




GUIDANCE DOCUMENT

**Topic : Sexual harassment of woman at
workplace Act 2013**

Archive inward date : 24/12/2021

Archived By : 


24/01/2021

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Patharkandi College
Dist. - Karimganj, Pin- 788724



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं- 18]

नई दिल्ली, मंगलवार, अप्रैल 23, 2013/ वैशाख 3, 1935 (शक)

No. 18]

NEW DELHI, TUESDAY, APRIL 23, 2013/ VAISAKHA 3, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd April, 2013/Vaisakha 3, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 22nd April, 2013, and is hereby published for general information:-

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

(No. 14 OF 2013)

[22nd April, 2013.]

An Act 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.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India:

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

It enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:--

CHAPTER I

PRELIMINARY

Short title
extent and
commencement

1. (1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions

2. In this Act, unless the context otherwise requires,--

(a) "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;

(b) "appropriate Government" means--

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

(c) "Chairperson" means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) "District Officer" means an officer notified under section 5;

(e) "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;

(f) "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;

(g) "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 sub-clause (i), any person responsible for the management, supervision and control of the workplace

Explanation— For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(m) in relation to workplace covered under sub-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;

(h) "Internal Committee" means an Internal Complaints Committee constituted under section 4;

(i) "Local Committee" means the Local Complaints Committee constituted under section 6;

(j) "Member" means a Member of the Internal Committee or the Local Committee, as the case may be;

(k) "prescribed" means prescribed by rules made under this Act;

(l) "Presiding Officer" means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(m) "respondent" means a person against whom the aggrieved woman has made a complaint under section 9;

(n) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) "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 corporation 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;

(v) a dwelling place or a house,

(p) "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.

3. (1) No woman shall be subjected to sexual harassment at any workplace

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment.

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that 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 constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that 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 department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Notification of District Officer

6. (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Constitution and jurisdiction of Local Complaints Committee

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

7. (1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:—

Composition, tenure and other terms and conditions of Local Complaints Committee

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed;

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member *ex officio*.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer

(3) Where the Chairperson or any Member of the Local Complaints Committee —

- (a) contravenes the provisions of section 16; or
- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

8. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that 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 render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) 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.

10. (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Grants and
audit

Complaint of
sexual
harassment

Conciliation

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, 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.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Inquiry into complaint

45 of 1860

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of 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.

45 of 1860

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, 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 matters, namely:—

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

CHAPTER V

INQUIRY INTO COMPLAINT

12. (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

Action during pendency of inquiry

(a) transfer the aggrieved woman or the respondent to any other workplace; or

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

13. (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

14. (1) Where the Internal Committee or the Local Committee, as the case may be, 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, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

Inquiry report

Punishment
for false or
malicious
complaint and
false evidence

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to

Determination of compensation

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

16. 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 inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Prohibition of publication or making known contents of complaint and inquiry proceedings

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Penalty for publication or making known contents of complaint and inquiry proceedings

18. (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

Appeal

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations

CHAPTER VI

DUTIES OF EMPLOYER

19. Every employer shall --

- (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee under sub-section (1) of section 4;

Duties of employer