



AKALKANK PUBLICATIONS

ABSTRACT OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

OBJECTIVE OF THE ACT

The Act aims 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.

DEFINITIONS (SECTION 2)

"Aggrieved woman" means— (i) 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; (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

"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;

"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 expressed or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

"Employer" means— (i) 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;

(ii) in any workplace not covered under above clause (i), any person responsible for the management, supervision and control of the workplace;

(iii) in relation to a workplace covered under above clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) 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;

"Respondent" means a person against whom the aggrieved woman has made a complaint under section 9;

"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
- a 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;

"Workplace" includes— (i) 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 co-operative society;

(ii) 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;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) 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;

(vi) a dwelling place or a house;

"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.

PREVENTION OF SEXUAL HARASSMENT (SECTION 3)

It provides that no woman shall be subjected to sexual harassment at any workplace. The harassment may include, but is not limited to—

- implied or overt promise of preferential treatment in her employment; or
- implied or overt threat of detrimental treatment in her employment; or
- implied or overt threat about her present or future employment status;

(iv) conduct of any person which interferes with her work or creates an intimidating or offensive or hostile work environment for her; or

(v) humiliating conduct constituting health and safety problems for her.

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE (SECTION 4)

It provides that every employer of a workplace shall constitute, by an order in writing, a Committee to be known as the "Internal Complaints Committee". It further provides that where the offices or administrative units of the workplace are located at different places or divisions or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE (SECTION 5)

The appropriate Government may notify a District Magistrate or Additional District Magistrate or District Collector or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act. District Officer shall constitute a Local Complaints Committee to receive complaints etc.

COMPLAINTS OF SEXUAL HARASSMENT (SECTION 9)

That any aggrieved woman may, at her option, make in writing a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee if an Internal Committee is not constituted or if the complaint is against the employer himself. It further provides that in a case 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 provide all reasonable assistance to the woman for making the complaint in writing. It also provides that in a case 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.

CONCILIATION (SECTION 10)

This section makes provision for conciliation. It provides that before initiating enquiry under section 11 and at the request of the aggrieved woman, the Internal Committee and the Local Committee may take steps to settle the matter between her and the respondent through conciliation and where a settlement has been arrived, the Internal Committee or the Local Committee 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.

It further provides that the Internal Committee or the Local Committee shall provide the copies of the recorded settlement to the aggrieved woman and the respondent and no further enquiry shall be conducted by the Internal Committee or the Local Committee.

INQUIRY INTO COMPLAINT (SECTION 11)

That subject to the provisions of section 10 and section 16, the Internal Committee or the Local Committee shall proceed to make enquiry into the complaint in such manner as may be prescribed by rules. The enquiry under this section shall be completed within a period of ninety days.

PENDENCY OF INQUIRY (SECTION 12)

That during the pendency of enquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee may recommend to the employer to—

- transfer the aggrieved woman or the respondent to any other workplace; or
- grant leave to the aggrieved woman; or
- grant such other relief to the aggrieved woman as may be prescribed by rules.

It further makes it clear that the leave granted to the aggrieved woman under this section shall be in addition to the leave she would be entitled to otherwise if the case is proved.

It also casts a duty on employer to implement the recommendations of the Internal Committee or the Local Committee and send the report of such implementation to the Internal Committee or the Local Committee.

INQUIRY REPORT (SECTION 13)

That on the completion of an enquiry under the proposed legislation, the Internal Committee or the Local Committee shall provide a report of its findings to the employer or to the District Officer, as the case may be, and such report shall be made available to the concerned parties. It also provides that the employer and the District Officer shall act upon the recommendation within sixty days of its receipt by him.

PUNISHMENT FOR FALSE OR MALICIOUS COMPLAINT AND FALSE EVIDENCE (SECTION 14)

That where the Internal Committee or the Local Committee arrives at a conclusion that the allegation against the respondent is false or malicious or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, then, it may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint in accordance with the provisions of the service rules applicable to her or him or whom no such service rules exist, in such manner as may be prescribed by rules.

DETERMINATION OF COMPENSATION (SECTION 15)

That for the purpose of determining the compensation to be paid to the aggrieved woman, the Internal Committee or the Local Committee shall have regard to—

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

PROHIBITION OF PUBLICATION OR MAKING KNOWN CONTENTS OF COMPLAINT AND INQUIRY PROCEEDINGS (SECTION 16) AND PENALTY THEREOF (SECTION 17)

That notwithstanding anything contained in the Right to Information Act, 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 enquiry proceedings, recommendations of the Internal Committee or the Local Committee, and the action taken by the employer or the District Officer under the provisions of the proposed legislation shall not be published, communicated or made known to the public, press and media in any manner.

The person shall be liable for penalty in accordance with the provisions of the service rules applicable or where no such service rules exist, in such manner as may be prescribed by rules.

APPEAL (SECTION 18)

Any person aggrieved by the recommendations made by the Internal Committee or the Local Committee or non implementation of such recommendations or by imposition or penalty under section 17 may prefer an appeal to the court or tribunal within thirty days of the recommendations.

DUTIES OF EMPLOYER (SECTION 19)

Every employer shall—

- provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- display the order constituting the Internal Committee at any conspicuous place in the workplace;
- undertake workshops and training programmes at regular intervals for sensitising the employees regarding the provisions of the proposed legislation;
- provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting enquiry;
- assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- make available such information to the Internal Committee or the Local Committee as it may require having regard to the complaint;
- provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; and
- initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator after the conclusion of the enquiry, or without waiting for the enquiry, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place.

DUTIES AND POWERS OF DISTRICT OFFICER (SECTION 20)

- monitor the timely submission of reports furnished by the Local Committee;
- 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.

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 (Section 22)

PENALTY (SECTION 25)

- Where the employer fails to constitute an Internal Committee under sub-section (1) of section 4: take action under sections 13, 14 and 22; and 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.
- If any employer, subsequently commits and is convicted of the same offence, he shall be liable to (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence;
- 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.

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 (Section 28).

(To be displayed for Reference only, in case of any doubt or explanation please refer to Act)

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