

# Legislative Brief

## The Protection of Women Against Sexual Harassment at Work Place Bill, 2010

The Bill was introduced in the Lok Sabha on December 7, 2010.

The Bill has been referred to the Parliamentary Standing Committee on Human Resource Development (Chairperson: Shri. Oscar Fernandes), which is scheduled to submit its report on June 30, 2011.

### Recent Briefs:

The Direct Taxes Code Bill, 2010  
April 21, 2011

The Judicial Standards and Accountability Bill, 2010  
March 18, 2011

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**May 20, 2011**

### Highlights of the Bill

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

## PART A: HIGHLIGHTS OF THE BILL

### Context

India has signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). However, India does not have a specific law to address the issue of sexual harassment of women at the place of work. Currently, the Indian Penal Code (IPC) covers criminal acts that outrage or insult the 'modesty' of women. It does not cover situations which could create a hostile or difficult environment for women at the work place.

In 1997 as part of the Vishaka judgment, the Supreme Court drew upon the CEDAW and laid down specific guidelines on the prevention of sexual harassment of women at the work place.<sup>1</sup> The Vishaka guidelines defined sexual harassment and codified preventive measures and redressal mechanisms to be undertaken by employers.

A draft Bill was circulated by the Ministry of Women and Child Development for public feedback in 2007. The current Bill establishes a framework to be followed by all employers to address the issue of sexual harassment.

### 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 Bill 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 Bill 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 Bill 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.

## PART B: KEY ISSUES AND ANALYSIS

### Feasibility issues in the composition of the Internal Complaints Committee

#### Constitution of an internal committee at each administrative unit

- Clause 4 (1) The Bill requires that every office or branch with 10 or more employees constitute an Internal Complaints Committee. This requirement differs from the one proposed in the draft Bill circulated by the National Commission for Women (NCW) in 2010.<sup>2</sup> The NCW draft Bill prescribed that if units of the work place are located at different places, an Internal Committee shall be constituted 'as far as practicable' at all administrative units or offices. A similar requirement was laid down in the 2007 draft Bill circulated by the Ministry of Women and Child Development.<sup>3</sup>

#### NGO representation in Internal Committees

- Clause 4 (2) Each Internal Committee requires membership from an NGO or association committed to the cause of women. This implies that every unit in the country with 10 or more employees needs to have one such person in the Committee. As per the Economic Census 2005, there are at least six lakh establishments that employ 10 or more persons.<sup>4</sup> 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 available.

#### Bar on engagement in additional paid employment

- Clause 4 (5) No member of the Internal Committee is allowed to engage in any paid employment outside the duties of her office. This implies that even the external person in the Committee (who is with an NGO) may not hold any other part-time employment. It is not clear why this condition has been prescribed.

#### Powers of a civil court

- Clause 11 (2) The Internal Complaints Committee has been given powers of a civil court for summoning, discovery and production of documents etc. The composition of the Internal Committee does not require any member to have a legal background. Moreover, the Bill 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.

### Ambiguous guidelines for the constitution of the Local Complaints Committee

- Clause 6 Two different bodies are called 'Local Complaints Committee.' The Bill provides that every District Officer shall constitute a Local Complaints Committee in the district. It also prescribes that an additional Local Complaints Committee shall be constituted at the block level to address complaints in certain cases.

The jurisdiction and functions of these committees have not been delineated. It is also unclear whether the block level committees are permanent committees or temporary ad hoc committees constituted for dealing with specific cases.

## Availability of Protection Officers

- Clause 7 (1) The Bill prescribes that a Protection Officer (PO), appointed under the Domestic Violence Act, 2005, shall be a member of the Local Complaints Committee. These Local Committees shall be established at the district level and may also be set up at the block level.

There is wide variation across states in the number of POs appointed per district.<sup>5</sup> For instance, Maharashtra has appointed an average of 98 POs per district. Bihar, on the other hand, has appointed one PO for every two districts. This could lead to unavailability of POs in some areas for appointment to the Local Complaints Committees.

## Scope for misuse of some provisions

### Punishment for false *or* malicious complaints

- Clause 14 (1) The Bill provides that in case a committee arrives at a conclusion that the allegation was false *or* malicious, it may recommend that action be taken against the woman who made the complaint. The clause 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 clause penalises even false complaints (which may not be malicious). This could deter women from filing complaints. Recent Bills such as the Public Interest Disclosure Bill, 2010 (commonly known as the Whistleblower's Bill), penalise only those complaints that are mala fide *and* knowingly false.<sup>6</sup> The National Advisory Council (NAC) has recommended that the entire clause be removed as it might deter victims from seeking protection of the proposed legislation.<sup>7</sup>

## Exclusion of domestic workers

- Clause 2 (e) The definition of 'employee' specifically excludes 'domestic workers working at home'. The draft Bill circulated by the Ministry in 2007<sup>3</sup> and that circulated by the NCW in 2010,<sup>2</sup> both included this category of employees in the definition.

The NAC recommended that the Bill should be applicable to domestic workers as these employees, 'especially live-in workers, are prone to sexual harassment and abuse, without access to any complaint mechanism or remedial measures.'<sup>7</sup> However, the government stated that 'it may be difficult to enforce the provisions of the Bill within the privacy of homes and it may be more practical for them to take recourse to provisions under criminal law.'<sup>8</sup>

## International experience

Sexual harassment is a form of illegal employment discrimination in many developed countries including the US, UK and the European Union countries.<sup>9</sup> In these domains, the definition of sexual harassment includes employer-employee relationship as well as a hostile work environment. This is similar to the current Bill. However, those laws differ in one important aspect, in that they are gender neutral. This Bill provides protection only to women, and not to men.

### Notes

1. Vishaka and others V. State of Rajasthan and others [1997 (6) SCC 241]
2. Revised Draft Bill, 'The Prohibition of Sexual Harassment of Women at Workplace Bill, 2010', National Commission for Women, [http://ncw.nic.in/PDFFiles/sexualharassmentatworkplacebill2005\\_Revised.pdf](http://ncw.nic.in/PDFFiles/sexualharassmentatworkplacebill2005_Revised.pdf)
3. Draft Bill, 'The Protection of Women against Sexual Harassment at Workplace Bill, 2007', Ministry of Women and Child Development, <http://wcd.nic.in/protshbill2007.htm>
4. 5th Economic Census (2005), Ministry of Statistics and Programme Implementation, [http://www.mospi.gov.in/index\\_6june08.htm](http://www.mospi.gov.in/index_6june08.htm)
5. 'Agenda No. 7 Review of implementation of Protection of Women from Domestic Violence Act, 2005', Ministry of Women and Child Development, June 16, 2010, [http://wcd.nic.in/agenda16062010/agenda\\_16062010\\_item7.pdf](http://wcd.nic.in/agenda16062010/agenda_16062010_item7.pdf)
6. Clause 16 of The Public Interest Disclosure and Protection to Persons Making the Disclosures Bill, 2010
7. Press release, National Advisory Council, January 10, 2011, [http://nac.nic.in/press\\_releases/10\\_january\\_2011.pdf](http://nac.nic.in/press_releases/10_january_2011.pdf)
8. Rajya Sabha unstarred Question 3706, answered on December 13, 2010
9. The Civil Rights Act of 1964, United States; Sex Discrimination Act (1975) and Employment Rights Act (1996), United Kingdom; Sexual Harassment in the Workplace in EU Member States, Government of Ireland, 2004

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