

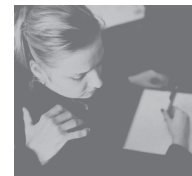
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GLOBAL WORKPLACE LAW PERSPECTIVES



## New India Law Heightens Employers' Obligations to Prevent Sexual Harassment in the Workplace

In the past year or so, several disturbing, highly-publicized incidents of violence and sexual offenses against women have taken place in India. The Indian government has responded by, among other things, instituting a comprehensive statutory program to prohibit sexual harassment in the workplace. While many aspects of the statute are familiar concepts in the US, Europe and other jurisdictions with strong sexual harassment laws, the new law contains a number of novel provisions and represents a far-reaching shift for employers in India.



Until very recently, sexual offenses against women were governed by only a few sections of the Indian Penal Code, 1860 (the "IPC"), in addition to the 1997 Supreme Court of India judgment in *Vishaka and Others v. State of Rajasthan and Others*<sup>1</sup> (the "Vishaka Case"), which set out guidelines for the prevention of sexual harassment in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (the "Act") and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the "Rules"), to a great extent, codify the guidelines established by the Supreme Court in the Vishaka Case,

as well as implement new provisions to protect women from workplace sexual harassment.

All employers in India are now required to take steps to prevent sexual harassment in the workplace, including implementing an anti-sexual harassment policy, establishing an Internal Complaints Committee to investigate any allegations of workplace sexual harassment, organizing workshops and awareness programs, providing necessary facilities to the Internal Committee, and helping female employees file a police complaint.

Some of the key provisions of the new law are discussed below.



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## KEY PROVISIONS AND DEFINITIONS

In general, the Act prohibits sexual harassment in the workplace, defined to include any of the following unwelcome acts or behaviors:

- 1) *Physical contact and advances;*
- 2) *A demand or request for sexual favors;*
- 3) *Making sexually colored remarks;*
- 4) *Showing pornography; or*
- 5) *Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.*

The Act also identifies certain circumstances which, if occurring in conjunction with sexual harassment as defined in the Act, would be significant evidence of an offense. The circumstances are:

- 1) *Implied or explicit promise of preferential treatment in employment;*
- 2) *Implied or explicit threat of detrimental treatment in employment;*
- 3) *Implied or explicit threat about present or future employment status;*
- 4) *Interference with work or creating an intimidating or offensive or hostile work environment; or*
- 5) *Humiliating treatment likely to affect one's health or safety.*

The sweeping breadth of new protections provided by the Act is exemplified by some of its key definitions, which go beyond the parameters of the traditional employment relationship. For example, an "Aggrieved Woman" entitled to seek redress under the Act is a woman of any age, whether employed or not, who claims to have been subjected to any act of sexual harassment. Thus, employers' obligations are not restricted to female employees but

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instead extend to all women who may be subjected to workplace sexual harassment.

Similarly, an "Employee" under the Act is a person employed at a workplace for any work on a regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied. The definition includes co-workers, contract workers, probationers, trainees, apprentices, or persons called by any other such name.

Finally, the Act defines "Workplace" to include not only the usual place of employment but any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey.

## INVESTIGATION OF COMPLAINTS

In one of its most novel aspects, the Act requires that all employers of a Workplace having more than ten (10) Employees set up an Internal Committee to investigate allegations of harassment.

The Internal Committee must include:

- 1) *A presiding officer who shall be a woman employed at a senior level at the workplace;*
- 2) *Not less than two members preferably committed to the cause of women or who have had experience in social work or have legal knowledge; and*
- 3) *One member from a non-governmental organization or association committed to the cause of women or a person familiar with the issues relating to sexual harassment.*

In addition, as per the Act, at least half the members of the Internal Committee must be women. The presiding



officer and other members of the Internal Committee are to hold office as members of the Internal Committee for a period to be specified by the employer, not to exceed three years. The member from a non-governmental organization or association committed to the cause of women or person familiar with issues relating to sexual harassment should be paid a fee or allowance as specified by the Rules for participation in the proceedings of the Internal Committee.

During the pendency of an inquiry under the Act and on a written request made by an Aggrieved Woman, the Internal Committee may recommend to the employer certain interim measures that could be taken for the protection of the Aggrieved Woman until the matter is resolved. The interim relief that may be granted includes:

- 1) *Transfer of the Aggrieved Woman or respondent to any other workplace;*
- 2) *Grant of leave to the Aggrieved Woman up to a period of three months (such leave is in addition to the paid leave that the Aggrieved Woman is entitled to under other applicable laws); and*
- 3) *Restraining the respondent from reporting on the work performance of the Aggrieved Woman or writing confidential reports and assigning the same to another person.*

## REMEDIAL MEASURES TO BE TAKEN BY EMPLOYERS

After the completion of an inquiry under the Act, the Internal Committee has to provide a report of its findings to the employer within a period of 10 days. The report should also be made available to the Aggrieved Woman and respondent.

*In cases where the Committee recommends compensation, it may propose that the employer deduct from the salary or wages of the respondent such sum as it considers appropriate. . . .*

In cases where the Internal Committee concludes that the allegation against the respondent has not been proved, it is required to make a recommendation to the employer that no action should be taken. However, in cases where the Internal Committee concludes that the allegation against the respondent has been proven, it is required to make a recommendation to the employer to take action in the manner prescribed by the Rules. The Rules provide for measures such as requiring the respondent to provide a written apology, warning the respondent, reprimand or censure of the respondent, withholding of promotion, withholding of pay rise or increments, termination of service of the respondent or requiring the respondent to undergo a counselling session or carry out community service, and payment of compensation to the claimant. In cases where the Internal Committee recommends compensation, it may propose that the employer deduct from the salary or wages of the respondent such sum as it considers appropriate to be paid to the Aggrieved Woman or her legal heirs.

The Act requires the employer to act upon the recommendation within sixty (60) days of its receipt from the Internal Committee. The Aggrieved Woman or respondent, if aggrieved by the recommendations made by the Internal Committee or their non-implementation by the employer, may appeal to the authority prescribed by the Rules within a period of ninety (90) days of the recommendations.

## OTHER DUTIES OF THE EMPLOYER

The Act imposes the following additional duties on the employer:

- 1) *To provide a safe working environment, which includes safety from other persons;*



*The Act marks  
an important milestone  
in the path toward  
eliminating workplace  
sexual harassment  
in India.*

- 2) *To display, at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the Internal Committee under the Act;*
- 3) *To promulgate policies, organize workshops and awareness programs at regular intervals for informing employees of the provisions of the Act, and to conduct orientation programs for the members of the Internal Committee in the manner prescribed by the Rules;*
- 4) *To provide necessary facilities to the Internal Committee for dealing with complaints and conducting inquiries;*
- 5) *To assist in securing the attendance of the respondent and other witnesses before the Internal Committee;*
- 6) *To make all relevant information available to the Internal Committee in relation to a complaint under the Act;*
- 7) *To provide assistance to the Aggrieved Woman if she chooses to file a complaint in relation to the offense under the IPC or any other law;*
- 8) *To initiate action under the IPC or any other law against the respondent, or if the Aggrieved Woman so desires, in cases where the respondent is not an Employee, in the Workplace at which the incident of sexual harassment took place;*
- 9) *To treat Sexual Harassment as misconduct under the service rules and initiate action for the same; and*
- 10) *To monitor the timely submission of reports by the Internal Committee.*

The Internal Committee is required to submit an annual report to the employer in a form prescribed by the Rules. In addition, the Employer is required to include details on the number of cases filed under the Act and their disposal in an annual report to or in a disclosure to the District Officer (an authority under the Act).

## PENALTIES FOR NON-COMPLIANCE

Non-compliance with the Act is punishable with a fine of INR 50,000 in the first instance. While repeated violations are likely to result in higher financial penalties, the Act also provides the power to the Government to cancel an employer's license or registration to do business in cases of repeated violations, at the Government's sole discretion. Although the financial penalties may not be significant to employers, the Government's power to cancel business licenses for repeated violations goes a long way in ensuring compliance.

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The Act marks an important milestone in the path toward eliminating workplace sexual harassment in India. While many of the requirements of the new law parallel policies which most multinationals have already implemented globally, the unique approach India has adopted in its broad definition of responsible parties, its process for investigation of complaints, and its assessment of compensation directly against individuals merit special attention from global employers with operations in India.

<sup>1</sup> JT 1997 (7) SC 384.

This newsletter was prepared by:



Avik Biswas

RDA Legal

TEL: (+91) 9916140546

E-MAIL: [avik.biswas@rdalegal.in](mailto:avik.biswas@rdalegal.in)



John Sander

Jackson Lewis P.C.

TEL: (212) 545-4000

E-MAIL: [john.sander@jacksonlewis.com](mailto:john.sander@jacksonlewis.com)



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Editor: Carrie L. Jabinsky, Esq.

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