

Protection of Women against Sexual Harassment Bill, 2010: An Overview

Ministry of Women & Child Development

Structure of the Proposed Bill

- ▶ Preamble – confers the right to protection against sexual harassment, and towards this, prevention and redressal of SHW
 - ▶ Clear statement that SHW is a violation of fundamental rights of women to equality under Articles 14 & 15, and live with dignity under Article 21 of Indian Constitution – reference to SC Guidelines in *Vishaka case*
 - ▶ Recognition of India's obligations under international instruments like CEDAW – right to protection from SHW as a universal human right
- ▶ Definitions and Coverage of the proposed Bill
- ▶ Right to prevention of SHW
- ▶ Statutory mechanisms for implementation
- ▶ Remedies, procedures, and penalties under the proposed Bill

Definitions and Coverage (Section 2)

- ▶ Who is aggrieved woman (a.p.) – any woman (including a minor), against whom an act of SHW has/alleged to have been committed
 - ▶ **Not limited to employer-employee relationship** (covers employees, students, research scholars, patients etc.)
 - ▶ **Includes the unorganised sector**

- ▶ What is a workplace – Includes
 - ▶ Any department/organisation/undertaking/office/branch etc. established, owned or controlled by Government/local authority/corporation/cooperative society
 - ▶ Any private sector enterprise/NGO/trust/service provider carrying on commercial, professional, educational, financial, entertainment activities (patients, students covered)
 - ▶ House or dwelling place (domestic help covered)
 - ▶ Any place/vehicle by land, air or sea, during and course of employment (cabin attendants covered)
 - ▶ Unorganised sector that is, private unincorporated enterprises engaged in agriculture, industry, trade/business. List of sectors covered provided in Schedule

Definitions and Coverage (Contd.)

- ▶ Who is an employee – person employed on regular/temporary/ad-hoc/daily wage basis, either directly or indirectly and whether for remuneration or not (broad scope – covers contract labour, trainees/apprentices etc.)

- ▶ Who is an employer –
 - ▶ Head of a department/establishment/office/branch etc. of Government/local authority as notified by order of that authority
 - ▶ In other workplaces not covered by above, person responsible for management, supervision and control



Right to Prevention of SHW (Section 3)

- ▶ No woman at any workplace shall be subjected to sexual harassment

- ▶ SHW defined to include
 - ▶ unwelcome sexually determined behavior,
 - ▶ physical contact,
 - ▶ sexually coloured remarks,
 - ▶ showing pornography,
 - ▶ Request for sexual favours or **any other unwelcome conduct**, whether verbal, textual, physical, graphic, electronic or any other action, not limited to:
 - ▶ Implied or overt promise of preferential treatment
 - ▶ Implied or overt threat of detrimental treatment or threat about present/future employment status
 - ▶ Conduct which interferes with work or creates an intimidating or hostile work environment
 - ▶ Humiliating conduct constituting a health and safety concern to the woman



Statutory Mechanisms under the Bill

- ▶ Internal Complaints Committee – to be constituted by every employer (must be established in every branch/office/unit of the workplace)
- ▶ District Officer – DM/DC or ADM/ADC to be appointed as District Officer
- ▶ Local Complaints Committee – where constitution of Internal Committee is not possible/practicable/where employer has not constituted it, District Officer will constitute Local Committee at block/tribal area in rural areas and division/sub-division in urban areas



Remedies, Procedures and Penalties

- ▶ **Complaint** can be filed in writing, by a.p. or in her absence, by her legal heir or any other person as prescribed in case of her incapacity, to Committee or Local Committee as the case may be
 - ▶ Right to approach Local Committee directly even when Internal Committee exists at the workplace (can be used when complaint is against employer himself)
- ▶ Provision for **conciliation** (Sec. 8&9) – The Committee or Local Committee may, only at the instance of the a.p., attempt to settle the matter through conciliation before initiating enquiry
 - ▶ Committee will record terms of settlement and recommend to employer/District Officer appropriate action. No further enquiry
 - ▶ Where conciliation fails, the Committee/Local Committee shall proceed with enquiry. In case of non-compliance with terms of settlement too, enquiry to proceed

Remedies, Procedures and Penalties (Contd.)

- ▶ **Recommendations to be made by Committee/Local Committee during pendency of enquiry:**
 - ▶ Transfer of a.p. of respondent to any other workplace (no woman shall be transferred/suspended except on her own request)
 - ▶ Grant leave to a.p. (leave to be in addition to entitlement of leave in case the allegation is proved)
 - ▶ Grant any other relief to the a.p. as may be prescribed
 - ▶ Employer or District Officer may take any necessary action on recommendation of Committee/Local Committee

Note: Recommendations to be made only on written request of a.p.

- ▶ **On completion of enquiry:**
 - ▶ Where allegation has not been proved, Committee/Local Committee shall recommend that no action is required
 - ▶ Where allegation proved, shall recommend
 - ▶ Action as per Service Rules applicable
 - ▶ Deduction of salary or wages as compensation to a.p. or direct respondent to pay compensation
 - ▶ Employer/District Officer shall act upon recommendation within 60 days

Note: Compensation to be determined on the basis of mental trauma, emotional distress caused; loss in career opportunities sustained due to the incident; medical expenses incurred; income & financial status of respondent

Other Provisions

- ▶ Punishment for false/malicious complaint and false evidence to the a.p. or any other person/witness – in accordance with applicable Service Rules or as may be prescribed
- ▶ Any information relating to proceedings shall not be published or made known to public, except dissemination regarding justice secured
- ▶ Duties of Employer spelt out in a standalone section, including provision of safe working environment, display of information relating to constitution of Committee, sensitization workshops, ensuring attendance of respondent & witnesses during enquiry, providing necessary materials for enquiry, assist a.p. in any other manner
- ▶ Duties of District Officer include responsibility of implementation of Act, create a corpus and administer fines, monitor activities of Committee, conduct surprise checks to ensure compliance by workplaces etc.
- ▶ Penalty on employer/District Officer for failure to constitute committee/take action etc. – Fine upto Rs 50,000/-. Fine to be kept in a corpus



Issues for Discussion

- ▶ Whether the definition of a.p., as including patients, students/research scholars is comprehensive?
- ▶ Feasibility of incorporating unorganised sector within the purview of draft Bill – challenges in monitoring compliance & penalties – possible solutions
- ▶ Duty of private sector to constitute Internal Committees – whether fine of Rs 50,000/- sufficient to ensure compliance
- ▶ Need to provide a time frame for completion of conciliation proceedings (90 days time limit for completion of enquiry)
- ▶ Proposed provision of punishment for false or malicious complaint, or giving false evidence
- ▶ Duties of employer and District Officer – suggestions to make them pro-active

- ▶ Need for monitoring mechanism under the Bill
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