

NATIONAL COMMISSION FOR WOMEN

NCW

Sexual Harassment of Women at their Work Place (Prevention) Bil, 2000

A Bill to provide for the prevention of sexual harassment of women employees at their work places by their employers, superiors, colleagues or by any one connected with the work place and matters connected therewith.

Be it enacted by Parliament in the Fiftieth year of the Republic of India as follows:-

Short title extent and commencement

1. (i) This Act may be called the Sexual Harassment of Women at their Work Place (Prevention) Act, 2000
(ii) It extends to the whole of India
(iii) It shall come into force with immediate effect.
2. In this Act, unless the Context otherwise requires-

Definition

- (a) "Appropriate Government" means in relation to the Centrally owned undertakings or departments, the Central Governmental and in relation to the other undertakings and departments, the State Government
- (b) Employer means:-
 - (i) In relation to an establishment which is under control of the Appropriate Government a person or authority appointed by the Appropriate Government for the supervision and control of employees or where no person or authority is appointed the head of the department.
 - (ii) In relation to an establishment under any local authority, the person appointed by such authority for the supervision and control of employees or where no person is so appointed the Chief Executive Officer;
 - (iii) In any other case, the person who or the authority which, has the ultimate control over the affairs of establishment or house and where such affairs are entrusted to any other person whether called a Manager, Managing Director, Managing Agent or by any other name, such person:

- (c) "Sexual harassment" includes any act of verbal or gestural sexual advances, sexually explicit and derogatory statements or remarks, unwelcome sexually determined behaviour as avoidable physical contacts and advances, touching or patting, suggestive remarks, pinching, whistling, staring, sexually slanted and obscene jokes, comments about physical appearance, compromising invitation, use of pornographic material, demands for sexual favours, threats, innuendoes, physical assault and molestation of and towards women workers by their male superiors, colleagues or anyone who for the time being is in a position to sexually harass the women workers.

Women & Children

- (d) "Woman" means and includes a woman employed, whether directly or through any agency, for wages or for similar other considerations in any establishment, house or industry;

- (e) "Work place: means-

- (i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an agricultural field;
- (v) a hospital or nursing home;
- (vi) a shop or business establishment;
- (vii) a brick kiln;
- (viii) a construction site;
- (ix) any banking establishment;
- (x) any Government, semi Government establishment or department including telegraph office, post office, telephone exchange etc;
- (xi) any private office or house;
- (xii) any school, college, university or like institution
- (xiii) any establishment wherein persons are employed for exhibition of equestrian, acrobatic and other performances;
- (xiv) any other such place, where a woman is working;

Punishment for sexual harassment of women

- 3 Notwithstanding anything contained in the Indian Penal Code or any other law for the time being in force whoever sexually harasses a woman at a work place shall be punished with simple imprisonment for a term which may extend to twenty thousand rupees or with both.

Burden of Proof

- 4 Notwithstanding any thing contained in any other law for the time being in force the onus of proving the innocence shall be on the accused and the sexually harassed woman shall have the right to lead evidence in rebuttal.

Joint responsibility of employer in office of sexual harassment.

- 5 Notwithstanding anything contained in any other law for the time being in force if an act of sexual harassment is committed at a work place the supervisor, manager and managing Director or employer shall have the joint responsibility towards the commission of sexual harassment in the organisation and section 34 of the Indian Penal Code shall be made, applicable in their case.

Pleading in case of harassed women worker

- 6 Notwithstanding anything contained in any other law for the time being in force the case of a sexually harassed woman at a work place shall be pleaded either by herself or with her consent by women's organisation or the trade union of which she is a member.

Trial to be held in camera

- 7 The trial of an offence committed under this Act shall be held in camera if the harassed woman so desires.

Criminal Proceedings

- 8 Where the conduct of sexual harassment amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate action in accordance with law by making a complaint with the appropriate authority ensuring 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

- 9 - Where the conduct of sexual harassment amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer, in accordance with these rules.

Complaint Mechanism

- 10 - Whether or not such action constitutes an offence under law or a breach of the service rules, a complaint mechanism as stated in sub-section (I) of section (II) shall be created in the employer's organisation for redressal of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

Complaints Committee

11. (i) A complaints committee shall be constituted consisting of five members headed by a woman and not less than half of its members shall be women.
- (ii) It shall include a non-governmental organisation or other body who is familiar with the issue of sexual harassment.
- (iii) It shall make an annual report to the Government department concerned, of the complaints and action taken by them.

Workers Initiative

12. Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate forum, and it should be affirmatively discussed in employer-employee meetings.

Third party harassment

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

Special Officer to deal with cases in the Government offices

14. (1) The appropriate government shall designate an officer, who shall be a woman as far as may be, as it may deem fit, to be the Special Officer in every department or office under its jurisdiction to deal with cases arising out of this Act..
- (2) The Special Officer so designated under sub-section (1) shall deal with complaints lodged by female employees in her department or office or establishment and shall forward it to the Complaint Committee, constituted under section 11, for investigation.

District Level Officer every district

15. The appropriate government shall appoint a District level Officer, who shall be a woman, as far as may be, other than those covered under section 14(1), for every district to deal with cases arising out of provisions of this Act within the jurisdiction of that district.

Discussions on the sexual harassment bill drafted by NCW

Subject: Discussion on the sexual harassment bill drafted by NCW

Date: Thu, 25 Oct 2001 10:11:38 +0000

From: "saheli women" <saheliwomen@hotmail.com>

To: nilanjanabiswas@yahoo.com, nirmala.karunan@dialb.greenpeace.org, adiniv@vsnl.com, nsm@pn3.vsnl.net.in, olakh@satyam.net.in, pamela@del3.vsnl.net.in, pbaxd@satyam.net.in, pudrdelhi@yahoo.com, chetana@cal2.vsnl.net.in, sakhi@md2.vsnl.net.in, sandhyagokhale@yahoo.com, sanskruti123@yahoo.com, shomasen@yahoo.co.in, sabbbar@vsnl.com, s.sakshi@mailcity.com, streesangam@rediffmail.com, sujatagothoskar@hotmail.com, svati@nda.vsnl.net.in, suswaru@roitanet.com, tarshi@vsnl.com, helmut@glasmd01.vsnl.net.in, lara1984@bom5.vsnl.net.in, saryajni@pn3.vsnl.net.in, amarvg@del3.vsnl.net.in, womcentr@vsnl.com, aidwa@del2.vsnl.net.in, nfiwdelhi@yahoo.com, sangini97@hotmail.com, ankureducation@vsnl.net, ics@bnpl.com, gmbn@bom2.vsnl.net.in, rimi221@rediffmail.com, nawo@ndf.vsnl.net.in, alforum@vsnl.net, tanu_10us@yahoo.com, sharmadeepti@hotmail.com

Dear Friends,

We have tried to put together a few issues of concern that have been raised regarding the Draft Bill on sexual harassment at the work place formulated by the NCW.

You may be aware that many groups have been debating the loopholes in the proposed bill, these groups include:

Human Rights Law Network; Olakh, Baroda; Gujarat Forum for Women Studies and Action Groups, Baroda; Women's Centre, Mumbai; India Centre for Human Rights and Law, Mumbai; Adhikaar; Sanhita; Y.W.C.A, Mumbai; IWID, Mumbai; Sahiyar, Gujarat; Special Cell for Women and Children; Bailancho Saad, Goa; Asmita, Secunderabad; Sakhya, Mumbai; Forum Against Oppression of Women, Mumbai; SNDT University, Mumbai; Hengasara Hakka Sangha, Bangalore; Streevedi, Kerala; AIDWA, Chennai; Vividha, Rajasthan; Chetana, Allahabad; Women's Struggle Committee, Chennai; All India Co-ordination Committee of working women, TN; Sakhya, Mumbai.

In addition, many meetings amongst women's groups in Delhi have been held on this issue and the below mentioned letter to NCW broadly summarise concerns raised by all these groups.

Many of you have been working on this issue for the past few years and some of you have already raised this issue with the NCW. But we feel that at this juncture a nation wide debate must take place, and the current bill cannot be passed in its present shape. Specifically, experiences of women's groups working in the informal sector must be included. Please endorse the letter pasted below so that our stand point can be forcefully communicated to NCW, and the current bill is not passed without in-depth deliberations with groups from all over the country who are working on the issue of sexual harassment at work place.

If you would like any other point to be included in the letter, please give your feed back and suggestions by 3rd November 2001. Currently, the letter has been endorsed by Saheli, Gujarat Forum for Women Studies and Action Groups, Jagori, Sama, Nirantar, Lawyers Collective - Women Rights Initiative, Human Rights Law Network and Partners in Law and Development.

In case you feel that we have missed out any group or individual, please feel free to forward this letter to them. In case you wish to have a copy of NCW's draft bill, please write to us and we will forward the same.

Looking forward to hearing from you.

In Solidarity,

Laxmi Murthy and Deepti Sharma
(For Saheli)

LETTER TO NCW:

To,

Vibha Parthasarthi
Chairperson
National Commission for Women
New Delhi

Madam,

This is with reference to the proposed bill on Sexual Harassment at the Workplace circulated by you. We sum up for you several reservations expressed by women's groups.

As you are aware many women's groups have expressed grave reservations over the passing of such a bill in the absence of extensive consultations. We would like to point out that these reservations come in the wake of our experiences over the last few years while working on the issue of sexual harassment, and we think that these have to be taken into account before a law is formulated. Failing that, we believe a law dealing with sexual harassment can have serious and negative implications for working conditions for women all over the country. Therefore, more widespread consultations need to be held. Women's groups in various parts of the country have to be contacted for this.

- The preventive aspect is not highlighted in the Bill, as it was in the Vishakha judgement. This is the most important aspect of the issue, since all workplaces must take responsibility for generating awareness about sexual harassment and making the workplaces safe for women.
- The bill must be preceded by preambular objectives which states the position on sexual harassment at the workplace and the purpose this special law seeks to serve, in order to guide interpretations and application of the law and provides crucial space to endorse CEDAW obligations/ women's human rights and the government's commitment to fulfilling it through such a bill.
- In addition to the substantive aspects, certain procedural matters also have to be taken into consideration, specifically keeping in view the practical experiences of women's groups; for instance the absence of eyewitnesses or delay in filing the complaint should not be the ground for disbelieving the complaint.
- Definition of workplace needs to be thoroughly thought through in order to include all categories of working women.
- As it stands the provisions of the draft bill address the organised sector. However, the majority of women in the workforce belongs to the informal or unorganised sector. Unless a framework for addressing sexual harassment in the informal sector is incorporated the bill will fail to address the realities of a large bulk of women.
- A checklist of minimum non- negotiable of a legislation on sexual harassment of women at workplace has to be drawn out. Workplace and sexual harassment have to be defined very carefully.
- The definition of sexual harassment in the present draft is problematic and is unacceptable. For example, the term 'avoidable' in the definition should be replaced with 'unwanted'.
- There is a lot of confusion between the civil and criminal procedure in the bill in its present form. The full scope of civil law on the issue has to be explored further. The nature and impact of the criminal penalties need further discussion for clarity on which of the two options meet our objectives best. The bill needs to explore civil law to mandate the participation of employers, organisations, trade unions in not only