

POSH KEY PROVISION

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.

Highlights

- The Act 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 Act 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 this Act.
- Unlike sexual harassment legislation in many other countries, this Act does not provide protection to men.

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 Act 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 Act 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 Act 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