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India,

## Law on Prevention of Sexual Harassment at the Workplace Passed by the Lower House of the Indian Parliament

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The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 (the Bill) was passed by the Lower House of the Indian Parliament on September 3, 2012. The Bill replaces the previously introduced Bill on Protection of Women against Sexual Harassment at Workplace, 2010,<sup>1</sup> and must receive the assent of the Rajya Sabha (the Upper House of the Parliament) and the President of India to take effect.

The development is a significant step towards ensuring a safe and healthy work environment for 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 (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).

In addition to the organized sector (that is, those industries registered or under the purview of the Indian Factories Act, the Company Law, Shops and Establishment Acts, etc.), the Bill applies to unorganized sectors (that is, those industries not falling within the organized sectors where employees may not traditionally be able to get protection under labor laws), hospitals and nursing homes, educational institutes, sports institutes and stadiums used for training and domestic workers. The Bill covers not only employees, but also clients, customers, apprentices, or daily wage workers who enter the workplace. The definition of sexual harassment in the 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.

In line with the Guidelines, the Bill lays down detailed provisions with respect to setting up of an Internal Complaints Committee for an organization employing ten or more employees at each office or branch. The Bill also contemplates setting up Local Complaints Committees 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 fewer than ten employees or if the complaint is against the employer himself or herself. The Bill, *inter alia*, sets out the process to be followed for making a complaint and inquiring into the complaint in a time bound manner. It also lists down in detail the various duties of the employer in prohibiting sexual harassment at the workplace and providing a safe working environment for women employees.

In addition to making prohibited behavior a criminal offence, the Bill envisages a monetary penalty of up to INR 50,000 (approx. US\$1,000) for any organization for violating the provisions contained therein, and a repetition of

the same offence could result in the punishment being doubled. Repeated contravention of the provisions of the Bill could lead to de-registration of the entity or revocation of any statutory business licenses. Also, to ensure that the protections contemplated under the Bill do not get misused, provisions for action against "false or malicious" complainants have been made.

<sup>1</sup>See prior article at [International Labor & Employment Law Committee Newsletter \(May 2012\)](#).

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