

HR Law Hotline

September 14, 2012

INDIA'S LAW ON PREVENTION OF SEXUAL HARASSMENT AT WORKPLACE: A STEP CLOSER TO BEING ENACTED

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 ("**Sexual Harassment Bill**") is now a step closer to being enacted. The Lower House of the Indian Parliament passed the Sexual Harassment Bill on September 3, 2012. This development is a significant step towards ensuring a safe and healthy work environment to women and has come almost 15 years after the Supreme Court of India, in its landmark judgment in Vishaka and others v. State of Rajasthan and others¹ ("**Vishaka Judgment**"), laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women ("**Guidelines**").

The Sexual Harassment Bill, which replaces the previously introduced Bill on Protection of Women against Sexual Harassment at Workplace, 2010, awaits the assent of the Rajya Sabha (the Upper House of the Parliament) and the President of India so as to come into effect.

BACKGROUND

The Supreme Court of India, in 1997, in the Vishaka Judgment, for the first time, acknowledged sexual harassment at the workplace as a human rights violation. The Supreme Court relied on the Convention on the Elimination of All Forms Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. In the judgment, the Supreme Court outlined the Guidelines making it mandatory for employers to provide for sympathetic and non-retributive mechanisms to enforce the right to gender equality of working women. As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject is drawn-up and enacted, shall have the effect of law and the Guidelines are to be mandatorily followed by organizations, both in the private and public sector.

SEXUAL HARASSMENT - MEANING

The definition of sexual harassment in the Sexual Harassment Bill is in line with the Supreme Court's definition in the Vishaka Judgment and includes any unwelcome sexually determined behavior (whether directly or by implication) such as physical contact and advances, demand or request for sexual favors, sexually colored remarks, showing pornography, or any other unwelcome physical verbal or non-verbal conduct of sexual nature.

SALIENT FEATURES OF THE SEXUAL HARASSMENT BILL

The key features of the Sexual Harassment Bill are:

- **Coverage:** The Sexual Harassment Bill includes, inter alia, the organized sector, the unorganized sector, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals.
- **Inclusion of domestic workers:** The Sexual Harassment Bill includes within its ambit women employees employed as domestic help. Domestic workers have been defined to mean women employed to do household work for remuneration (in cash or kind), either directly or through an agency on a temporary, permanent, part time or full time basis, excluding any member of the family of the employer.
- **Internal Complaints Committee and Local Complaints Committee:** The Sexual Harassment Bill lays down detailed provisions with respect to setting up of an Internal Complaints Committee for an organization employing 10 or more employees at each office or branch. Provisions have also been made for setting up Local Complaints Committees by the government at the district level to investigate complaints regarding sexual harassment from establishments where the Internal Complaints Committee has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer itself. The Sexual Harassment Bill also sets

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out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.

- **Interim Reliefs:** The Sexual Harassment Bill empowers the Internal Complaints Committee and the Local Complaints Committee to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.
- **Employer's Obligations:** In addition to ensuring compliance with the other provisions stipulated, the Sexual Harassment Bill requires the employer to, inter alia, (i) provide a safe working environment (ii) display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Complaints Committee; (iii) organise workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee; and (iv) treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.
- **Penalty:** If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Bill envisages a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and /or de-registration of the entity or revocation of any statutory business licenses.
- **Action against Frivolous Complaints:** So as to ensure that the protections contemplated under the Sexual Harassment Bill do not get misused, provisions for action against "false or malicious" complainants have been made.

ANALYSIS

The Bill once enacted into a law, is likely to create greater awareness on this subject and to a significant extent, help in ensuring a safe and secure work environment for women in India. While employers are already required to be in compliance with the Guidelines prescribed by the Supreme Court and have a complaints committee to address grievances, considering the nature of penalties under the Sexual Harassment Bill, it shall become critical for all employers, whether in the government, private or the unorganized sector, to set up a complaints committee to address the grievances in respect of sexual harassment at workplace in a time bound manner.

The inclusion of domestic workers within the scope of the Sexual Harassment Bill has been considered to be a significant step, keeping in mind the number of women employees working as domestic help. Women's organisations in the country have however requested for the inclusion of women working in the agricultural sector, fisheries, forests, construction work sites, roads, stations, trains, etc., within the purview of the law on workplace related sexual harassment.

The Sexual Harassment Bill is however facing criticism on account of being lop-sided as it only addresses the issue of protection of women employees and is not gender neutral. Male employees, if subjected to sexual harassment cannot claim protection or relief under the proposed law. Keeping in mind the stigma associated with issues of sexual harassment, certain women's groups are condemning the provision under the Sexual Harassment Bill which allows action against the complainant in case of a false or malicious complaint on the ground that such provision will further deter victims from reporting such incidents and filing complaints.

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¹AIR 1997 SC 3011

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