

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

The Ministry of Law & Justice has passed the Act on 22nd April 2013. The Rules were passed on 9th December 2013.

WHAT ARE THE OBJECTIVES OF THE ACT?

This Act is to provide

- Protection against sexual harassment of women at workplace
- Prevention
- Redressal of complaints of sexual harassment

WHAT IS SEXUAL HARASSMENT?

The Act in its Section 2n, defines sexual harassment. Sexual harassment includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication), namely

- Physical contact and advances
- A demand or request for sexual favours
- Making sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal, non verbal conduct of sexual nature

WHAT IS SEXUAL HARASSMENT?

Section 3 (2) of the Act further elaborates that if any of the following circumstances occurs or is present in relation to or connected with any act or behavior of sexual harassment among other circumstances, it may amount to sexual harassment 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
- Interference with her work or creating an intimidating or offensive or hostile work environment for her
- Humiliating treatment likely to affect her health or safety

WHO IS AN AGGRIEVED WOMAN?

According to the Act (Section 2a) aggrieved woman means

- 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 or house

WHO IS THE RESPONDENT?

Respondent means a person against whom the aggrieved woman has made a complaint. (Section 2 m)

WHAT IS WORKPLACE?

Workplace includes (Section 2o)

- Any department, organization, 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 cooperative society
- Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non governmental organization, unit or service provider carrying on commercial , professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service
- Hospital or nursing homes
- Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating to it
- 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
- A dwelling or a house

WHO IS AN EMPLOYEE?

According to the Act (Section 2f), employee means a person employed at a workplace for any work on regular, temporary, adhoc or daily 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.

WHO IS AN EMPLOYER?

In Relation to Government : Head of the Department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or authority may by an order specify in this behalf.

Any other workplace : Any person responsible for the management, supervision and control of the workplace.

In relation to dwelling place or house a person 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.

WHAT ARE THE DUTIES OF THE EMPLOYER?

- Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace
- Display at any conspicuous place in the workplace, the penal consequences of sexual harassments and the order constituting the Internal Complaints Committee (ICC)
- Organize workshops and awareness programmes at regular intervals for sensitising the employees with the Act
- Organize orientation programmes for the members of the ICC
- Provide necessary facilities to the ICC or the Local Complaints Committee(LCC) for dealing with the complaint and conducting an inquiry
- Assist in securing the attendance of respondent and witness before the ICC or the LCC

WHAT ARE THE DUTIES OF THE EMPLOYER?

- Make available such information to the ICC or the LCC with regard to the complaint
- Provide assistance to the woman if she chooses to file a complaint under IPC or any other law
- Cause to initiate action under the IPC or any other law 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
- Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct
- Monitor the timely submission of reports by the ICC

WHAT IS INTERNAL COMPLAINT COMMITTEE?

Every employer of a workplace shall constitute by an order in writing, a Committee to be known as the Internal Complaint Committee (ICC) as per Section 4(1) of the Act.

WHERE SHOULD THE INTERNAL COMPLAINTS COMMITTEE BE LOCATED?

The Internal Complaint Committee should be located at all workplace. 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 located at all administrative units or offices. (Section 4(1) of the Act)

WHO ARE THE MEMBERS OF THE INTERNAL COMPLAINT COMMITTEE?

- **Presiding Officer : One :** a woman employed at a senior level at workplace from amongst employees (in case a senior level women employee is not available, the Presiding officer shall be nominated from the other offices or administrative units of the workplace. 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 dept or organization)
- **Members : not less than two :** from employees preferably committed to the cause of women or who have experience in social work or have a legal knowledge
- **Member : One :** from amongst non governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment
- **At least one half of the total members shall be women.**

WHAT IS THE TENURE OF THE MEMBERS OF THE INTERNAL COMPLAINT COMMITTEE?

The Presiding Officer and every members of the Internal Committee shall hold office for a period not exceeding three years from the date of nomination as member.

WHAT IS LOCAL COMPLAINTS COMMITTEE?

In a district, a committee known as Local Complaints Committee (LCC) has to be constituted. (Section 6(1) of Act)

WHO WILL CONSTITUTE THE LOCAL COMPLAINTS COMMITTEE?

The District Officer shall constitute the Local Complaints Committee in a district.

The District Magistrate or Additional District Magistrate or the Collector or Deputy Collector may be notified as the District Officer for every District (Section 5).

WHAT IS THE WORK OF THE LOCAL COMPLAINTS COMMITTEE?

The Local Complaints Committee is to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than 10 workers or if the complaint is against the employer himself. (Section 6(1) of Act)

WHAT IS THE JURISDICTION OF THE LOCAL COMPLAINTS COMMITTEE?

The jurisdiction of the Local Complaints Committee is extended to the areas of the district where it is constituted

WHO ARE THE MEMBERS OF THE LOCAL COMPLAINTS COMMITTEE?

- Chairperson : One : eminent woman in the field of social work and committed to the cause of women.
- Member : One : nominated amongst the women working in the block, taluka or tehsil or ward or municipality in the district
- Members : Two : to be nominated from amongst non governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment
- At least one of the two members shall be women.
At least one of the two should have a back ground in law or legal knowledge
- At least one of the two shall be a woman belonging to the SC or the ST or OBC or minority community
- Member : ex officio : the concerned officer dealing with the social welfare or women and child development in the district

WHAT IS THE POWER OF THE ICC AND THE LCC?

For the purpose of making an inquiry the ICC or the LCC shall 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 the following (Section 11(3)) :

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

WHAT WILL BE THE ACTION OF THE ICC OR THE LCC ON RECEIPT OF A COMPLAINT?

- **Option A :** Upon receipt of the complaint, the ICC or LCC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or where no such service rules exist, in accordance with rules framed under the Act (Section 11(1) of the Act).
- **Option B :** The ICC or the LCC may forward the complaint to the Police

HOW WILL A COMPLAINT BE DONE?

Any aggrieved women may make in writing a complaint of sexual harassment at workplace to the Internal committee/ Local Committee within 3 months from the date of incident or the date of the last incident in case of a series of incidents. In case the women cannot write, the Presiding officer/ any member of Internal Committee/ Chairperson/ any member of Local Committee shall render all reasonable assistance. (Section 9(1) of the Act)

The Internal Committee and the Local Committee can extend the time limit not exceeding another 3 months if it is satisfied that the circumstances were such which prevented the woman from filing the complaint within the said period (Section 9(1)).

WHEN CAN THE ICC OR THE LCC FORWARD A COMPLAINT TO THE POLICE?

- The ICC or the LCC can forward a complaint to the Police for registering the case under Section 509 of the IPC and any other relevant provisions of the IPC within 7 days.
(Section 11(1))
- In the event of non compliance by the respondent of the terms and conditions of a settlement agreed upon and when the aggrieved woman informs the ICC or the LCC about it, the ICC or the LCC may make an inquiry or forward the complaint to the Police.(Section 11(1))

WHAT IS TO BE DONE WHEN BOTH THE PARTIES ARE EMPLOYEES?

Where both the parties are employees, the parties during the course of the 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.

WHAT IS THE SCOPE AND PROCESS FOR CONCILIATION AND SETTLEMENT?

- Before initiating an inquiry, the ICC or LCC may and at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1) of the Act)
- Where such a settlement has been arrived at, the ICC or the LCC, record the settlement and forward the same to the employer or the District officer to take action as specified in the recommendation (Section 10(2) of the Act).
- The ICC or the LCC shall provide copies of the settlement to the aggrieved woman and the respondent (Section 10(3)).

CAN FURTHER INQUIRY BE MADE AFTER SETTLEMENT?

Where a settlement is arrived at, no further inquiry shall be conducted by the ICC or the LCC. (Section 10(4) of the Act).

However, if the aggrieved woman informs the ICC or the LCC that any term or condition of the settlement has not been complied with by the respondent, the ICC or the LCC shall proceed to make an inquiry into the complaint or forward the complaint to the police. (Section 11(1) of the Act)

CAN SOMEONE ELSE FILE THE COMPLAINT UNDER THE ACT?

If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs or such other person as may be prescribed may do so. (Section 9(2) of the Act)

WHAT CAN THE ICC OR LCC RECOMMEND TO THE EMPLOYER DURING THE PENDENCY OF AN INQUIRY?

During the pendency of the inquiry of the ICC or LCC, on a written request by the aggrieved woman, the ICC or LCC can recommend the following to the employer :

- Transfer the aggrieved woman or the respondent to any other workplace or
- Grant leave to the aggrieved woman upto a period of 3 months or
- Grant such other relief to the aggrieved woman as may be prescribed
- The leave granted to the aggrieved woman under Section 12(1) is in addition to the leave that she is otherwise entitled.
- The employer shall implement the recommendations made by the ICC or the LCC and send the report of such implementation to the ICC or the LCC. (Section 12(3)).

WHAT IS THE TIME LIMIT OF INQUIRY?

The inquiry should be completed within a period of 90 days (Section 11(4)).

WHAT IS TO BE DONE BY THE ICC OR LCC ON COMPLETION OF INQUIRY?

On completion of inquiry the ICC or LCC will provide a report of the findings to the employer or the District Officer within 10 days from the date of completion of the inquiry and such report will be made available to the concerned parties.

WHAT CAN THE ICC OR THE LCC RECOMMEND?

Option 1 : If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has not been proved, it will recommend to the employer and the District Officer that no action is required to be taken.

WHAT CAN THE ICC OR THE LCC RECOMMEND?

Option 2 : If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has been proved, it will recommend to the employer and the District Officer, the following as per Section 13(3):

- To take action for sexual harassment as a misconduct in accordance with the provisions of the service rule applicable to the respondent or where no such service rules have been made , in such manner prescribed
- To deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs
- In case the employer is unable to make such deductions from the salary of the respondent due to his being absent or cessation of employment, the ICC or the LCC may direct to the respondent to pay such sums to the aggrieved woman.
- In case the respondent fails to pay the sum, the ICC or the LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer.

WHAT CAN THE ICC OR THE LCC RECOMMEND?

Option 3 : If the ICC or LCC 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 to take action against the woman or the person who has made the complaint.

WHAT IS THE TIME LIMIT FOR THE EMPLOYER OR THE DISTRICT OFFICER TO ACT ON THE RECOMMENDATIONS?

The employer or the District Officer have to act upon the recommendations within 60 days.

CAN THE ICC OR LCC RECOMMEND COMPENSATION?

If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has been proved, it will recommend to the employer and the District Officer to deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs. In case the employer is unable to make such deductions from the salary of the respondent due to his being absent or cessation of employment, the ICC or the LCC may direct to the respondent to pay such sums to the aggrieved woman. In case the respondent fails to pay the sum, the ICC or the LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District officer.

CAN THE ICC OR LCC RECOMMEND COMPENSATION?

As per Section 15, the basis of determining sums to be paid to the aggrieved woman under Section 13(3) ii under the Act will be –

- Mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
- Loss in career incurred by the victim for physical or psychiatric treatment
- Income and financial status of the respondent
- Feasibility of such payment in lumpsum or installments

CAN CONTENTS OF COMPLAINT AND INQUIRY PROCEEDINGS BE MADE PUBLIC?

The contents of the complaint, identity and address of the aggrieved woman, respondent and witness, information relating to conciliation and inquiry proceedings, recommendations of the ICC or the LCC and the action taken by the employer or the District Officer shall not be published, communicated or made known to the public, press and media. However information may be disseminated regarding the justice secured to the victim of sexual harassment without disclosing the name, address, identity or any other particulars.

WHAT IS THE PENALTY FOR NON COMPLIANCE WITH PROVISIONS OF THE ACT?

Twice the punishment (which might have been imposed on a first conviction) is liable if any employer after having been previously convicted of an offence punishable under the Act commits and is convicted of 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 cognizance of the same while awarding the punishment (Section 26(2) (i)).

WHAT IS THE PENALTY FOR NON COMPLIANCE WITH PROVISIONS OF THE ACT?

There can be cancellation of license or withdrawal or no renewal or approval or cancellation of registration by the Government or the local authority if any employer after having been previously convicted of an offence punishable under the Act commits and is convicted of the same offence (Section 26(2)(ii)).

WHEN WILL THE COURT TAKE COGNIZANCE OF THE OFFENCE?

- The Court will take cognizance of the offence on a complaint made by the aggrieved woman or any person authorized by the ICC or the LCC (Section 27(1))
- No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class will try any offence punishable under this Act (Section 27(2)).
- Every offence under this Act is non cognizable.

WHAT WILL THE ICC OR THE LCC DO IF IT FINDS ALLEGATIONS MALICIOUS?

If the ICC or LCC 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 to take action against the woman or the person who has made the complaint in accordance with the provisions of the service rules.