

Bill No. 144 of 2010.

**THE PROTECTION OF WOMEN AGAINST SEXUAL HARASSEMENT AT
WORK PLACE BILL, 2010.**

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**THE PROTECTION OF WOMEN AGAINST SEXUAL HARASSMENT AT
WORKPLACE BILL, 2010.**

**A
BILL**

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.

whereas sexual harassment results in violation of the fundamental rights of woman to equality under article 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

and whereas the protection against sexual harassment and the right to work with dignity and universally recognized human rights by international conventions and instruments such as Conventions on the Elimination of all Forms of Discrimination against women, which has been ratified on the 25th June, 1993 by the government of India.

and whereas it is expedient to make provisions for giving effect to the said convention for protection of women against sexual harassment at workplace.

Chapter I

Preliminary

1. (1) This act may be called the Protection of women against Sexual Harassment at Workplace Act, 2010.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires, -

(a) “aggrieved woman” in relation to a workplace means of woman, of any age, who alleges to have been subjected to any act of sexual harassment by the Respondent and includes a woman whether employed or not;

(b) “appropriate Government” means –

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly –

(A) by the Central Government or the Union territory administration, the Central Government:

(B) by the state government, the state government.

(ii) in relation to any workplace not covered under sub section (i) and falling within its territory, the state government.

(c) “chairperson” means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) “District Officer” means an officer notified under section 5.

(e) “employee” means a person employed at a workplace for any work on regular, temporary, as 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 express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name; but does not include, domestic worker working at home.

(f) “employer” means –

(i) in relation to any department, organization, undertaking, establishment, enterprises, institutions, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise,

institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf.

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

(g) “Internal committee” means an Internal Complaints Committee constituted under section 4;

(h) “local Committee” means the local Complaints Committee constituted under section 6.

(i) “Member means a member of the Internal Committee or the local committee, as the case may be.

(j) “prescribed” means prescribed by rules made under this Act,

(k) “Presiding Officer” means the Presiding Officer of the Internal Complaints Committee nominated under sub section (2) of section 4.

(l) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9;

(m) “sexual harassment” includes such unwelcome sexually determined behaviour (whether directly or by implication) as –

- i. physical contact and advances; or
- ii. a demand or request for sexual favours.
- iii sexually coloured remarks;
- iv showing pornography; or
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(n) “workplace” includes –

(i) any department, organization, undertaking, establishment, enterprise, institutions, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds

provided directly or indirectly by the appropriate Government or the local authority or a government company or a corporation or a co operative society.

(ii) any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, Non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities, including production, supply, sale distribution or services.

(iii) Hospitals or nursing homes.

(iv) any place visited either by air, land, rail or sea by the employee arising out of, or during and in the course of employment.

(o) “unorganized sector” in relation to a workplace means an enterprise owned by individuals or self employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

3. No woman shall be subjected to sexual harassment at any workplace which may include, but is not limited to –

(i) implied or overt promise or preferential treatment in her employment.

(ii) implied or overt threat of detrimental treatment in her employment; or

(iii) implied or overt threat about her present or future employment status; or

(iv) conduct of any person which interferes with her work or creates an intimidating or offensive or hostile work environment for her, or

(v) humiliating conduct constituting health and safety problems for her.

CHAPTER II

Constitution of Internal Complaints Committee

4(1) Every employer of work place shall, by an order in writing, constitute a committee to be known as the “Internal Complaints Committee”

Provided that where the offices and administrative units of the workplace are located at different places or divisional or sub divisional level, the Internal committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely: -

a. A presiding officer who shall be woman employed at a senior level at workplace from amongst the employees.

Provided that in case a senior level woman employee is not available, the presiding officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1).

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the district officers notified under section 5 may nominate a member of the local complaints Committee in that area to act as the Presiding Officers.

b. not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.

c. One member from amongst non-governmental organization or associations committed to the cause of women.

Provided that at least one half of the total Members so nominated shall be women.

(3) The presiding officer and every member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Presiding Officer and Members of the Committee shall be paid such fees or allowance for holding the proceedings of the Internal Committee by the employer as may be prescribed.

(5) Where the presiding Officer or any Member of the Internal Committee, -

(a) contravenes the provisions of section 16, or

(b) is adjudged an insolvent; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

- (d) is unfit to continue in office by reason of infirmity of mind or body;
or
- (e) is of unsound mind and stands so declared by a competent court; or
- (f) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude; or
- (g) has so abused his position as to render his continuation in office prejudicial to the public interest.

Such Presiding officers or members, as the case may be, shall be removed from the committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination with accordance with the provision of this section.

Chapter III

Constitution of Local Complaints Committee

5. The Appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or deputy Collector as a District officer for every District to exercise powers or discharge functions under this Act.

6. (1) Every district Officer shall constitute in the district concerned, a committee to be known as the “local Complaints Committee”.

(2) Where constitution of the Internal Committee at a workplace is not feasible on account of less than ten persons being employed at such workplace or where the complaints is against the employer himself, the District Officer shall, constitute at every concerned block, taluka or tehsil in rural or tribal area and ward or municipality in urban area, additional Local Committee also to be known as the “local complaints committee” for that area concerned.

(3) The Jurisdiction of the local Committee shall extend to the area within the district, or block, taluka or tehsil or ward or municipality level where it is constituted.

7. (1) The local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely,

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women.

(b) one Member to be nominated from amongst the woman working in block, taluka or tehsil or ward or municipality in the district;

(c) two members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organizations or associations committed to the cause of women, which may prescribed;

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge.

(d) the Protection Officer appointed under sub section (1) of section 8 of the protection of women from domestic Violence Act, 2005 in the district, in which block, taluka or tehsil in rural or tribal area or ward or municipality in Urban Area, the local Committee is constituted.

Provided that at least one half of the total members so nominated shall be women.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be prescribed.

(3) Where the chairperson or any member of the Local Committee contravenes the provision of section 16, such Chairperson or Members, as the case may be, shall be removed from the local committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee shall be entitled to such fees or allowances for holding the proceedings of the local Committee as may be prescribed.

8. (1) The Central Government may, after due appropriation made by Parliament by law in his behalf, make to the state Government grants of such sums of money as the Central Government may think fit, for being utilized for the payment of fees or allowances referred to in sub section (4) of section 7.

(2) The state government may set up an agency and transfer the grants made under sub section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowance referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the state, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the local Committee, in case it is not so constituted.

Provided that where such complaint cannot be made in writing, the Presiding officer or any Member of the Internal Committee or the chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

10 (1) The Internal Committee or; as the case may be, the local Committee, may, before initiating inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.

(2) Where a settlement has been arrived at under sub section (1), the Internal Committee or the local Committee, as the case may be, shall record

the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the local committee, as the case may be, shall provide the copies of the settlement as recorded under sub section (2) to the aggrieved woman and respondent.

(4) Where a settlement is arrived at under sub section (1), no further inquiry shall be conducted by the Internal Committee or the local Committee, as the case may be.

11. (1) Subject to the provisions of section 10 and section 16, the Internal Committee or the Local Committee, as the case may be, shall proceed to make inquiry into the complaint in such manner as may be prescribed.

Provided that where the aggrieved woman informs the Internal Committee or the local Committee, as the case may be, that any term or condition of the settlement arrived at under sub section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the local Committee shall proceed to make an inquiry into the complaint.

(2) For the purpose of making inquiry under sub section (1), the Internal Committee or the local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:-

- a. summoning and enforcing the attendance of any person and examining him on oath,
- b. requiring the discovery and production of documents; and
- c. any other matter which may be prescribed.

(3) The Inquiry under sub section (1) shall be completed within a period of ninety days.

CHAPTER V

Inquiry into complaint

12 (1) During the pendency of inquiry, on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to –

- a. transfer the aggrieved woman or the respondent to any other workplace;
or
- b. grant leave to the aggrieved woman; or
- c. grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be entitled to otherwise if the case is proved.

(3) On the recommendation of the Internal Committee or the local Committee, as the case may be, under sub section (1), the employer shall implement the recommendation made under sub section (1) and send the report of such implementation to the Internal Committee or the local Committee, as the case may be.

13. (1) On the completion of an inquiry under this Act, the Internal Committee or the local Committee, as the case may be, shall provide a report of its finding to the employer, or as the case may be, the District Officer and such report be made available to the concerned parties.

(2) Where the Internal Committee or the local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the district Officer that no action is required to be taken that in the matter.

(3) Where the Internal Committee or the local committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer or the district Officer, as the case may be –

(i) to take action for sexual harassment as a misconduct in accordance with the provision of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the Respondent such sum of compensation to be paid to the aggrieved woman or to legal heirs, as it may determine, in accordance with the provisions of section 15.

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of

employment it may direct to the respondent to pay such compensation to the aggrieved woman.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

14. (1) Where the Internal Committee or the local Committee, as the case may be arrives at a conclusion that the allegation against the respondent is false or malicious or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub section (1) or sub section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section.

Provided further that the malicious intent or falsehood on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the local Committee, as the case may be, 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 or the District Officer, as the case may be to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. For the purpose of determining the compensation to be paid to the aggrieved woman under clause (ii) of sub section (3) of section 13, the internal Committee or the local Committee, as the case may be, shall have regard to –

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman.

(b) the loss in the career opportunity due to the incident of sexual harassment;

(c) medical expenses incurred by the victim for physical or psychiatric treatment.

(d) the income and financial statement status of the respondent.

(e) feasibility of such payment in lump sum or in installments.

16. Notwithstanding anything contained in the Right to Information Act, 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 Committee or the local Committee, as the case may be, and the action taken by the employer or the district Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner.

Provided that 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.

17. Where any person entrusted with the duty of the handle or deal with the complaint, inquiry or any recommendation or action to be taken under the provisions of this Act, contravenes the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

18. (1) Any person aggrieved from the recommendation made under sub section (2) of section 13 or under clause (i) or clause (ii) of sub section (3) of section 13 or sub section (1) or sub section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub section (1) shall be preferred within a period of thirty days of the recommendations.

CHAPTER VI

Duties of Employer

19. Every employer shall –

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.

(b) display at any conspicuous place in the workplace, the order constituting, the internal Committee under sub section (1) of section 4.

(c) undertake workshops and training programmes at regular intervals for sensitizing the employees regarding the provisions of this Act;

(d) provide necessary facilities to the Internal Committee or the local Committee, as the case may be, for dealing with the complaint and conducting inquiry.

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the local Committee, as the case may be;

(f) make available such information to the Internal Committee, as the case may be, as it may require having regard to the complaint made under sub section (1) of section 9.

(g) provide assistance to the woman if she so choose to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.

(h) initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator after the conclusion of the inquiry, or without waiting for the inquiry, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place.

CHAPTER VII

Duties And Powers of District Officer

20. The District Officer shall, -

(a) monitor the timely submission of reports furnished by the Internal Committee or the local Committee.

(b) take such measures as may be necessary for engaging non-governmental organization for creation of awareness on sexual harassment and the rights of the woman.

CHAPTER VIII

Miscellaneous

21 (1) The Internal Committee or the local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under sub section (1) to the State Government.

22. The employer shall include in its report the number of cases filed, and their disposal under this Act in the annual report of his organization or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

23. The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

24. The Appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of woman employees at a workplace to do so, by order in writing, -

a. call upon my employer or District Officer to furnish in writing such information relating to sexual harassment as it may require.

b. authorize any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

25. (1) Where the employer fails to –

(a) constitute an Internal committee under sub section (1) of section 4.

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder.

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to –

(1) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

(ii) cancellation, of his license or withdrawal, or non renewal, or approval, or cancellation of the registration, as the case may be, by the government or local authority required for carrying on his business or activity.

26. (1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the

aggrieved women or any person authorized by the Internal Committee or local committee in this behalf.

(2) No court inferior to that of a Metropolitan Magistrate or a judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.

27. The Provision of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

28. (1) The central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide all or any of the following matters, namely: -

(a) the fees or allowances to be paid to the Presiding officer and Members under sub section (4) of section 4.

(b) the fees or allowances to be paid to the Chairman, and member under sub section (4) of section 7;

(c) the person who may make complaint under sub section (2) of section 9;

(d) the manner of enquiry under sub section (1) of section 11.

(e) the powers of making inquiry under clause (C) of sub section (2) of section 11.

(f) the relief to be recommended under clause (C) of sub section (1) of section 12.

(g) the manner of action to be taken under clause (i) of sub section (3) of section 13,

(h) the manner of action to be taken under sub sections (1) and (2) of section 14;

(i) the manner of action to be taken under section 17.

(j) the manner of appeal under sub section (1) of section 18, and

(k) the form and time for preparation of annual report by Internal Committee and the local Committee under sub section (1) of section 21.

(3) Every rule made by the Central Government under this act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the sessions or the successive session aforesaid, both houses agree in the making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two houses, or where such legislature consists of one house, before that house.

29. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provision, not inconsistent with the provision of this Act, as may appear to it to be necessary for removing the difficulty.

Provided that no such order shall be made under this Section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each house of Parliament.

Statement of Objects and Reasons

Sexual Harassment at a workplace is considered as violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.

2. The Constitution of India embodies the concept of equality under Article 14 and 15 and prohibits discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article 19 (1) (g) gives the fundamental right to all citizens to practice any profession, or to carry on any occupation, trade or business. This right pre-supposes the availability of an enabling environment for women, which is equitable, safe and secure in every aspect. Article 21, which relates to the right to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that they must be treated with due respect, decency and dignity at the workplace.

3. Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its general Recommendation No. 19 (1992), the United Nations Committee on CEDAW further clarified that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. India's commitment to protection and promotion of women's constitutional right as well as respect for its obligations under various international treaties is unequivocal.

4. With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. The proposed legislation contains provisions to protect every woman from any act of sexual harassment irrespective of whether such woman is employed or not.

5. The supreme court of India in the case of Vishaka & ors. v. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognized that it violates the constitutional right of equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

6. It is, thus, proposed to enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status (other than domestic worker working at home), free from all forms of sexual harassment by fixing the responsibility on the employer as well as the District Magistrate or Additional District Magistrate

or the Collector or Deputy Collector of every District in the State as a District Officer and laying down a statutory redressal mechanism.

7. The Notes on clauses explain in details the various provisions contained in the Bill.

8. The bill seeks to achieve the above objectives.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA.

[Copy of Letter dated 24 November 2010 from Smt. Krishna Tirath, Minister of State for women and Child Development to the Secretary-General, Lok Sabha]

The president, having been informed of the subject matter of the Protection of Women against Sexual Harassment at workplace Bill, 2010, recommends the introduction and consideration of the Bill in Lok Sabha under Article 111 (1) and (3) of the constitution.

Notes on Clauses

Clause 2 – This clause provides for definitions. It defines the various expressions used in the proposed legislation which, inter alia, include the expressions “aggrieved woman”, “appropriate Government”, “chairperson”, “District Officer”, “employee”, “employer”, “Internal Committee”, “Local Committee”, “respondent”, “sexual harassment”, “workplace” and “unorganized sector.”

Clause 3 – This Clause makes provision for prevention of sexual harassment. It provides that no woman shall be subjected to sexual harassment at any workplace. The Harassment may include, but is not limited to – (i) implied or overt promise of preferential treatment in her employment; or (ii) implied or overt threat of detrimental treatment in her employment; or (iii) implied or overt threat about her present or future employment status (iv) conduct of any person which interferes with her work or creates an intimidating or offensive or hostile work environment for

her; or (v) humiliating conduct constituting health and safety problems for her.

Clause 4 – This Clause provides for the constitution of Internal Complaints Committee. It provides that every employer of a workplace shall constitute, by an order in writing, a Committee to be known as the “Internal Complaint Committee”. It further provides that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

It also provides that employer shall nominate members of the Internal Committee which shall consist of – (a) a Presiding Officer who shall be woman employed at a senior level at workplace from amongst the employees; (b) not less than two member from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge and (c) one member from amongst non-governmental organizations or associations committed to the cause of women. Out of these members at least one-half shall be nominated from amongst women.

It also provides that the term of the Presiding Officer and every member of the Internal committee shall be specified by the employer which shall not exceed three years from the date of their nomination and their fees or allowances for holding the proceedings of the internal Committee, as may be prescribed by rules made in the behalf, shall be paid by the employer.

It also provides that in case a senior level woman employee is not available at a work place, the Presiding Officer shall be nominated from other offices or administrative units of the workplace do not have a senior level woman employee, the District Officer may nominate a member of the local Complaint Committee in that area to act as the Presiding Officer.

It also provides that the Presiding Officer or any Member of the Internal Committee shall be removed from the committee, if he – (a) contravenes the provisions of section 16 relating to prohibition of publication or making known contents of complaint and enquiry proceedings; or (b) is adjudged an insolvent; or (c) engages during his term of office in any paid employment outside the duties of his office; or (d) is unfit to continue in office by reasons of infirmity of mind or body; or (e) is of unsound mind and stands

so declared by a competent court or; (f) is convicted and sentenced to imprisonment for an offence which in the opinion of the Central Government involves moral turpitude; or (g) has so abused his position as to render his continuance in office prejudicial to the public interest, and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this clause.

Clause 5 – This Clause provides for notification of the District Officer. It provides that the appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or deputy Collector as a District Officer for every District to exercise powers or discharge functions under the proposed legislation.

Clause 6 – This clause provides for constitution and jurisdiction of the Local Complaints Committee. It provides that every district officer shall constitute in the district concerned, a committee to be known as the “Local Complaints Committee”.

It further provides that where constitution of the Internal Committee at a workplace is not feasible on account of less than ten persons being employed at such work place or where the complaint is against the employer himself, the district officer shall, constitute at every concerned block, taluka or tehsil in rural or tribal area and ward or municipality in urban area, additional Local Committee which shall also be known as the “Local Complaints Committee” for that area concerned.

It also provides that the jurisdiction of the Local Committee shall extend to the area within the district, or block, taluka or tehsil or ward or municipality level where it is constituted.

Clause 7 – This Clause provides for composition, tenure and other terms and conditions of local Complaints Committee. It provides that the members of the local Complaints committee shall be nominated by the District Officer which shall consist of – (a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed, to the cause of women; (b) one Member to be Nominated from amongst the woman working in block, taluka or tehsil or ward or municipality in the district (c) two members, of whom atleast one shall be a woman, to be nominated from amongst such non-governmental organizations or associations committed to the cause of women, which may be prescribed provided that

one of the nominees should preferably, have background in law or legal knowledge; and (d) the Protection Officer appointed under sub section (1) of section 8 of the protection of women from Domestic Violence Act, 2005 in the district, in which block, taluka or tehsil in rural or tribal area of ward or municipality in urban area, the Local Committee is constituted. At least one half of the total Members is Nominated shall be women.

If further provides that the Chairperson and every Member of the local Committee shall hold office for such period as may be specified by rules which shall not exceed three years from the date of their appointment.

It also provides that the Chairperson or any Members of the Local Committee shall be removed from the Local Committee if he contravenes the provisions of clause 16 relating to prohibition of publication or making known contents of complaint and enquiry proceedings and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of the clause. The chairperson and Members of the Local committee shall be entitled to such fees or allowance for the holding the proceeding of the Local Committee as may be prescribed by rules.

Clause 8 – This Clause provides for grants and audit. It provides that the Central Government may, after due appropriation made by Parliament by Law in this behalf, make to the State Government grants of such sums may be required for the payments of fees or allowances of the Chairperson and Members of the local committee.

It also empowers the state Government to set up an agency and transfer the grants under sub clause (1) to that agency and the agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowance of the Chairperson and Members of the Local Committee.

It also provides that the accounts of the agency shall be maintained and audited in such manner as may be prescribed by rules in consultation with the accountant General of the state and the person holding the custody of the accounts of the agency shall furnish its audited copy of accounts together with auditors report thereon to the State Government before such date as may be specified by rules.

Clause 9 – This Clause provides for making of complaint of sexual harassment. It provides that any aggrieved woman may, at her option, make in writing a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the local Committee if an Internal committee is not constituted or if the complaint is against the employer himself.

It further provides that in a case where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the chairperson or any Member of the Local Committee, as the case may be, shall provide all reasonable assistance to the woman for making the complaint in writing.

It also provides that in a case where the aggrieved woman is unable to make a complaint on account of her physical or mental capacity or death or otherwise, her legal heirs or such other person as may be prescribed may make a complaint under this Clause.

Clause 10 – This Clause makes provision for conciliation. It provides that before initiating enquiry under clause 11 and at the request of the aggrieved woman, the Internal Committee and the Local Committee may take steps to settle the matter between her and the respondent through conciliation and where a settlement has been arrived, the Internal Committee or the local Committee shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

It further provides that the Internal Committee or the local Committee shall provide the copies of the recorded settlement to the aggrieved woman and the respondent and no further enquiry shall be conducted by the Internal Committee OR the local Committee.

Clause 11 – This clause makes provision for inquiry into complaint. It provides that subject to the provisions of clause 10 and clause 16, the Internal Committee shall proceed to make inquiry into the complaint in such manner as may be prescribed by rules.

It further provides that if the aggrieved woman informs that any term or condition of the settlement arrived at under sub clause (2) of clause 10 has not been complied with by the respondent, then the Internal Committee or the local Committee shall proceed to make an enquiry into the complaint.

It also provides that for the purpose of making inquiry, the Internal Committee or the Local Committee shall have the same powers as are vested in a civil court under the code of Civil Procedure, 1908 when trying a suit in respect of matters relating to – (a) summoning and enforcing the attendance of any person and examining him on oath. (b) requiring the discovery and production of documents; and (C) any other matter which may be prescribed by rules. The inquiry under this clause shall be completed within a period of ninety days.

Clause 12 – This Clause provides for action during pendency of enquiry. It provides that enquiry, on a written request made by the aggrieved woman, the Internal Committee or the local Committee may recommend to the employer to – (a) transfer the aggrieved woman or the respondent to any other workplace; or (b) grant leave to the aggrieved woman; or (c) grant such other relief to the aggrieved woman as may be prescribed by rules;

It further makes it clear that the leave granted to the aggrieved woman under this clause shall be in addition to leave she would be entitled to otherwise if the case is proved.

It also casts a duty on employer to implement the recommendations of the Internal Committee or the local Committee and send the report of such implementation to the Internal Committee or the local committee.

Clause 13 – This clause provides for enquiry report. It provides that on the completion of an enquiry under the proposed legislation, the Internal Committee or the local committee shall provide a report of its findings to the employer or to the District Officer, as the case may be, and such report shall be made available to the concerned parties.

It further provides that in case the Internal Committee or the local Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer or to the District Officer, as the case may be, that no action is required to be taken in the matter.

It also provides that in case the Internal Committee or the Local Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer or to the district officer, as the case may be, that no action is required to be taken in the matter.

it also provides that in case the Internal Committee or the local Committee arrives at the conclusion that the allegation against the respondents has been proved, then, it shall recommend to the employer or the District Officer – (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed by rules, and (ii) notwithstanding any thing contained in the service rules applicable to the respondent, to deduct from the salary or wages of the Respondent such sum of compensation to be paid to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of clause 15 and in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such compensation to the aggrieved woman.

It also provides that the employer and the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Clause 14 – This clause provides for false or malicious complaint and false edition. It provides that where the Internal Committee or the Local Committee arrives at a conclusion that the allegation against the respondent is false or malicious or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, then, it may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint or accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed by rules.

It further provides that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this clause and the malicious intent or falsehood on part of the complainant shall be established after an enquiry in accordance with the procedure prescribed by rule before any action is recommended.

It also provides that where the Internal Committee or the local Committee arrives at a conclusion that during the enquiry any witness has given false evidence or produced any forged or misleading document, then, it may recommend to the employer of the witness or the district officer to take action in accordance with the provisions of the services rules applicable to

the said witness or where no such service rules exist, in such manner as may be prescribed by rules.

Clause 15 – This Clause provides for determination of compensation. It provides that for the purpose of determining the compensation to be paid to the aggrieved woman, the Internal Committee or the Local Committee shall have regard to – (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; (b) the loss in the career opportunity due to the incident of sexual harassment; (c) medical expenses incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent; and (e) feasibility of such payment in lump sum or in installments.

Clause 16. – This Clause provides for prohibition of publication or making known contents of complaint and enquiry proceedings. It provides that notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under clause 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and enquiry proceedings, recommendations of the Internal Committee or the local committee, and the action taken by the employer or the District Officer under the provisions of the proposed legislation shall not be published, communicated or made known to the public, press and media in any manner.

It further provides that information may be disseminated regarding the justice secured to any victim of sexual harassment under the proposed legislation without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

Clause 17 – This clause provides for penalty for publication or making known contents of complaint and enquiry proceedings. It provides that where any person entrusted with the duty to handle or deal with the complaint, enquiry or any recommendation or action to be taken under the provision of the proposed legislation contravenes the provisions of clause 16 relating to prohibition of publication or making known contents of complainant and enquiry proceedings, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said persons or where no such service rules exist, in such manner as may be prescribed by rules.

Clause 18 – This clause provides for appeal. It provides that any person aggrieved by the recommendation made by the Internal Committee or the local Committee or non-implementation of such recommendation or by imposition or penalty under clause 17 may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed by rules.

It further provides that the appeal under this clause shall be preferred within thirty days of the recommendations.

Clause 19 – This clause lays down duties of employer. It provides that every employer shall – (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display the order constituting the Internal committee at any conspicuous place in the working;

(c) undertake workshops and training programmes at regular intervals for sensitizing the employees regarding the provisions of the proposed legislation.

(d) provide necessary facilities to the internal Committee or the local Committee, as the case may be, for dealing with the complaint and conducting enquiry.

(e) assists in securing the attendance of respondent and witnesses before the Internal Committee, as the case may be;

(f) make available such information to the Internal Committee, or the local committee as it may require having regards to the complaint.

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; and

(h) initiate action, under the Indian penal Code or any other law for the time being in force, against the perpetrator after the conclusion of the enquiry, or without waiting for the enquiry, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place.

Clause 20 – This clause lays down duties and powers of District Officer. It provides that the District Officer shall monitor the timely submission of reports furnished by the Internal Committee or the local Committee; and

take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of woman.

Clause 21 – This Clause provides submission of annual report by committee. It provides that the Internal Committee and the Local Committee shall in each calendar year prepare an annual report in such form and at such time as may be prescribed by rules and submit the same to the employer and the District Officer.

It further provides that the District Officer shall forward a brief report on the annual reports received under this clause to the State Government.

Clause 22 – This Clause lays down information which the employer shall include in annual report. It provides that the employer shall include in its report the number of cases filed, if any, and their disposal under the proposed legislation in the annual report of his organization or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Clause 23 – This Clause provides for monitoring implementation and maintenance of data appropriate Government. It provides that the appropriate government shall monitor the Implementation of the proposed legislation and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Clause 24 – This clause empowers appropriate Government to call information and inspection of records. It provides that the appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing call upon any employer or district officer to furnish in writing such information relating to sexual harassment as it may require. and authorize any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

It further provides that every employer and District Officer shall produce on demand before the officer making the inspection all information, records, and other documents in his custody having a bearing on the subject matter of such inspection.

Clause 25 – This clause provides for penalty for non-compliance with provisions of proposed legislation. It provides that where the employer fails to – (a) constitute a Internal Committee; (b) take action under clauses 13, 14 and 22; and (c) contravenes or attempts to contravene or abets contravention of other provisions of the proposed legislation or any rules made thereunder, then, he shall be punishable with fine which may extend to fifty thousand rupees.

It further provides that if any employer, after having been previously convicted of an offence punishable under the proposed legislation subsequently commits and is convicted of the same offence, then, he shall be liable to – (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence. However, in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment; and (ii) cancellation, of his license or withdrawal, or non renewal, or approval, or cancellation of the registration, as the case may be, by the government or local authority, required for carrying on his business or activity.

Clause 26 – This clause provides for cognizance of offence by courts. It provides that no court shall take cognizance of any offence punishable under the proposed legislation or any rules made thereunder, save on a complaint made by the aggrieved women or any person authorized by the Internal Committee or local committee in this behalf.

It further provides that no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under the proposed legislation and every offence under the proposed legislation and every offence under the proposed legislation shall be non-cognizable.

Clause 27 – This Clause provides that the provisions of the proposed legislation shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 28 – This Clause empowers the appropriate Government to make rules. It provides that the Central government may, by notification in the

Official Gazette, make rules for carrying out the provisions of the proposed legislation. it further specifies the matter for which such rules may be made.

It also provides that every rule made by the Central Government shall be paid before each House of Parliament and every rule made by the State Government shall be laid before each House of State Legislature where it consists of two Houses, or where such legislature consists of two houses, or where such legislature consists of one house, before that house.

Clause 29 – This Clause provides for power to remove difficulties. It provides that if any difficulty arises in giving effect to the provisions of the proposed legislation, the Central Government may, by order published in the official gazette, make such provisions, not inconsistent with the provisions of the proposed legislation, as may appear to it to be necessary for removing the difficulty.

It further provides that no such order shall be made under this clause after the expiry of a period of two years from the commencement of the proposed legislation.

It also provides that every order made under this clause shall be laid, as soon as may be after it is made, before each House of parliament.

FINANCIAL MEMORANDUM

Sub – clause (1) of clause 6 of the bill empower every District officer to constitute a Local Complaint Committee in the district concerned and sub clause (2) provides for additional Local Complaint Committees at block, Taluka or tehsil in rural or tribal areas and ward or municipality in urban area, wherever required. Sub-clause (4) of clause 7 provides for payment of fees or allowances to the Chairperson and Members of the Local Complaint Committee for conducting the proceedings of the committee.

2. Sub clause (1) of clause 8 of the bill provides that the Central Government may, after due appropriation made by parliament, by law in this behalf, make to the state government grant of such sum of money as the Central Government may think fit for being utilized for the payment of fees and allowance to the Chairperson and members of the local Complaint Committee.

3. The Central Government will meet the entire expenditure on fees and allowance payable to the chairperson and members of the Local Complaints Committee till the financial year 2012 (i.e. the end of the 11th Plan period). The annual expenditure of fees and allowance is estimated at Rs. 13.38 crore. The Central Government will specify the sharing pattern between the central Government and State Governments beyond 2012.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub clause (1) of the clause 28 of the Bill provides that the central Government may, by notification in the Official gazette, make rules for carrying out the provisions of the proposed legislation. Sub clause (2) specifies the matters in respect of which such rules may be made. These matters, inter alia, include – (a) the fees or allowances to be paid to the Presiding Officer and members under sub clause (4) of Clause 4; (b) the fees or allowances to be paid to the Chairperson, and Members under sub clause (4) of Clause 7; (c) the person who may make complaint under sub clause (2) of clause 9; (d) the manner of enquiry under sub – clause (1) of clause 11, (e) the powers of making enquiry under item (c) of sub clause (2) of clause 11. (f) the relief to be recommended under item (i) of sub clause (3) of clause 13; (h) the manner of action to be taken under clause 17; (g) the manner of action to be taken under item (1) and (2) of clause 14 (i) the manner of action to be taken under clause 17; (j) the manner of appeal under sub clause (1) of clause 18; and (k) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub clause (1) of Clause 21.

2. Sub clause (3) of Clause 28 provides that every rule made by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament. Sub clause (4) of that clause provides that any rule made by the State Government shall be laid before each house of the State Legislature where it consists of one House, before that House.

3. The matters in respect of which the Central Government may make rules are matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of a normal character.

LOK SABHA

A Bill to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for the matters connected therewith or incidental thereto.