

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

- **Introduction**

Employers in India now have to comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("ACT"). The Act received presidential assent on April 22, 2013 and was published in the Gazette of India on April 23, 2013. However, the Central Government has only recently appointed December 9, 2013 as the date on which provisions of the Act come into force.

The Central Government has also notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("Rules") to come into force on December 9, 2013.

The Act based on the guidelines laid down by the Supreme Court in the case of Vishaka & Ors. V. State of Rajasthan & Ors. ("**Vishaka Guidelines**"), imposes further obligations on the employer and also elaborates on the process to be followed on receipt of a complaint of sexual harassment at the workplace by an aggrieved woman.

- **Coverage**

The Act prohibits sexual harassment of women at any workplace and also other acts which if coupled with any act or behavior of sexual harassment, would amount to sexual harassment. Such acts include an implied or explicit promise or threat to woman's employment prospects or creation of a hostile work environment or humiliating treatment, which can affect her health or safety.

The definition of 'sexual harassment' is essentially the same as the definition under the Vishaka Guidelines and includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication), such as physical contact and advances, a demand or request for sexual favours, making sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

The Act also defines certain terms very widely. For example:

- "aggrieved woman" has been defined to mean any woman in relation to a workplace, of any age whether employed or not who alleges to have been subjected to any act of sexual harassment by the 'respondent', who is any person against whom a complaint has been made.

This definition extends the responsibility of the employer not just to its women employees but also to any woman who is present in the workplace for which the employer is responsible. The definition of respondent also does not require that the respondent be an employee.

- "employer" has been defined to include the head or persons responsible for management, supervision or control of the workplace or the person discharging contractual obligations with respect to his or her employees.
- "workplace" has been defined to include not only the premises of the employer but also locations where any women employees have to visit on work including the mode of transport provided by the employer to undertake the journey.

This definition extends the workplace and increases the obligation of the employer to prevent sexual harassment in such space.

• **Complaints Committee**

It is now mandatory for workplaces employing 10 or more workers to constitute an Internal Complaints Committee ("ICC")

The ICC is required to have a minimum of 4 members, where at least half the members are required to be women. The ICC must comprise the following members:

- 1 senior woman employee as the Chairman;
- 2 members from amongst the employees (who are committed to the cause of women or have experience in social work or have legal knowledge); and
- 1 third party member from an NGO or associations committed to the cause of women or other person familiar with issues relating to sexual harassment.

The ICC Committee of Silver Touch Technologies Limited shall consist of the following:

1. Mrs Shyamla Sharma- Presiding Officer/Chairperson
2. Mr Dipesh Solanki- Member
3. Ms Mayuri Vyas- Member
4. Mr Jignesh Shah- Member

The members of the ICC can hold office for a period not exceeding 3 years.

In the absence of an ICC or where employees who work is establishments which employ less than 10 workers, complaints can be filed with the Local Complaints Committee constituted under the Act by the district officer.

• **Conciliation Proceedings**

The Act provides that the ICC may, before initiating an inquiry, at the request of the aggrieved woman, initiate conciliation proceedings to settle the complaint with the respondent. If the conciliation is successful, a record of the settlement has to be forwarded to the employer and copies provided to the parties. Thereafter, no further inquiry will be conducted by the ICC. However, no monetary settlement can be the basis of the conciliation.

• **Complaint Mechanism**

The Act prescribes the following broad timeline for the proceedings and settlement of complaints by the ICC:

Step	Action	Time Period
Step 1	Aggrieved woman to file complaint in writing with the ICC	Within 3 months from the date of the incident.
Step 2	ICC to initiate and complete enquiry	Within 90 days of the complaint being filed
Step 3	ICC to submit report of findings and recommendations to the employer for implementation (a copy of the report is to also be provided to both parties)	Within 10 days the completion of the inquiry
Step 4	Employer to implement recommendations of the ICC	Within 60 days of the receipt of the recommendations of the ICC

Step 5	Aggrieved woman/respondent to file appeal to a court or tribunal against recommendations or non-implementation of recommendations of the ICC	Within 90 days of the receipt to the recommendations of the ICC
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The Rules, require that the inquiry be conducted in accordance with the principles of natural justice and set out details on the manner in which the ICC shall conduct its proceedings, including:

- Timelines within which the respondent must be served with the complaint and the period of time within which the respondent has to file a reply.
- Details of persons other than the aggrieved woman who may make the complaint due to death or incapacity of the aggrieved woman.
- Mandating the presence of a minimum of three members of the ICC including the Chairperson, to be present in conducting the inquiry.
- Empowering the ICC to give an ex-parte decision or terminate the inquiry proceedings, if the complainant or the respondent fails to present themselves for three consecutive hearings without sufficient cause. However no ex-parte order can be passed without giving prior written notice of fifteen days to the concerned party.
- Restricting legal practitioners from representing parties in the ICC proceedings.
- **Interim Relief**

As interim relief pending the inquiry, the ICC may at the request of the aggrieved woman, award the aggrieved woman, additional leave of up to 3 months, restrain the respondent from reporting on the work performance of the aggrieved woman, transfer the respondent, allow the aggrieved woman to be transferred to another workplace or grant any other appropriate relief.

- **Recommendations of the ICC**

The ICC may recommend to the employer that the respondent be punished for misconduct under the service rules and may also recommend actions which range from a written apology and warnings to withholding of promotions or pay rise, to termination of employment or undergoing counseling sessions/ community service, deduction of sums from the salary of the respondent or payment of the same by the respondent to the complainant as compensation.

- **Malicious Complaints and False Evidence**

The Act authorizes the ICC to also recommend to the employer appropriate penalties, for a malicious complaint or a complaint that was made by the aggrieved woman knowing it to be false or if it arrives at a conclusion that any witness has given false or misleading evidence. It has been clarified that a mere inability to substantiate a complaint or provide adequate proof need not attract penalty.

- **Confidentiality**

The Act makes it mandatory that the identity of the aggrieved woman, respondents and witnesses and any information relating to the proceeding shall not be published, communicated or made known to the

public or media. The employer shall be entitled to recover Rs. 5000 as penalty from any person breaching the obligation to maintain confidentiality about the ICC proceedings

- **Obligations of the Employer**

The Act prescribes wide ranging obligations on the employer including, organizing workshops and awareness programmes for sensitizing employees of provisions of the Act, displaying in a conspicuous place in the workplace the consequences of sexual harassment and the order constituting the ICC, treating sexual harassment as 'misconduct' under the service rules, ensuring necessary facilities and assistance to the ICC and providing assistance to the aggrieved woman if she chooses to file a complaint under the Indian Penal Code, 1860.

The Rules provide that an employer is required to remove conditions that create a hostile environment towards women at the workplace and organize seminars and train the members of the ICC to increase their level of skill

- **Penalties**

An employer who fails to comply with the provisions of the Act can be punished with a fine that may extend to Rs. 50,000. Repeat violations can lead to doubling of the penalty and a possible cancellation of licenses or other registrations that have been granted to the employer by the Government for carrying on business.

- **Reporting Requirement**

Under the Act, the ICC is required to submit an annual report to the district office containing details such as the number of complaints received, disposed off, pending for more than 90 days, number of workshops conducted by the employer etc.

- **Implications**

With the provisions of the Act now in force, it is essential for every company to have a policy in compliance with the Act, prohibiting sexual harassment at the workplace. Companies having more than 10 employees at any of their offices/branches are required to constitute an ICC. All employers are also required to conduct workshops to educate employees about such policy and the provisions of the Act and Rules

Neither the Act nor the notification addresses whether the Act will be applicable to complaints regarding sexual harassment which have been filed prior to the notification of the Act will be made applicable to existing complaints or whether the Vishaka Guidelines will continue to be applicable to complaints where investigations are underway.