

Vishaka Guidelines
against
Sexual Harassment at Workplace

Guidelines and norms laid down by the Hon'ble Supreme Court in Vishaka and Others Vs. State of Rajasthan and Others(JT 1997 (7) SC 384)

HAVING REGARD to the definition of 'human rights' in Section 2 (d) of the Protection of Human Rights Act, 1993,

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

Duty of the Employer or other responsible persons in work places and other institutions

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts, of sexual harassment by taking all steps required.

Definition

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) **Physical contact and advances;**
- b) **A demand or request for sexual favours;**
- c) **Sexually coloured remarks;**
- d) **Showing pornography;**
- e) **Any other unwelcome physical, verbal or non-verbal conduct of sexual nature**

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Preventive Steps

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- A. Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.**
- B. The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.**
- C. As regards private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.**
- D. Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.**

Criminal Proceedings

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Disciplinary Action

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

Complaint Mechanism

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organisation for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

Complaints Committee

The complaint mechanism, referred to above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its members should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

Worker's Initiative

Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

Awareness

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

Third Party Harassment

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

Legislative Brief

The Protection of Women Against Sexual Harassment at Work Place Bill, 2010

The Bill was introduced in the Lok Sabha on December 7, 2010.

The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri. Oscar Fernandes), which is scheduled to submit its report on June 30, 2011.

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The Judicial Standards and Accountability Bill, 2010
March 18, 2011

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Highlights of the Bill

- ◆ The Bill defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- ◆ Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- ◆ The Complaints Committees have the powers of civil courts for gathering evidence.
- ◆ The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- ◆ Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to Rs 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.

Key Issues and Analysis

- ◆ There could be feasibility issues in establishing an Internal Complaints Committee at every branch or office with 10 or more employees.
- ◆ The Internal Complaints Committee has been given the powers of a civil court. However, it does not require members with a legal background nor are there any provisions for legal training.
- ◆ The Bill provides for action against the complainant in case of a false or malicious complaint. This could deter victims from filing complaints.
- ◆ Two different bodies are called 'Local Complaints Committee'. The Bill does not clearly demarcate the jurisdiction, composition and functions of these Committees.
- ◆ Cases of sexual harassment of domestic workers have been specifically excluded from the purview of the Bill.
- ◆ Unlike sexual harassment legislation in many other countries, this Bill does not provide protection to men.

PART A: HIGHLIGHTS OF THE BILL

Context

India has signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). However, India does not have a specific law to address the issue of sexual harassment of women at the place of work. Currently, the Indian Penal Code (IPC) covers criminal acts that outrage or insult the 'modesty' of women. It does not cover situations which could create a hostile or difficult environment for women at the work place.

In 1997 as part of the Vishaka judgment, the Supreme Court drew upon the CEDAW and laid down specific guidelines on the prevention of sexual harassment of women at the work place.¹ The Vishaka guidelines defined sexual harassment and codified preventive measures and redressal mechanisms to be undertaken by employers.

A draft Bill was circulated by the Ministry of Women and Child Development for public feedback in 2007. The current Bill establishes a framework to be followed by all employers to address the issue of sexual harassment.

Key Features

The Bill lays down the definition of sexual harassment and seeks to provide a mechanism for redressing complaints. It provides for the constitution of an 'Internal Complaints Committee' at the work place and a 'Local Complaints Committee' at the district and block levels. A District Officer (District Collector or Deputy Collector), shall be responsible for facilitating and monitoring the activities under the Act.

Prohibition of Sexual Harassment at the Work Place

- Sexual harassment is defined to include unwelcome sexually determined behaviour such as physical contact, request for sexual favours, sexually coloured remarks, screening of pornography, or any other conduct of sexual nature.
- The Bill prohibits sexual harassment at the work place which may include promise of preferential treatment, threat of detrimental treatment, hostile work environment, or humiliating conduct constituting health and safety problems.
- The Bill defines a work place to include all organizations, and any place visited by an employee during the course of work. It covers every woman at the work place (whether employed or not) except a domestic worker working at home. It defines employer as the person responsible for the management, supervision and control of the work place.

Duties of the employer

- The Bill assigns certain duties to each employer. These include (a) providing a safe working environment; (b) constituting an Internal Complaints Committee and conspicuously displaying the order constituting the Committee; (c) undertaking workshops and training programmes at regular intervals for sensitizing employees; (d) providing assistance during an inquiry; and (e) initiating action against the perpetrator.

Structure for redressal of complaints

- Every employer is required to constitute an 'Internal Complaints Committee' at all offices and branches with staff strength of 10 or more employees. Members of the committee shall include a senior woman employee, two or more employees and one member from an NGO committed to the cause of women. A member of this Committee may not engage in any paid employment outside the duties of the office.
- A 'Local Complaints Committee' is required to be constituted in every district. An additional 'Local Complaints Committee' shall also be constituted at the block level to address complaints in situations where the complainant does not have recourse to an Internal Complaints Committee or where the complaint is against the employer himself.
- The 'Local Complaints Committee', to be constituted by the District Officer, shall include an eminent woman as the Chairperson, a woman working in the area, two members from an NGO committed to the cause of women, and a Protection Officer appointed under the Protection of Women from Domestic Violence Act, 2005.
- At least 50 percent of the nominated members in any Internal or Local Committee must be women.

Procedure for filing complaints and initiating inquiry

- An aggrieved woman may complain to the Internal Committee. In the absence of such a committee, she may file a complaint with the Local Committee. All complaints must be in writing. The complainant may also pursue other remedies, including filing a criminal complaint.

- The Committee shall provide for conciliation if requested by the complainant. Otherwise, the Committee shall initiate an inquiry.

Penalties and appeal

- If the allegation is proved, the Committee shall recommend penalties for sexual harassment as per service rules applicable or the Rules under the Act. In addition, it may provide for monetary compensation to the complainant.
- If the allegation is proved to be false or malicious, the Committee may recommend action against the complainant. However, action may not be taken against a complainant merely on the inability to substantiate a complaint or provide adequate proof.
- Appeals against the recommendations of either Committee shall lie with the courts.
- Penalties have also been prescribed for employers who fail to comply with the provisions of the Act. Non-compliance shall be punishable with a fine of up to Rs 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration required for carrying on the business.

PART B: KEY ISSUES AND ANALYSIS

Feasibility issues in the composition of the Internal Complaints Committee

Constitution of an internal committee at each administrative unit

- Clause 4 (1) The Bill requires that every office or branch with 10 or more employees constitute an Internal Complaints Committee. This requirement differs from the one proposed in the draft Bill circulated by the National Commission for Women (NCW) in 2010.² The NCW draft Bill prescribed that if units of the work place are located at different places, an Internal Committee shall be constituted 'as far as practicable' at all administrative units or offices. A similar requirement was laid down in the 2007 draft Bill circulated by the Ministry of Women and Child Development.³

NGO representation in Internal Committees

- Clause 4 (2) Each Internal Committee requires membership from an NGO or association committed to the cause of women. This implies that every unit in the country with 10 or more employees needs to have one such person in the Committee. As per the Economic Census 2005, there are at least six lakh establishments that employ 10 or more persons.⁴ There is no public data on the number of NGO personnel 'committed to the cause of women'. There could be difficulties in implementation if sufficient number of such NGO personnel is not available.

Bar on engagement in additional paid employment

- Clause 4 (5) No member of the Internal Committee is allowed to engage in any paid employment outside the duties of her office. This implies that even the external person in the Committee (who is with an NGO) may not hold any other part-time employment. It is not clear why this condition has been prescribed.

Powers of a civil court

- Clause 11 (2) The Internal Complaints Committee has been given powers of a civil court for summoning, discovery and production of documents etc. The composition of the Internal Committee does not require any member to have a legal background. Moreover, the Bill does not specify any requirement of legal training to the Committee for fulfilling these duties. This provision differs from that of the Local Complaints Committee, in which at least one member has to 'preferably' have a background in law or legal knowledge.

Ambiguous guidelines for the constitution of the Local Complaints Committee

- Clause 6 Two different bodies are called 'Local Complaints Committee.' The Bill provides that every District Officer shall constitute a Local Complaints Committee in the district. It also prescribes that an additional Local Complaints Committee shall be constituted at the block level to address complaints in certain cases.

The jurisdiction and functions of these committees have not been delineated. It is also unclear whether the block level committees are permanent committees or temporary ad hoc committees constituted for dealing with specific cases.

Availability of Protection Officers

- Clause 7 (1) The Bill prescribes that a Protection Officer (PO), appointed under the Domestic Violence Act, 2005, shall be a member of the Local Complaints Committee. These Local Committees shall be established at the district level and may also be set up at the block level.

There is wide variation across states in the number of POs appointed per district.⁵ For instance, Maharashtra has appointed an average of 98 POs per district. Bihar, on the other hand, has appointed one PO for every two districts. This could lead to unavailability of POs in some areas for appointment to the Local Complaints Committees.

Scope for misuse of some provisions

Punishment for false *or* malicious complaints

- Clause 14 (1) The Bill provides that in case a committee arrives at a conclusion that the allegation was false *or* malicious, it may recommend that action be taken against the woman who made the complaint. The clause also provides that mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant.

Though there may be merit in providing safeguards against malicious complaints, this clause penalises even false complaints (which may not be malicious). This could deter women from filing complaints. Recent Bills such as the Public Interest Disclosure Bill, 2010 (commonly known as the Whistleblower's Bill), penalise only those complaints that are mala fide *and* knowingly false.⁶ The National Advisory Council (NAC) has recommended that the entire clause be removed as it might deter victims from seeking protection of the proposed legislation.⁷

Exclusion of domestic workers

- Clause 2 (e) The definition of 'employee' specifically excludes 'domestic workers working at home'. The draft Bill circulated by the Ministry in 2007³ and that circulated by the NCW in 2010,² both included this category of employees in the definition.

The NAC recommended that the Bill should be applicable to domestic workers as these employees, 'especially live-in workers, are prone to sexual harassment and abuse, without access to any complaint mechanism or remedial measures.'⁷ However, the government stated that 'it may be difficult to enforce the provisions of the Bill within the privacy of homes and it may be more practical for them to take recourse to provisions under criminal law.'⁸

International experience

Sexual harassment is a form of illegal employment discrimination in many developed countries including the US, UK and the European Union countries.⁹ In these domains, the definition of sexual harassment includes employer-employee relationship as well as a hostile work environment. This is similar to the current Bill. However, those laws differ in one important aspect, in that they are gender neutral. This Bill provides protection only to women, and not to men.

Notes

1. Vishaka and others V. State of Rajasthan and others [1997 (6) SCC 241]
2. Revised Draft Bill, 'The Prohibition of Sexual Harassment of Women at Workplace Bill, 2010', National Commission for Women, http://ncw.nic.in/PDFFiles/sexualharassmentatworkplacebill2005_Revised.pdf
3. Draft Bill, 'The Protection of Women against Sexual Harassment at Workplace Bill, 2007', Ministry of Women and Child Development, <http://wcd.nic.in/protshbill2007.htm>
4. 5th Economic Census (2005), Ministry of Statistics and Programme Implementation, http://www.mospi.gov.in/index_6june08.htm
5. 'Agenda No. 7 Review of implementation of Protection of Women from Domestic Violence Act, 2005', Ministry of Women and Child Development, June 16, 2010, http://wcd.nic.in/agenda16062010/agenda_16062010_item7.pdf
6. Clause 16 of The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010
7. Press release, National Advisory Council, January 10, 2011, http://nac.nic.in/press_releases/10_january_2011.pdf
8. Rajya Sabha unstarred Question 3706, answered on December 13, 2010
9. The Civil Rights Act of 1964, United States; Sex Discrimination Act (1975) and Employment Rights Act (1996), United Kingdom; Sexual Harassment in the Workplace in EU Member States, Government of Ireland, 2004

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Bill Summary

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- The Bill assigns certain duties to each employer. These include (a) providing a safe working environment; (b) constituting an Internal Complaints Committee and conspicuously displaying the order constituting the Committee; (c) undertaking workshops and training programmes at regular intervals for sensitizing employees; (d) providing assistance during an inquiry; (e) initiating action against the perpetrator.
- Every employer is required to constitute an 'Internal Complaints Committee' at all offices and branches with staff strength of 10 or more employees. Members to the committee are to be nominated by the employer and shall include:
 - (i) A Presiding Officer who is a senior level woman employee. In case such a person is not available, the District Officer may nominate a person from the Local Complaints Committee;
 - (ii) Two or more employees who are either committed to the cause of women or have experience in social work or possess legal knowledge;
 - (iii) One member from an NGO committed to the cause of women
- A member of this Committee may not engage in any paid employment outside the duties of his office.
- A 'Local Complaints Committee' is required to be constituted in every district. An additional 'Local Complaints Committee' shall also be constituted at the block/ ward level to address complaints (i) where the complainant does not have recourse to an Internal Complaints Committee (applicable in cases where the workplace employees less than 10 people); (ii) where the complaint is against the employer himself.
- Members to each 'Local Complaints Committee' shall be nominated by the District Officer and shall include:
 - (i) A Chairperson from among the eminent women in the field of social work and committed to the cause of women;
 - (ii) One member from among the women working in the area concerned;
 - (iii) Two members, of whom at least one is a woman, from an NGO committed to the cause of women;
 - (iv) The Protection Officer for the area appointed under the Protection of Women from Domestic Violence Act, 2005.

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- At least 50% of the nominated members in any Internal or Local Committee must be women. Each member shall be nominated for a term of three years and shall be paid the fees or allowances (to be prescribed in the rules) for participating in the proceedings of the committee.
- An aggrieved woman may complain to the Internal Committee if such a committee has been constituted in her workplace. In other cases, she may file a complaint with the Local Committee. All complaints must be in writing.
- The Committee shall provide for conciliation before initiating an inquiry if requested by the complainant. If a settlement is reached, no further inquiry shall be conducted. If conciliation is not desired, or when settlement fails, the Committee shall initiate an inquiry into the complaint. The inquiry must be completed within 90 days.
- If the complainant gives a written request during the inquiry, the Committee may recommend to the employer to (a) transfer the aggrieved woman to any other workplace; (b) grant her leave; or (c) provide other relief.
- After completion of the inquiry, the Committee shall present its recommendations to the employer or the District Officer, as the case may be. The employer or the District Officer must act upon the recommendation within 60 days of its receipt.
- If an allegation is proved, the Committee shall recommend penalties for sexual harassment as per service rules applicable or the Rules under the Act. In addition, it may provide for monetary compensation to the complainant.
- If the allegation is proved to be false or malicious, the Committee may recommend action against the complainant. However, action may not be taken against a complainant merely on the inability to substantiate a complaint or provide adequate proof.
- Appeals against the recommendations of either Committee shall lie with the courts. All appeals must be filed within a period of 30 days of the recommendations.
- Penalties have also been prescribed for employers who fail to comply with the provisions of the Act. Non-compliance shall be punishable with a fine of up to Rs. 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration.

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