ICC shall have the powers of a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of following matters;
- Summoning and enforcing the attendance of any person and examining him on oath;
- Requiring the discovery and production of documents; and
- Any other matter which may be prescribed.

4. Procedures for Filing a Complaint

- A written Complaint to the ICC by the complainant, within a period of three months from the date of the incident.
- A complaint shall include 6 copies with supporting documents.
- ICC shall send one copy to the respondent within 7 working days to get a reply.
- The respondent has to file his reply within 10 working days.
- The Committee is required to complete the inquiry within 90 days.
- Within 10 days of completion of inquiry send report with the recommendation report to the Employer.
- Action to be taken by the Employer within 60 days of the completion of the inquiry.

III. Conciliation Under Section 10

- Pre-enquiry conciliation if requested by aggrieved woman.
- No monetary settlement shall be made as a basis of conciliation.
- ICC to record the settlement.
- Forward the same to Employer.
- Action to be taken as recommended by Employer.
- Copies of settlement to be given to the aggrieved party.
- If settled by Conciliation no further Inquiry needed.

IV. INTERIM RELIEF

On the written request of the Complainant, the ICC may recommend to the Employer to:

- (a) transfer the complainant / respondent to any other place of work
- (b) grant leave to aggrieved party up to 3 months in addition to her entitlement of leave
- (c) grant such other relief as may be prescribed
- (d) restrain the Respondent from reporting on the work performance of the aggrieved woman or raise her AR

V. PENALTIES FOR SEXUAL HARASSMENT

1. When there are no Service Rules, the Committee can recommend if allegation proved to take any action which includes:
 - Written apology
 - Warning
 - Reprimand or censure
 - With-holding of promotion
 - With-holding of pay rise and increments
 - Termination of service
 - Undergoing counselling session or carrying out community service
2. For false or malicious complaint or false evidence, the Committee may recommend to take any of the above seven actions against the Complainant or any other concerned person.
3. Mere inability to prove allegation, would not attract such action.
4. By way of victim's compensation the amount is calculated in view of:
 - (a) sufferings
 - (b) medical expenses required
 - (c) income and financial status of the respondent
 - (d) feasibility in lump sum or in instalments
5. An appeal to the Appellate Authority is allowed in case of non-implementation of such recommendations.

VI. ANNUAL REPORT

- ICC shall in each calendar year prepare and submit an Annual Report to the Employer of such cases.
- The Employer shall submit the Annual Report to the District Officer (DO) and the DO shall forward brief report on the Annual Reports received to State Government.
- It shall contain the following details -
 - (a) No. of Sexual Harassment complaints received in the year
 - (b) Number of complaints disposed off
 - (c) Number of pending cases for more than 90 days
 - (d) Number of workshops and awareness programmes carried out
 - (e) Nature of action taken by the Employer

VII. CONSEQUENCES OF FAILURE BY EMPLOYER FOR NONCOMPLIANCE OF THE ACT

- Fine up to Rs 50,000
- For subsequent failure:
 - (a) Twice the punishment which might have been imposed on a first conviction.
 - (b) cancellation of License / Registration / suspension / non-renewal to carry out business activity

VIII. SEXUAL HARASSMENT AS CRIMINAL OFFENCE

SECTIONS UNDER IPC	OFFENCE	NATURE OF COGNIZANCE	PUNISHMENT
354	Assault or criminal force to woman with intent to outrage her modesty	<i>Cognizable, Non-Bailable & Triable by any Magistrate</i>	1-5 years imprisonment with fine
354A (Sexual Harassment)	1. Physical contact and advances involving unwelcome and explicit sexual overtures; or 2. a demand or request for sexual favours; or 3. making sexually coloured remarks; or	<i>Cognizable, Bailable & Triable by any Magistrate</i>	Extend to 3 years rigorous imprisonment or fine or both
	4. forcibly showing pornography.		Extend to 1 year imprisonment or fine or both
354C (Voyeurism)	Watching or capturing a woman in "private act", which is an act that is not of a kind ordinarily done in public.	<i>Cognizable, Bailable & Triable by any Magistrate</i>	1-3 years imprisonment with fine. In case of second or subsequent conviction 3-7 years imprisonment with fine
354D (Stalking)	Anybody who follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman or monitors the use by a woman of the internet, email or any other form of electronic communication.	<i>Cognizable, Bailable & Triable by any Magistrate</i> <i>Second offence, Cognizable, Non-Bailable Triable by any Magistrate</i>	Extend to 3 years rigorous imprisonment with fine In case of second or subsequent conviction-extend to 5 years imprisonment with fine.

376C	<i>Whoever abuses a woman using his position of authority (or fiduciary relationship) to induce or seduce any woman in his charge or present in the premises to have sexual intercourse not amounting to rape.</i>	<i>Cognizable, Non-Bailable & Triable by Court of Sessions.</i>	<i>Rigorous imprisonment for 5-10 years with fine.</i>
-------------	--	---	---

IX. AMENDMENT TO EVIDENCE ACT /CODE OF CRIMINAL PROCEDURE

1. The Indian Evidence Act, 1872

Section 114 A: if victim states that act not consented, presumption is did not consent in Rape.

In trial under Sec 354, 354(A) (B) (C) & (D) (Sexual Harassment) – character of the victim is not relevant

Sec 119A: signs for evidence would be deemed to be oral evidence if witness cannot speak.

2. Code Of Criminal Procedure, 1973

Section 161 (3): statement of the victim to be recorded by woman police officer.

Sub-Sec 5A in S 164: Judicial Magistrate to record statement of the victim.

3. Section 176 of IPC- Omission to give notice

- Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice shall be punished: or,
- If the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of the offender, with simple imprisonment for a term which may extend to 6 months or with fine up to 1000 Rupees, or with both.
- Offences under this Act shall be non-cognizable.
- Further, the court can take cognizance of an offence punishable under this Act only on a Complaint made by the aggrieved party or on her behalf.

© Copyright Fox Mandal 2014

This document is aimed to bring out the salient features of the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 for information purposes only and is intended merely to highlight issues under the Act. The comments or the analysis are not intended to provide legal advice. Before taking action or relying on the comments and the information given, recipients of this document should seek specific advice on the matters which concerns them.

Fox Mandal does not accept any responsibility for any loss occasioned to any person acting or refraining from acting as a result of any material in this document.

Prepared by: HR & Employment Team, Fox Mandal, Bangalore.

Readers can send their queries/comments/feedbacks to bangalore@foxmandal.com



About Fox Mandal

Established in 1896 in Kolkata, Fox Mandal is one of India’s oldest and most-respected full service law firms. Although we have evolved and grown significantly in the last 115+ years, our core values remain the same:

- Focus on our clients’ best interests at all times; and
- Integrity in everything we do.

Our team of professionals 300+ Lawyers, IP attorneys, Paralegals, Chartered Accountants (CPAs), Company Secretaries, Taxation specialists, Engineers, Consultants etc. work closely to understand our clients’ business context and specific issues. This multi-disciplinary approach helps us to effectively combine legal expertise with business acumen and specialist industry sector knowledge to deliver better solutions. It also allows our teams to apply innovative and cross-domain thinking to evolve more robust solutions to our client’s problems. We provide services on all major areas of law across the Industry sectors. Our Practice Areas includes:

- Corporate & Commercial
- Employment and Industrial Relations
- Environment
- Immigration and Nationality
- Intellectual Property & Information Technology
- Litigation, Mediation, Arbitration & Dispute Resolution
- Real Estate & Infrastructure
- Secretarial services
- Taxation [direct & indirect]
- Transaction advisory services (Mergers & Acquisitions, Divestments, Private Equity, Venture Capital and Privatization)
