



# news flash

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## Law to Tackle Sexual Harassment of Women at the Workplace Brought into Force

### Background

On 9 December 2013 the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**Act**”) and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (“**Rules**”) were notified and brought into force.

The Act is framed on the basis of the guidelines framed by the Supreme Court in the case of *Vishakha vs. State of Rajasthan*<sup>1</sup> which was until now, the only law that dealt with sexual harassment apart from certain provisions of the Indian Penal Code and of the model standing orders<sup>2</sup>.

The Act has in fact sought to widen the scope of the guidelines issued by the Supreme Court by bringing within its ambit (amongst other things) a “domestic worker” who is defined to mean 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.

### Salient Features

#### *Important Definitions*

The Act has defined “*sexual harassment*” to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- (i) physical contact and advances;
- (ii) a demand or request for sexual favours;
- (iii) making sexually coloured remarks;
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Further, the following may also amount to sexual harassment:

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

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<sup>1</sup> 1997 JT (7) 384

<sup>2</sup> Framed under the Industrial Employment (Standing Orders) Act, 1946.

The term '*employee*' includes regular, temporary, ad hoc, daily wage employees and persons who are working on a voluntary basis i.e. without remuneration. The term also includes contract workers, probationers, and trainees.

The Act defines "*aggrieved woman*" to mean:

- (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.

The Act defines "*workplace*" to include (amongst other things):

- (i) any government body;
- (ii) any private sector organisation;
- (iii) 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;
- (iv) a dwelling place or a house.

### *Constitution of Complaints Committees*

The Act contemplates the constitution of Internal Complaints Committee ("**ICC**") and Local Complaints Committee ("**LCC**") (jointly referred to as "**Complaints Committee**") as discussed below.

ICC: The employer of a workplace employing 10 or more employees is required to constitute an ICC. The ICC is required to consist of at least four members, and its presiding officer is required to be a woman employed at a senior level. Further, one half of the members must be women.

LCC: LCCs are to be set up by the appropriate government which shall receive complaints in respect of establishments that do not have ICCs on account of having fewer than 10 employees and to receive complaints from domestic workers.

The ICC and LCC are required to have at least one member who is from a non-governmental organisation that is committed to the cause of women or is a person familiar with issues relating to sexual harassment as prescribed.

The ICC and the LCC are required to prepare an annual report and submit the same to the employer or the District Officer, as the case maybe.

### *Complaint Process*

A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. Where the aggrieved woman is unable to make a complaint on account of her mental or physical incapacity, the Rules provide that certain other persons, such as her relatives, friends, co-workers, officers of the National or State Women's Commission, etc., may make a complaint.

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 in their absence, in accordance with Rules. While the term 'service rules' has not been defined under the Act, it could refer to rules applicable to employees in the government service or possibly model standing orders in case of other employees.

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if in the opinion of the LCC a prima facie case exists, the LCC is required to forward the complaint to the police to register a case under the relevant provisions of the Indian Penal Code.

Except where service rules exist, where the Complaints Committee finds that the allegations against the respondent are proven, it must recommend to the employer or District Officer, as the case may be, to take any action, including:

- (i) take action for sexual harassment as a misconduct in accordance with the provisions of the applicable service rules or where no service rules exist, in accordance with the Rules;
- (ii) to deduct 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.

The Rules provide that the Complaints Committee may recommend to the employer actions including a written apology, warning, reprimand or censure, withholding of promotion or pay rise, termination or counselling. The employer is then required to act on these recommendations within 60 days.

### *False or Malicious Complaint*

In case the ICC or LCC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules. It must be noted that an inquiry must be made in order to establish malicious intent. Also, mere inability to substantiate a complaint will not attract action under this provision.

### *Duties of an Employer*

The Act makes it the duty of every employer to:

- a) provide a safe working environment at the workplace which shall include safety from all the persons with whom a woman comes into contact at the workplace;
- b) display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the ICC;
- c) organise workshops and awareness programmes;
- d) provide assistance to the woman if she so chooses to file a criminal complaint;
- e) initiate criminal action against the perpetrator;
- f) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct; etc.

### *Penalties*

Where the employer fails to comply with the provisions of the Act, he shall be liable to be punished with a fine which may extend to Rs. 50,000. In case of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his licence or withdrawal of his registration.

### **Analysis & Conclusion**

The introduction of the Act and the Rules not only fill a legislative vacuum in protecting women against sexual harassment but goes one step further by extending its application to domestic help as well.

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Employers should ensure that they comply with the provisions of the Act and the Rules (amongst other things) by setting up the ICC, displaying the penal provisions and the constitution of the ICC at the workplace, creating awareness, monitoring the submission of reports by the ICC, etc.

It may be noted that the Act appears to suggest that the 'service rules' have an overriding effect over the Rules. However, as mentioned above, there is no clarity on what constitutes 'service rules' whether these are the rules applicable to government employees or model standing orders. It would be prudent for the government to provide clarity on this aspect.

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