

## **SOME IMPORTANT /MAJOR PROVISIONS OF:**

### **“THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 AND RULES MADE THERE UNDER :**

#### **1.The Preamble/ Object of the Act:**

To provide protection against sexual harassment of women at workplace and for the prevention & Redressal of complaints of sexual harassment.

The sexual harassment is considered as violation of women's fundamental rights to equality, life , liberty and to live with dignity under Articles 14,15 and 21 of the Constitutions of India.

#### **2.The Applicability and Commencement of the Act:**

This Act extends to whole of India and came in to force on 9/12/2013.

#### **3. Section 2: Some important Definitions under the Act are as follows:-**

**3.1.”Employee”** means a person who has been employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent /contractor and includes a contract worker ,probationer, trainee, apprentice etc.

**3.2.”Employer”** means any person responsible for the management, supervision and control of the workplace.

**3.3. “Aggrieved Woman “**means in relation to a workplace ,a woman of any age ,who alleges to have been subjected to any act of sexual harassment by the Respondent .

**3.4.”Respondent”**means a person against whom the aggrieved woman has made a complaint.

**3.5.”Sexual Harassment “**includes any one or more of the following acts or behaviour ,whether directly or by implication ,such as :

- Physical contact and advances
- A demand for sexual favours
- Making sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non verbal conduct of sexual nature

The following circumstances, among other circumstances , also mean sexual harassment if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment at any workplace:

- Implied/Explicit promise of preferential treatment in her employment
- Implied/Explicit threat of detrimental treatment in her employment
- Implied/Explicit threat about her present or future employment status
- Interference with her work or creating an intimidating or offensive or hostile work environment for her
- Humiliating treatment likely to affect her health or safety

**3.6."Workplace** "among others includes any private sector organisation carrying on commercial, professional, industrial, educational, health services etc. activities.

**4. Section 4: Constitution of Internal Complaints Committee and the laid down guidelines for its working :-**

4.1. Every Employer shall by an order in writing ,constitute an "Internal Complaints Committee".(Where the offices or administrative units of the workplace are located at different places ,the Internal Committee shall be constituted at all administrative units or offices.)

**4.2. The Internal Committee shall consist of the following members to be nominated by the Employer:**

- a.)A Presiding Officer , who shall be a woman employed at a senior level at workplace.
- b)Minimum two Members from amongst employees preferably committed to cause of women or having experience in social work or having legal knowledge.
- c)One Member from any NGO or Associations committed to the cause of women or a person familiar with the issues relating to sexual harassment .

However, the mandatory condition is that at least one-half of the total Members shall be women.

4.3. The Presiding Officer and other Members shall hold the Office for maximum three years.

4.4. The Member appointed from NGOs/Associations shall be paid fees or allowances by the Employer ,for holding the proceedings of the Internal Committee.

**The Act has also laid down the circumstances under which the Presiding Officer or any Member shall be removed from the Committee (Section 5 (a to d) of the Act).**

**5.Section 9:Complaint of Sexual Harassment :-**

Any aggrieved women will have to make a written complaint of sexual harassment at workplace ,to the Internal Committee ,within a period of three months from the date of incident. However, under certain genuine circumstances ,the Internal Committee ,if satisfied, may extend the time limit by another three months .

**6.Section 10 :Conciliation :-**

The Internal Committee , before initiating an enquiry ,at the request of the aggrieved woman ,may take steps to settle the matter between her and the Respondent ,through conciliation.

Where a settlement has been arrived, the Internal Committee shall record the settlement so arrived and forward the same to the Employer to take action as per the recommendation.(The copies of the settlement shall be provided to the aggrieved woman and the Respondent.)

Where such a settlement has been arrived at ,no further enquiry shall be conducted by the Committee.

### **7. Section 11: Enquiry in to complaint:-**

7.1. The Committee shall proceed to make an enquiry against the respondent (if an employee) as per the service rules applicable to him and in absence of any such service rules, in such manner as prescribed. During the enquiry, both the parties shall be given an opportunity of being heard, produce any document /any other relevant matter and also make a representation against the findings, before the Committee.

The enquiry shall be completed within a period of ninety days.

7.2. If prima facie case exists, the Committee shall forward the case to the police within seven days for registering the same under Indian Penal Code. When the Respondent is convicted of the offence, the Court may order payment of certain sum by the Respondent, to the aggrieved woman.

7.3. Similarly, where the aggrieved woman informs the Committee that any of the terms of the settlement arrived at earlier, have not been complied with by the Respondent, the Committee shall proceed to make an enquiry in to the complaint or as the case may be, forward the complaint to the police.

### **8. Section 12: Action during pendency of enquiry:-**

8.1. During the pendency of an enquiry, on a written request by the aggrieved woman, the Committee may recommend to the Employer to :-

- a) transfer the aggrieved woman or the respondent to any other workplace or
- b) grant leave to the aggrieved woman up to three months or grant her any such relief (The leave so granted shall be in addition to the normal leave to which she is entitled)

8.2. The Employer shall implement the recommendations made by the Committee and send the report of such implementation to the Committee.

### **9. Section 13: Enquiry Report:-**

9.1. On completion of the enquiry, the Committee shall provide a report of its findings, to the employer, within ten days and copies of the same shall be made available to the concerned parties.

9.2. Where the Committee finds that allegations against the respondents have not been proved, it shall recommend to the Employer not to take any action in the matter.

9.3. Where the Committee finds that allegations against the respondents have been proved, it shall recommend to the Employer :

- a) to take action in the matter as a misconduct as per the service rules
- b) to deduct from the salary of the respondent such sums as considered appropriate to be paid to the aggrieved woman.

The Employer shall act up on the recommendations of the Committee within sixty days.

**10. Section 14: Punishment for false /malicious complaint and false evidence:-**

Where the Committee, after an enquiry, finds that the allegation against the Respondent is false or based up on forged or misleading documents produced by the complainant or any other person if any or witness has given false evidence , produced any forged /misleading documents with malicious intent ,it will recommend to the Employer ,to take action against the woman or person or the witness concerned ,in accordance with the service rules applicable to her/him.

**11. Section 15: Determination of compensation to the aggrieved woman :**

For determining the compensation to be paid, the Committee will take in to consideration :

11.1. The mental trauma ,pain , sufferings and emotional distress caused to her

11.2. The loss in the career opportunity due to the incident

11.3. The medical expenses incurred by the victim for physical/psychiatric treatment

11.4. The income and financial status of the Respondent and

11.5. The feasibility of such payment in lump sum or in instalments.

**12. Section 16: Prohibition against disclosing the contents of complaint & enquiry proceedings etc. :**

The identity/address of the aggrieved woman, Respondent and witness, any information regarding enquiry proceedings, recommendation of the Committee and action taken by the Employer will not be disclosed to any party, under any circumstances.

**13. Section 17: Penalty for disclosure of any information as enumerated in Section 16 of the Act.**

In case, of any violation of the provisions of Section 16, the concerned person will be liable for penalty as per the service rules.

**14. Section 18: Appeal :**

Any person aggrieved from the recommendations of the Committee or due to non implementation of such recommendations ,may prefer an Appeal to the Court/Tribunal as per the service rules applicable to the said person ,within a period of 90 days.

**15. Section 20: Duties of Employer:**

Every Employer shall :

15.1. Provide safe working environment at workplace .

15.2. Display at prominent place ,the penal consequences of sexual harassments and the order constituting ,the Internal Committee.

15.3.Organise workshops and awareness programme at regular intervals for the information of the employees as well as orientation programme for the members of the Committee.

15.4.Provide necessary facilities to the Committee for dealing with the complaint and conducting an enquiry.

15.5.Assist in securing attendance of Respondent and Witnesses before the Committee.

15.6.Provide assistance to the woman if she chooses to file a complaint in relation to the offence under the IPC etc.

15.7.Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct

15.8.Monitor the timely submission of reports by the Committee.

**16.Section 21:Annual Report by the Committee :**

The Committee shall prepare an Annual Report in every Calendar Year and submit it to the Employer.

**17.Section 22:Employer to include information in Annual Report:**

The Employer shall include in its report the no. of cases filed ,if any and their disposal under this Act in the Annual Report of the Organisation .

**18.Section 25:Power to the Govt. to call information and inspection of records:**

The appropriate Govt., may call up on any Employer to furnish in writing necessary information or authorise any officer to make inspection of the records & the workplace in relation to sexual harassment.

**18.Section 26:Penalty to the Employer for non compliance with the provisions of the Act:**

Where the Employer fails to constitute an Internal Committee or take appropriate actions or contravenes any of the provisions of the Act ,shall be punished with fine up to Rs. 50,000/-.

In case of repeated offences under the Act , the punishment will be increased and it may also result in cancellation , withdrawal or non renewal of the registration for carrying on the business /activities ,granted by the Govt. or Local Authority.

**THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION ,PROHIBITION AND REDRESSAL )RULES,2013.**

The Central Govt. has made certain rules under the Act , in respect of the following:

**Rule No. 2:**Definitions

**Rule No.3:**Payment of Fees/Allowances for Members of the Committee.

**Rule No.4:** Person familiar with issues relating to sexual harassment

**Rule No. 6 :**Complaint of sexual harassment

**Rule No.7:**Manner of enquiry in to complaint

**Rule No.8:**Other relief to the complainant during pendency of enquiry

**Rule No. 9:**Manner of taking action for sexual harassment

**Rule No.10:**Action for false or malicious complaint or false evidence

**Rule No.11:**Appeal

**Rule No.12:** Penalty for contravention of provisions of the Act

**Rule No.13 :**Manner to organise Workshop etc.

**Rule No. 14:**Preparation of Annual Report