Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013

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SH & HR

- Right to life
- Right to liberty
- Right to health
- Right to equality (Discrimination & Exploitation)
- Freedom of expression, movement and profession
- Right to education
- Right to development
Sexual Harassment

- Physical contact or advances
- Demand or request for sexual favours
- Making sexually colored remarks
- Showing pornography
- Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature
Workplace

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

- covers all women, irrespective of her age or employment status,
- whether in the organised or unorganised sectors,
- public or private

and covers clients, customers and domestic workers as well.
Employee

- Regular/temporary/ad hoc/daily wage employees,
- Remuneration or not
- can also include volunteers.
Employer

- includes the Head of the Government department/organisation/institution/office/branch/unit,
- Person responsible for management/supervisions/control of the workplace
- Person discharging contractual obligations with respect to his/her employees
- In relation to a domestic worker - person who benefits from that employment.
Also includes

- Implied or explicit promise of preferential treatment in her employment
- Implied or explicit threat of detrimental treatment in her employment
- Implied or explicit threat about her present or future employment status
- Humiliating treatment likely to affect her health or safety
Redress Mechanism

- Internal Complaints Committee (ICC) and
- Local Complaints Committee (LCC).
- All workplaces employing 10 or more than 10 workers are mandated under the Act to constitute an ICC.
- To be constituted at all administrative units
ICC

- Chairperson - a senior woman employee. (If senior woman not available - nomination from other admin department or units of the workplace if not from other workplaces of the same employer)

- Not less than 2 members from amongst the employees preferably committed to the cause of women or has experience in social work/legal knowledge

- One member (NGO or association committed to cause of women or person familiar with sexual harassment issues)

- One half of total members must be women
LCC

- Complaints from workplaces employing less than 10 workers or when the complaint is against the employer will be looked into by the LCC.

- A District Officer (District magistrate, Add Dist Mag/District Collector/Joint Collector) notified under the Act will constitute the LCC at the district level.

- LCC will also look into complaints from domestic workers.
Complaint

- To be made in writing within 3 months from the incident. In case of series of incidents 3 months from the date of last incident

- May be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same

- Reasonable assistance to victim who cannot write

- Heirs in case of death of victim can or others in case of physical or mental incapacity of victim can make complaint
Conciliation

- The ICC/LCC can take steps to settle the matter between the aggrieved woman and the respondent.
- However, this option is only available at the request of the woman.
- Monetary settlement is not a basis.
- If non-compliance, the Committee is to proceed to make an inquiry.
Inquiry

- Complete within 90 days.
- Report be sent to employer or District Officer.
- Mandated to take action on the report within 60 days according to service rules
- If no Rules or in case of domestic worker if prima facie case exists, then LCC to Police within 7 days from registering the case
Pending enquiry

- Transfer aggrieved women or respondent

- Leave to aggrieved up to 3 months (additional to eligible leave)

- Grant any other relief
Report

- Within 10 days from the completion of enquiry
- Employer to take action within 60 days from report
- Can recommend action for SH according to service rules on misconduct
- Deduct sum from salary etc to be paid to aggrieved or heir
- If employer unable to recover from salary direct the respondent to directly pay
- If he fails order to be recovered as arrear of land revenue by district Officer
False Complaint

- Malicious or false complaint - Act provides penalty according to the Service Rules.

- However, mere inability to prove the case will not attract penalty under this provision.

- Maliciousness to be established after enquiry.

- False evidence or forged document punishable.
Prohibition on Disclosure

- Prohibits disclosure of identity and addresses of the aggrieved woman, respondent and witnesses.

- However, information regarding the justice secured to any victim without disclosing the identity can be disseminated.
Duties of Employer

- To create an environment free from sexual harassment including safety from persons coming into contact with workplace.

- To organize workshops and awareness programmes at regular intervals

- Display notices regarding the constitution of Internal Committee, penal consequences of sexual harassment etc.
contd

- Necessary facilities
- Assist in securing attendance of respondent
- Make available necessary information
- Assist women of she chooses to make complaint under IPC
- Treat SH as misconduct
- Monitor timely submission of reports by Committee
An employer will be liable to a fine of Rs 50,000 in case of violation of his duties under the Act and in case of subsequent violations the amount of fine will be double together with penalty in the form of cancellation of his licence, withdrawal or non-withdrawal of the registration required for carrying out his activity.
Heads of Compensation

- Mental trauma, pain suffering, emotional stress
- Loss of career opportunity
- Medical expenses
- Income and financial status of respondent
- Feasibility of payment in lump sum or in installments
Penalty for Employer for non compliance

• Rs 5000

• Repetition- double the penalty imposed first time

• Cancellation of license or withdrawal or non renewal or cancellation of registration
IPC Protection

- Section 209, IPC - Obscene acts and songs - Whoever, to the annoyance of others:
  - a) does any obscene act in any public place or
  - b) sings, recites or utters any obscene song, ballad or words in or near any public place shall be punished with imprisonment of either description for a term which may extend to three months or with fine or both. (Cognisable, bailable and triable offense)
Section 354, IPC –

Assault or criminal force to a woman with the intent to outrage her modesty - whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both.
S 509 IPC

- Section 509, IPC –

- Word, gesture or act intended to insult the modesty of a woman - whoever intending to insult the modesty of any woman utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or both. (Cognisable and bailable offense
IPC Amendment Act 2013

- Gender neutral

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

- Rigorous imprisonment up to five years, or with fine, or with both in case of offence described in clauses (i) & (ii) Imprisonment up to one year, or with fine, or with both in other cases
The Indecent Representation of Women (Prohibition) Act (1987)

- Provisions of this Act have the potential to be used in two ways.

- First, if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing 'indecent representation of women'; they are liable for a minimum sentence of two years.

- Second, a 'hostile working environment' type of argument can be made under this Act. Section 7 (Offences by Companies) - holds companies where there has been 'indecent representation of women' (such as the display of pornography) on the premises guilty of offenses under this act. (Cognisable, bailable offense; with a minimum sentence of two years)
Industrial Disputes Act

- Rule 5 Schedule 5 - Cases can argued on the basis of unfair labour practices listed in this schedule. Such cases can be filed if an employee suffers unfair dismissal or denial of employment benefits as a consequence of the rejection of sexual advances. However, this would only be applicable in quid pro quo cases.

- Shehnaz Mudbhhatkal vs Saudi Arabian Airlines – Shehnaz was subjected to sexual harassment by her boss in 1985, and dismissed when she complained to higher authorities. Her case was won in 1996 when the Bombay labour court judged it to have been a case of unfair dismissal under the Industrial Disputes Act. It ordered her re-instatement with full back payment, perks and promotions.