

eMagazine

Bonus Issue

*Human
Brands*

**“Act”
to prevent
Sexual Harassment
of women
at
workplace**





Mysore Chapter

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Message from Chairman



Dear Readers,

It is a great pleasure to extend my heartfelt greetings.

I recall our Chief Guest Colonel (Rtd.) G M Devaya's words on the day of republic day last month, "A company secretary holds office based on the concept of independence and trust, reflecting the confidentiality of the role. Company Secretary is key to the application of best practice in corporate governance which is increasingly critical to an organisation's reputation and success." He advised students to get prepared to take up such role successfully.

Mysore Chapter has planned to organize a two days' seminar on 1st and 2nd March 2014. We invite all members to attend this 2 days seminar and make it a success. Students at Mysore chapter have started their preparation for the Annual event of the chapter on 16th March, 2014, *Umang 2014*. I request students to volunteer and participate in various competitions & activities and enhance their organising and management skills.

For the students awaiting results this month, I wish all success and good luck.

Yours in CS fraternity,
Ajay Madaiah B.B.

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Column on
Industrial and Employment laws

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The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 – An Analysis

Sexual harassment is an act that creates a hostile working environment which may be by way of cracking lewd jokes, verbal or physical abuse, circulating lewd rumors etc. Though, India had signed and ratified Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) way back in 1993, we did not have a specific legislation to address the issue of sexual harassment at Workplace. Till 1997, facing victim of sexual harassment at the workplace had to lodge a complaint under Section 354¹ and 509² of the Indian Penal Code 1860. However, scenario changed when Supreme Court stipulated the famous Vishaka Guidelines through its landmark judgment in *Vishaka and others v State of Rajasthan*³.

Further, Court observed that, the consideration of "CEDAW and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein." Vishaka guidelines defined sexual harassment and codified preventive measures and redressal mechanisms to be undertaken by employers. Accordingly, Government of India passed the Sexual Harassment of Women at Workplace (Prevention, prohibition & Redressal) Act⁴, to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or

incidental thereto, and the same has been made effective on December 9, 2013⁵.

The Act will ensure that women are protected against sexual harassment at all the Workplaces, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth⁶.

Key Features of the Act

Sexual harassment at Workplace

The Act defines *sexual harassment* to include unwelcome sexually determined behavior such as physical contact, request for sexual favours, sexually coloured remarks, screening of pornography, or any other conduct of sexual nature (Sec 2(n)). It may further include any promise of preferential treatment, threat of detrimental treatment, hostile work environment, or humiliating conduct constituting health and safety problems (Sec 3(2)).

Workplace, Employer, Employee

Workplace is defined to include all organizations, and any other places visited by an employee during the course of work (Sec 2(o)) and it covers every woman at the work

¹ Criminal assault of women to outrage women's modesty

² Assault or criminal force to woman with intent to outrage her modesty

³ Word, gesture or act intended to insult the modesty of a woman

⁴ Hereinafter the Act

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⁵ Gazette Notification dated December 9, 2013

⁶ Press Information Bureau, Government of India (Dated November 4, 2010). Protection of Women against Sexual Harassment at Workplace Bill, 2010, last accessed on December 12, 2013.

place whether employed or not (Sec 2(f)). Further, the Act defines employer as the person responsible for the management, supervision and control of the work place (Sec 2 (g)).

Internal Complaints Committee & Other Local Committees

The Act insists upon the formation of an Internal Complaints Committee in every workplace, as per the provisions of Section 4. It further provides that, where the offices or administrative units of the workplace are located in various places, Internal Complaints Committee shall be constituted in all such units.

The Act empowers the District Officer to constitute district wise Local Compliant Committees. Such Local Committee shall include an eminent woman who is working in the area of Social Work and committed towards the cause of women, as the Chairperson, and two members from an NGO committed to the cause of women (Sec 9).

Duties of Employer

Under Chapter VI, Section 19, every employer has to;

- a. Provide a safe working environment at workplace;
- b. Constitute an Internal Complaints Committee and conspicuously display the order constituting the Committee;
- c. Organize workshops and other training programmes at regular intervals for sensitizing employees;
- d. Provide assistance during any inquiry;
- e. Initiate actions against the perpetrator; and
- f. Provide assistance to the women if, she prefers to file complaint under the provisions of Indian Penal Code.

Redressal mechanisms: Complaint filing & Inquiry

Chapter IV of the Act prescribes the procedures to be followed in filing complaint. Under the provisions of this Act, aggrieved women shall make a complaint in writing to the Internal Complaint Committee within *three months* of the last incident. In case the women is not in a position to file complaint due to her physical or mental incapacity, death or otherwise, her legal heir shall file the complaint. In the absence of Internal Complaint Committee, complaint shall be filed with the Local Committee (Sec 9).

The Committee is required to complete the inquiry within a time period of three months. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be. They are mandated to take action on the report within two months. On request from the complainant, the committee shall provide for

conciliation (Sec 10). Complainant may also seek other remedies, including initiating criminal proceedings under the provisions of any other laws in existence.

Penalty & Appeal

The Committee shall recommend penalties for sexual harassment as per service rules applicable or the Rules under the Act, in case the allegations are proved. Besides, the Committee may provide for monetary compensation to the complainant. Further, whoever contravenes the provisions of Section 16⁷, shall be punished with a fine of Rs. 5000/- (Sec 17). Any person aggrieved by the recommendations of the Committee, shall appeal within 90 days of the recommendations. All such appeal shall be preferred to a Court/Tribunal (Sec 18).

Analysis & Major Issues

1. Act insists upon the employer to constitute an Internal Complaints Committee at every unit. Practically, it may be impossible for big employers.
2. Definition of employee is in its wider sense. Hence, it could be interpreted that, even a “domestic worker” who is working at home shall come under the protection of this Act.
3. Each Internal Committee requires membership from an NGO or association committed to the cause of women. This implies that every unit in the country needs to have one such person in the Committee. 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 available⁸.
4. Act doesn’t provide the maximum number of members which shall form part of the Committee.
5. The Internal Complaints Committee has been given powers of a civil court for summoning, discovery and production of documents etc. however, the composition of the Internal Committee does not require any member to have a legal background. Moreover, the Act 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.

⁷ Prohibition of Publication or making known contents of complaint and inquiry proceedings

⁸ PRS Legislative Brief, The Protection of Women against Sexual Harassment at Work Place Bill, 2010 available at <http://www.prsindia.org/uploads/media/Sexual%20Harassment/Legislative%20Brief%20-%20Sexual%20Harassment%20-%2020May11.pdf> last accessed on December 12, 2013.

6. Act provides that every District Officer shall constitute a Local Complaints Committee in the district. However, jurisdiction and functions of these committees have not been detailed. It is also unclear whether the block or taluk level committees are permanent committees or temporary ad hoc committees constituted for dealing with specific cases only.
7. Act provides that in case a committee is of the opinion that the allegation was false or malicious, it

may recommend that action be taken against the woman who made the complaint. However, the provision 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 provision penalises every false complaints, which may not be malicious. This could deter women from filing complaints.

POSH Act 2013 – A brief Analysis

Continued from page 8

The contents of the complaint made; the identity and addresses of the Complainant, Respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC and the action taken on the Respondent shall not be published, communicated or made known to the public, press and media in any manner. If the same is violated, the employer shall recover a sum of Rupees five thousand as penalty from such person or take action as per the provisions of the service rules. Upon conclusion of inquiry, based on the recommendations of the ICC, the punishment can include written apology, reduction in increments and for repetitive behavior, the punishment can also extend to termination of services.

The POSH Act 2013 is a much awaited development and a significant step towards ensuring women a safe and healthy work environment. However listed below are some issues:

- The POSH Act 2013 is gender specific and not “gender neutral”. Male employees cannot claim protection or relief under the law.
- The definition of the 'sexual harassment' does not cover the words 'verbal, textual, physical, graphic or electronic actions' which would have covered some of the technological developments.
- Constitution of ICC at "all administrative units or offices" poses a big challenge especially having regard to training the Committee members.
- The POSH Act, 2013 allows the ICC to recommend to the employer to deduct from the respondent's salary such sums it may consider appropriate to be paid to the aggrieved woman. However, corresponding changes to the Payment of Wages Act, 1936, which restricts the nature of deductions that may be made from an employee's salary is awaited.

IP Now! Human Brands

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The Tatas' could prove that the name “Tata” is well known brand and that the name stood for various positive attributes and legacy epitomised both by the respective Chairmen who headed the conglomerate over a long period of time has widely enhanced the business track record of the group. Based on the submission it was ruled that the domain name registration was done in bad faith and was ordered to be transferred to Tatas'.

Hence registration of celebrity names as trademarks establishes the ownership as against any mischief against cyber squatting, wrong and misleading association with products or services.

The concept of seeking protection to Human Brands in the realm of celebrity endorsements and public performances throws up lots of challenges under different fields of Intellectual Property. The celebrity's name, voice could be protected under the Trade Marks Act, 1999, the celebrity's well known attribute, style, performance can be protected under the Performers Rights within the meaning of the Copyright Act, 1957, a celebrity's unique garment design known for a character role or public appearance etc can be protected under the Designs Act, 2000.