

LAW GRAFFITI

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NEWSLETTER ON SEXUAL HARASSMENT ACT

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INTRODUCTION

Sexual Harassment at work place was front page news, when a high profile CEO was sacked by his board. This edition of *La[W] Graffiti* is about the processes that a Company in India needs to put in place based on the Indian law on sexual harassment at work place that received the presidential assent in April 2013. The Indian Parliament passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill in the Lok Sabha on 3rd September 2012 and Rajya Sabha on 26th February 2013. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**The New Law**") was made effective on 23rd April 2013 by way of publication in the Gazette of India.



PRECURSOR TO THE LAW

India's economy had opened up in the early 90's. One of the effects of this was increase in women workforce. In 1997 the Apex Court pronounced a landmark judgment in Vishaka and others v. State of Rajasthan ("Vishaka Judgement").

Vishaka - a NGO (along with other NGO's) filed a PIL (Public Interest Litigation), (after one Bhanwari Devi, a woman from Rajasthan who was allegedly gang raped) seeking special measures to deal with sexual harassment inflicted in the course of employment. The Hon'ble Supreme Court in Vishaka Judgment laid down the guidelines that were 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.

In the year 1993, India had ratified the United Nation Convention on Elimination of all Forms of Discrimination against Women. One of the requirements of the said UN Convention is that "State Parties shall take all appropriate measures to eliminate discrimination against women

in the field of employment in order to ensure, on a basis of equality of men and women, the same rights....."

A Law for prevention of sexual harassment at workplaces was a long pending one and was enacted by the parliament in 2013.

THE OBJECTIVE OF THE NEW LAW

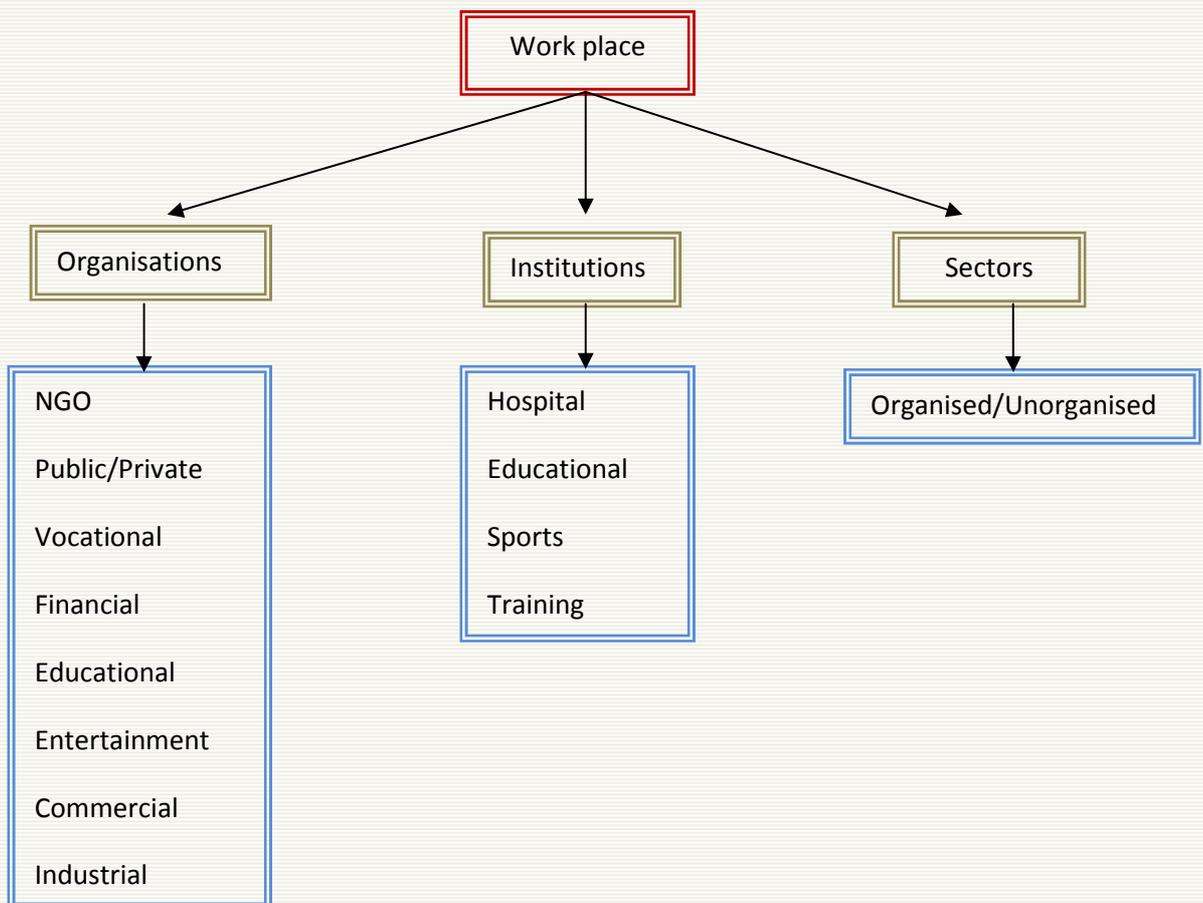
The New Law has been enacted with the objective of providing protection to women against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment. Sexual harassment is considered as a violation of the fundamental right of a woman to equality as guaranteed under Articles 14 and 15 of the Constitution of India ("**Constitution**") and her right to life and to live with dignity as per Article 21 of the Constitution. It is also considered as a violation of a right to practice or to carry out any occupation, trade or business under Article 19(1) (g) of the Constitution, which includes a right to a safe environment free from harassment.



WHAT CONSTITUTES SEXUAL HARASSMENT AT WORKPLACE?

- Circumstances of promise (implied or explicit) of preferential treatment in employment;
- Threat of detrimental treatment in employment;
- Threat about employment (present or future);
- Creating an intimidating or offensive or hostile work environment, or interference with work for the above;
- Humiliating treatment that may affect the lady employee's health or safety
- Unwelcome sexually determined behaviour (whether directly or by implication) such as physical contact and advances,
- Demand or request for sexual favours, sexually coloured remarks, showing pornography,
- Any other unwelcome physical verbal or non-verbal conduct of sexual nature.

WHO, WHERE AND WHAT DOES THE NEW LAW



As per the New Law, a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment - including transportation provided by the employer for the purpose of commuting to and from the place of employment.

The New Law applies to any woman falling under the definition of 'employee' under the Sexual Harassment Act and

encompasses regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, domestic help, contract labour, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

WHAT ARE THE OBLIGATIONS OF THE EMPLOYER?

The New Law casts certain obligations upon the employer.

They are

- ❖ Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.
- ❖ Treat sexual harassment as misconduct under the service rules and initiate action for misconduct. "Redraft your service rules to include this".
- ❖ Inform all employees of the penal consequences of indulging in acts that may constitute sexual harassment
 - Penal action shall include termination and reporting the harassment incident to relevant government authorities, and
- ❖ Constitute an Internal Complaints Committee ("ICC").
 - The ICC should be headed by a woman, and half its members shall

be women & include a third-party representative from an NGO or any other agency conversant in dealing with sexual harassment .

- ❖ Organise workshops and awareness programmes at regular intervals for sensitising employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the Internal Complaints Committee
- ❖ Monitor the timely submission of reports by the ICC.

If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000. 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.

WHAT IS THE REMEDY FOR THE AGGRIEVED?

The New Law acknowledges the possibility of harassment towards women in a workplace, where both genders interact. The New Law stipulates certain measures for the aggrieved employee to address her grievance.

➤ **Internal Complaints Committee:**

The New Law requires an employer to set up an 'Internal Complaints Committee' at each office or branch, of an organisation employing at least 10 employees.

➤ **Local Complaints Committee:** The government is also required to set up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The Sexual Harassment Act also sets 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 New Law empowers the ICC and the LCC 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.

➤ **Process for Complaint and Inquiry:**

- i. Any aggrieved employee within 3 months from date of the sexual harassment incident should report the same, in writing, to the ICC or LCC. The law allows female employees to request for conciliation to the ICC or LCC in order to settle the matter although a monetary settlement should not be made as a basis of conciliation.
- ii. If the conciliation proceedings fail or if no conciliation was requested, the ICC or LCC shall conduct an inquiry and complete the same within 90 days from receipt of the complaint.
- iii. Within 10 days from completion of the inquiry the ICC or LCC has to publish report with its recommendations.

- iv. The employer shall act on the recommendations of the report within 60 days of publication of the report.
- v. There are three possible outcomes:
 - a. The allegation levelled is proved, and action for misconduct is taken as provided under the service rules of the organisation or if the harassment is grave, the organisation is bound to inform the relevant authorities to institute penal action under the Indian Penal Code, 1860, which has provided special provisions for crimes relating to sexual harassment.
 - b. The allegation levelled is not proved due to the inability of the complainant to prove the facts and in the absence of malicious intent; the organisation shall decide not to take any action.
 - c. The allegation levelled is not proved and the allegation was made with a “false and malicious” intent, action can be against the complainant for misconduct under the service rules.

An appeal to a court or tribunal is available to the complainant and the alleged against the recommendations of the ICC or LCC. The appeal has to be made within 90 days from the date of the recommendation.

Should the Policy on Sexual Harassment be framed only for Women?

Although the New Law is gender biased towards women, organisational policy on sexual harassment should reflect the equality in treatment. Hence sexual harassment policy should be framed for both genders, sans discrimination.

CONCLUSION

The New Law provides the much needed grievance redressal process working women require at their workplaces. The Act has given itself a wide scope, so as to include all women, including domestic help, as the household is her workplace. Hence the New Law not only provides a redressal system for women in work as in the traditional sense, but to all women who work at some place.