

**Salient Features of the Sexual Harassment of Women at Workplace
(Prevention, Prohibition and Redressal) Act, 2013, &
the Rules made thereunder**

1. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, aims at prevention of sexual harassment at various work places. The said Act has come into force on 22.4.2013. In exercise of the powers conferred by Section 29 of the said Act, the Central Government has made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, for carrying out the provisions of the said Act.
2. The Act directs the employer to constitute an Internal Complaints Committee to look into the complaints of sexual harassment of women at workplace. As defined in Section 2(g) of the Act, an 'employer' means the head of an establishment.
3. For the purposes of this Act,
 - 'Aggrieved woman' means a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the Respondent [Section 2(a)(i)].
 - 'Employee' means a person employed at workplace for any work on 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 or working on a voluntary basis or otherwise, whether the terms of employment are expressed or implied, and also includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name [Section 2(f)].
 - 'Respondent' means a person against whom the aggrieved woman has made a complaint. [Section 2(n)]
4. An act of sexual harassment includes any one or more of the unwelcome acts or behaviour, whether directly or by implication [Section 2(n)]:
 - i) physical contact and advances; or
 - ii) a demand or request for sexual favours; or
 - iii) making sexual coloured remarks; or
 - iv) showing pornography; or
 - v) any unwelcome physical, verbal or non-verbal conduct of sexual nature.

The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment, may also amount to sexual harassment [Section 3(2)];

- i) Implied or explicit promise of preferential treatment in her employment; or
- ii) Implied or explicit threat of detrimental treatment in her employment; or

- iii) Implied or explicit threat about her present or future employment status; or
 - iv) Interference with her work or creating and intimidating or offensive or hostile work environment for her; or
 - v) Humiliating treatment likely to affect her health or safety.
5. In the Internal Complaints Committee, constituted as per Section 4 of the Act, at least 50% of the total members of the Committee shall be women. The Presiding Officer of the Committee is required to be a woman employee working at a senior level at workplace. There will be minimum two employees as member committed to the cause of women or who have had experience of social work or have legal knowledge. There will also be one outside member from amongst non-governmental organizations committed to the cause of women or a person familiar with the issues relating with the sexual harassment. Thus, the Internal Complaints Committee shall have at least four members. Maximum is not prescribed. The term of office of the Presiding Officer and every member of the Committee shall not exceed three years from the date of their nomination, as may be specified by the employer. The member appointed from amongst the non-governmental organization or associations shall be paid fees or allowances for holding the proceedings of the Committee.
6. As per Section 6 of the Act, every District Officer is required to constitute a Local Committee to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.
7. Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Complaints Committee, within a period three months from the date of incident or in case of a series of incidents within a period of three months from the date of the last incident. If an aggrieved woman is unable to make a complaint in writing, the Presiding Officer or any member of the Internal Complaints Committee shall render all reasonable assistance to her for making the complaint in writing. If the Internal Complaints Committee is satisfied that the circumstances were such, which prevented the woman for filing a complaint within a period of three months, the Committee may extend the time limit not exceeding three months, for the reasons to be recorded in writing. [Section 9(1)]
- i) Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by -
 - a) her relative or friend; or
 - b) her co-worker; or
 - c) an officer of the National Commission for Women or State Women's Commission; or
 - d) any person who has knowledge of the incident, with the written consent of the aggrieved woman.

- ii) Where aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by -
 - a) her relative or friend; or
 - b) a special educator; or
 - c) a qualified psychiatrist or psychologist; or
 - d) the guardian or authority under whom she is receiving treatment or care; or
 - e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist or guardian or authority under whom she is receiving treatment or care.
 - iii) Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent and where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir. (Rule 6)
8. The Complainant shall submit six copies of the complaint along with the supporting documents and names and addresses of the witnesses to the Internal Complaints Committee. On receipt of the complaint, the Committee shall send one of the copies to the respondent within a period of seven working days and shall ask the respondent to file his reply to the complaint along with his list of documents and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the complaint by him. The Committee shall have the right to terminate the enquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondents fails, without sufficient cause to prevent herself or himself for three consecutive hearings. Before such termination or ex-parte order, a prior written notice of not less than 15 days shall be given to the party concerned. Legal practitioner is not allowed to represent the case at any stage of the proceedings before the Committee. The quorum for the meeting shall be minimum three members including the Presiding Officer. (Rule 7)
9. The Internal Complaints Committee, before initiating an enquiry and at the request of the aggrieved woman, may take steps to settle the matter between her and the respondent through conciliation. Monetary settlement shall not be a basis of conciliation. Where a settlement has been arrived at, the Committee shall record the settlement so arrived and forward the same to the employer to take action as specified in the recommendations. The Committee shall provide the copies of the settlement to the aggrieved woman and the respondent. Where a settlement is arrived at, no further enquiry is required (Section 10).
10. The Internal Complaints Committee shall make enquiry into the complaint in accordance with the provisions of the Service Rules applicable to the respondent. For the purpose of the enquiry, if the respondent is a non-teaching employee of the university, provisions

of the Maharashtra Civil Services (Conduct) Rules, 1979 and provisions of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, are applicable, and if the respondent is a teacher, provisions of the Teachers' Statutes are applicable. If the Respondent is a student, an enquiry shall be made as per provisions of Ordinance 157 as regards maintenance of discipline and good conduct by students.

Where the aggrieved woman informs the Committee that any term or condition of the settlement arrived at has not been complied with by the respondent, the Committee shall proceed to make an enquiry into the complaint. Where both the parties are employees, they shall be given an opportunity of being heard and a copy of the findings of the Committee shall be made available to them enabling them to make representation against the findings before the Committee [Section (11)].

11. The Internal Complaints Committee functions like a quasi judicial authority and has powers of Civil Court of summoning and enforcing attendance of any person, examining him on own and requiring the discovery and production of documents. The enquiry shall be completed within a period of 90 days. [Section 11(4)]. While conducting enquiry, the Committee has to follow the principles of natural justice.
12. During the pendency of an enquiry, the Internal Complaints Committee, on a written request of aggrieved woman, may recommend to the employer to-
 - i) transfer the aggrieved woman or the respondent to any other workplace; [Section 12(1)(a)] or
 - ii) grant leave to the aggrieved woman up to a period of three months; [Section 12(1)(b)] or
 - iii) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer; [Rule 8(a)] or
 - iv) restrain the respondent from supervising any academic activity of the aggrieved woman [Rule 8(b)].

The employer is required to implement the above said recommendations of the Committee and send the report of such implementation to the Committee. [Section 12(3)]

13. On completion of the enquiry, the Internal Complaints Committee shall provide a report of its findings to the employer, within a period of 10 days from the date of completion of the enquiry and such report shall be made available to the concerned parties also. Where the Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter. Where the Committee arrives at the conclusion that the allegation against the

respondent has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the relevant provisions of the service rules and to deduct from the salary or wages of the Respondent such sum as it may considered appropriate to be paid to the aggrieved woman or to her legal heirs. [Section 13]

As per Rule 9, except in cases where services rules exist, the Internal Complaints Committee shall recommend to the employer the punishment to be imposed upon the Respondent, if the allegations against him have been proved. Therefore, in cases where service rules exist, the Internal Complaints Committee does not recommend the punishment to be imposed upon the Respondent. In such cases the Internal Complaints Committee should recommend to the employer to take action for sexual harassment as misconduct in accordance with the provisions of the service rules applicable to him.

The employer is required to implement the above said recommendations of the Committee, within sixty days of its receipt by him.[Section 13(4)]

14. Where the Internal Complaints Committee arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made a false complaint or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer, to take action against the woman or the person who has made the complaint, in accordance with the provisions of the service rules applicable to her or him. [Section 14(1)]
15. Where the Internal Complaints Committee arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness, to take action in accordance with the provisions of the service rules applicable to the said witness. [Section 14(2)]
16. For the purpose of determining the sums to be paid to the aggrieved woman, the Internal Complaints Committee shall have regard to-
 - i) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
 - ii) the loss in the career opportunity due to the incident of sexual harassment;
 - iii) medical expenses incurred by the victim for physical or psychiatric treatment;
 - iv) the income and financial status of the respondent;
 - v) feasibility of such payment in lump sum or in instalments.[Section 15]

17. Notwithstanding anything contained in the Right to Information Act, 2005(22 of 2005), the contents of the complaint made under Section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Complaints Committee and the action taken by the employer shall not be published, communicated or made known to the public, press and media in any manner. However, information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken, contravenes these provisions, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person. [Section 16] The employer has power to recover a sum of Rs. 5,000/- as penalty from such person. (Rule 12)
