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(*d*) make copies of or take extracts from any book, register or other documents maintained in relation to the newspaper establishment;

(*e*) exercise such other powers as may be prescribed.

Every Inspector shall be deemed to be a public servant within the meaning of the Indian Penal Code 1860. Any person required to produce any document or thing or to give information by an Inspector shall be legally bound to do so.

Penalty

According to section 18, If any employer contravenes any of the provisions of this Act or any rule or order made thereunder, he shall be punishable with fine which may extend to two hundred rupees. If anyone has been convicted of any offence under this Act, is again convicted of an offence involving the contravention of the same provision, shall be punishable with fine which may extend to five hundred rupees.

Where an offence has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. It is provided that if such person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence then he shall not be liable to any punishment provided in this section.

Where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to, any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this section, –

(*a*) "company" means any body corporate and includes a firm or other association of individuals; and

(*b*) "director" in relation to a firm means a partner in the firm.

No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence punishable under this section.No Court shall take cognizance of an offence under this section, unless the complaint thereof is made within six months of the date on which the offence is alleged to have been committed.

Indemnity

Section 19 contains immunity provisions by providint that no suit, prosecution or other legal proceeding shall lie against the Chairman or any other member of the Board or the person contributing the Tribunal or an Inspector appointed under this Act for anything which is in good faith done or intended to be done.

Defects in appointments not to invalidate acts

Section 19A rules out the questionability of any act or proceeding of the Board on the ground merely of the existence of any vacancy in, or defect in the constitution of the Board.

Non-applicability of the Act

Section 19B states that nothing in this Act or the Working Journalists (Fixation of Rates of Wages) Act, 1958 shall apply to any newspaper employee who is an employee of the Government to whom the following applies:

- the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules,

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- Civil Services (Temporary Service) Rules, Revised Leave Rules,
- Civil Service Regulations,
- Civilians in Defence Services (Classification, Control and Appeal) Rules or
- the Indian Railway Establishment Code or
- any other rules or regulations that may be notified in this behalf by the Central Government in the Official Gazette, apply.

Power of the Central Government to make rules

According to section 20, the Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

In exercise of the powers conferred by section 20 of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 , the Central Government makes the following rules, **"The Working Journalists And Other Newspaper Employees Tribunal Rules, 1979"**

THE SCHEDULE

[*See* section 2(*d*)]

1. For the purposes of clause (*d*) of section 2, –

(*1*) two or more newspaper establishments under common control shall be deemed to be one newspaper establishment;

(*2*) two or more newspaper establishments owned by an individual and his or her spouse shall be deemed to be one newspaper establishment unless it is shown that such spouse is a sole proprietor or partner or a shareholder of a corporate body on the basis of his or her own individual funds;

(*3*) two or more newspaper establishments publishing newspapers bearing the same or similar title and in the same language in any place in India or bearing the same or similar title but in different languages in the same State or Union territory shall be deemed to be one newspaper establishment.

2. For the purposes of paragraph 1 (*1*), two or more establishments shall be deemed to be under common control –

(*a*) (*i*) where the newspaper establishments are owned by a common individual or individuals;

(*ii*) where the newspaper establishments are owned by firms, if such firms have a substantial number of common partners;

(*iii*) where the newspaper establishments are owned by bodies corporate, if one body corporate is a subsidiary of the other body corporate, or both are subsidiaries of a common holding company or a substantial number of their equity shares are owned by the same person or group of persons, whether incorporated or not;

(*iv*) where one establishment is owned by a body corporate and the other is owned by a firm, if a substantial number of partners of the firm together hold a substantial number of equity shares of the body corporate;

(*v*) where one is owned by a body corporate and the other is owned by a firm having bodies corporate as its partners if a substantial number of equity shares of such bodies corporate are owned, directly or indirectly, by the same person or group of persons, whether incorporated or not, or

(*b*) where there is functional integrality between concerned newspaper establishments.

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THE WORKING JOURNALISTS (CONDITIONS OF SERVICE) AND MISCELLANEOUS PROVISIONS RULES, 1957

In exercise of the powers conferred by section 29 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, the Central Government hereby makes the Rules called "The Working Journalists (Conditions Of Service) And Miscellaneous Provisions Rules, 1957".

Definitions (Rule 2): In these rules, unless the context otherwise requires, -

(g) **"Leave"** means earned leave, leave on medical certificate, maternity leave, extraordinary leave, leave not due, casual leave, study leave or quarantine leave;

(h) **"Earned leave,"** means leave admissible under clause (a) of section 7 of the Act;

(i) **"Leave on medical certificate"** means leave admissible under clause (b) of section 7 of the Act;

(j) **"Leave not due"** means leave which is not due to a working journalist but which may be granted to him in anticipation of its being earned subsequently;

(k) **"Quarantine leave"** means leave of absence from duty by reason of the presence of an infectious disease in the family or household of a working journalist;

(l) **"Study leave"** means leave granted to a working journalist to enable him to undergo any special course of training which may be of use to him in his journalistic career; and

(m) **"Shifts":** 'day shift' means a shift when any hours of work of the shift do not fall between the hours of 11 P.M. and 5 A.M.; 'night shift' means a shift when any hours of work fall between the hours of 11 P.M. and 5 A.M.

Gratuity

3. Payment of gratuity. - Gratuity shall be paid to a working journalist or, in the case of his death, his nominee or nominees or, if there is no nomination in force at the time of the death of the working journalist, his family, as soon as possible after it becomes due and in any case not later than three months.

4. Gratuity due to a deceased working journalist to whom payable. -On death of a working journalist –

(a) If a nomination made by him in accordance with Rule 5 subsists, the gratuity shall be paid to his nominee or nominees in accordance with such nomination; and

(b) If no nomination subsists or if that nomination relates only to a part of the gratuity, the amount of the gratuity or the part thereof to which the nomination does not relate, as the case may be, shall be paid to his family.

5. Nominations.

(1) A working journalist shall, as soon as he completes three years of continuous service, or in the case of those who have completed three years of continuous service at the commencement of the Act, as soon as may be after these rules come into force, make a nomination in form A conferring the right to receive any gratuity payable under the Act, in the event of this death before the amount has become payable of, where the amount has become payable, before the payment has been made.

"Where the nominee is a minor, a working. Journalist shall appoint any person in Form AA to receive the gratuity in the event of working journalist's death during the minority of the nominee."

(2) A working journalist may, in his nomination distribute the amount that may be come due to him amongst his nominees at his own discretion.

(3) A nomination made under sub-rule (1) may at any time be modified by the working journalist after giving a

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written notice of his intention to do so in Form B. If the nominee predeceases the working journalist, the interest of the nominee shall revert to the working journalist, who may make a fresh nomination in accordance with these rules.

(4) A nomination or its modification shall take effect, to the extent it is valid on the date on which it is received by the newspaper establishment.

6. Deductions from gratuity. -The gratuity will be subject to deductions on account of overpayments made to a working journalist by the newspaper establishment liable to pay such gratuity and monies borrowed by the working journalist from such newspaper establishment.

Hours of work

7. Special provisions regarding editor's etc.-

(1) The provision of this Chapter shall not apply to editors, or to correspondents, reporters or news-photographers.

(2) Notwithstanding anything contained in sub-rule (1), the following provisions shall apply to every correspondent, reporter or news-photographer stationed at the place at which the newspaper (in relation to which any such person is employed) is published, namely:-

(a) Subject to such agreement as may be arrived at either collectively or individually between the parties concerned, every such correspondent, reporter or news photographer shall, once he enters upon duty on any day, be deemed to be on duty throughout that day in he finishes all the work assigned to him during that day:

Provided that if such correspondent, reporter or news-photographer has had at his disposal for rest any interval or intervals for a total period of two hours or less between any two or more assignments of work, he shall not be deemed to be on duty during Such period;

Provided further that where the total period of such interval or intervals exceeds two hours, he shall be deemed to be on duty during the period, which is in excess of the said period of two hours;

(b) Any period of work in excess of thirty-six hours during any week (which shall be considered as a unit of work for the purposes of this sub-rule) shall be compensated by rest during the succeeding week and shall be given in one or more spells of not less than three hours each

Provided that where the aggregate of the excess hours worked falls short of three hours, the duration of rest shall be limited only to such excess.

8. Normal working day. -The number of hours which shall constitute a normal working day for a working journalist exclusive of the time for meals shall not exceed six hours per day in the case of a day shift and five and half hours per day in the case of a night shift and no working journalist shall ordinarily be required or allowed to work for longer than the number of hours constituting a normal working day.

9. Interval for rest. -Subject to such agreement as may be arrived at between a newspaper establishment and working journalists employed in that establishment, the periods of work for working journalists shall be so fixed that no working journalist shall work for more than four hours in the case of day shift and three hours in the case of night shift before lie had had an interval of rest, in the case of day shift for one hour, and in the case of nigh shift for half an hour.

10. Compensation for overtime work. -When a working journalist works for more than six hours on any day in the case of a day shift and more than five and-half hours in the case of a night shift lie shall, in respect of that overtime work, be compensated in the form of hours of rest equal in number to the hours for which he has worked overtime.

11. Conditions governing night shifts. -No working journalist shall be employed on a night shift continuously

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for more than one week at a time or for more than one week in any period of fourteen days:

Provided that, subject to the previous approval of the State Labour Commissioner or any authority appointed by the State Government in this behalf, the limit prescribed in this rule may be exceeded where special circumstances so require.

12. Interval preceding change of shift. -In the case of change of shift from night shift to day shift or vice versa, there shall be an interval of not less than twenty-four consecutive hours between the two shifts and in the case of a change from one day shift to another day shift or from one night shift to another night shift there shall be interval of not less than twelve consecutive hours.

Provided that no such interval may be allowed if such interval either coincides with, or falls within, the interval enjoyed by a working journalist under sub-section (2) of section 6 of the Act.

Holidays

13. Number of holidays in a year. -A working journalist shall be entitled to ten holidays in a calendar year.

14. Compensatory holidays. -If a working journalist is required to attend on a holiday, a compensatory holiday shall be given to him, within thirty days immediately following the holiday, on a day mutually agreed upon by him and his employer.

15. Wages for holidays. -A working journalist shall be entitled to wages on all holidays as if he was on duty.

16. Wages for weekly day of rest. -A working journalist shall be entitled to wages for the weekly day of rest as if he was on duty.

Leave

17. Competent Officers. -Every newspaper establishment may designate one or more officers in that establishment as competent officers for the purposes of this Chapter.

18. Application for leave. –

(1) A working journalist who desires to obtain leave of absence shall apply in writing to the competent officer.

(2) Application for leave, other than casual leave, leave on medical certificate and quarantine leave, shall be made not less than one month before the date of commencement of leave, except in urgent or unforeseen circumstances.

19. Recording of reason for refusal or postponement of leave. -If leave is refused or postponed, the competent officer shall record the reasons for such refusal or postponement, as the case may be, and send a copy of the order to the working journalist.

20. Affixing of holidays to leave. -Holidays, other than weekly days of rest, shall not be prefixed or suffixed to any leave without the prior sanction of the competent officer.

21. Holidays intervening, during period of leave. -A holiday, including a weekly rest day, intervening during any leave granted under these rules shall form part of the period of leave.

22. Recall before expiry of leave. –

(1) A newspaper establishment may recall a working journalist on leave if that establishment considers it necessary to do so. In the event of such recall such working journalist shall be entitled to travelling allowance if at the time of recall he is spending his leave at a place other than his headquarters.

(2) The traveling allowance, which shall be paid to a working journalist under sub-rule (1), shall be determined in accordance with the rules of the newspaper establishment governing traveling allowance for journeys undertaken by working journalists in the course of their duties.

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23. Production of medical certificate of fitness before resumption of duty. -A working journalist who has availed himself of leave for reasons of health may, before he resumes duty, be required by his employer to produce a medical certificate of fitness from an authorised medical practitioner, any registered medical practitioner or the medical officer who issued the medical certificate under sub-rule (2) of rules 28.

24. Designation of authorised medical practitioner -Every newspaper establishment may designate one or more registered medical practitioner as authorised medical practitioners for the purposes of these rules.

25. Earned leave. –

(1) A working journalist shall be entitled to earned leave on full wages for a period not less than one month for every eleven months spent on duty:

Provided that he shall cease to earn such leave when the earned leave due amounts to ninety days.

(2) The period spent on duty shall include the weekly days of rest, holidays, casual leave and quarantine leave.

26. Wages during earned leave. -A working journalist on earned leave shall draw in wages equal to his average monthly wages earned during the period of twelve complete months spent on duty, or if the period is less than twelve complete months, during the entire such period, immediately preceding the month in which the leave commences.

27. Cash compensation for earned leave not availed of. –

(1) When a working journalist voluntarily relinquishes his post or retires from service on reaching the age of superannuation, he shall be entitled to cash compensation for earned leave not availed of unto a maximum of thirty days:

Provided that a working journalist who has been refused earned leave due to him shall be entitled to get cash compensation for the earned leave so refused:

Provided further that in the case of a working journalist who the while in service and who has not availed himself of the earned leave due to him immediately preceding the date of his death, his heirs shall be entitled to cash compensation for the leave not so availed of.

(2) When a working journalist's services are terminated for any reason, whatsoever, other than as punishment inflicted by way of disciplinary action, he shall be entitled to cash compensation for earned leave not availed of unto a maximum of ninety days.

(3) The cash compensation shall not be less than the amount of wages due to a working journalist for the period of leave not availed of, the relevant wage being that which would have been payable to him had he actually proceeded on leave on the day immediately preceding the occurrence of any of the events specified in sub-rules (1) or (2), as the case may be.

28. Leave on medical certificate. –

(1) A working journalist shall be entitled to leave on medical certificate on one-half of the wages at the rate of not less than one month for every eighteen months of service:

Provided that he shall cease to earn such leave when the leave on medical certificate amounts to ninety days.

(2) The medical certificate shall be from an authorised medical practitioner:

Provided that when a working journalist has proceeded to a place other than his headquarters with the permission of his employer and falls in, he may produce a medical certificate from any registered medical practitioner:

Provided further that the employer may, when the registered medical practitioner is not in the service of the Government, arrange at his own expense, the medical examination of the working journalist concerned, by any Government Medical Officer not below the rank of a Civil Assistant Surgeon or any other Medical Officer

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in Charge of a hospital run by a local authority or a public Organisation at that place like the Kasturba Gandhi Trust, Kamiadevi Nehru Trust or Tata Memorial Trust.

(3) Leave on medical certificate may be taken in continuation with earned leave provided that that the total duration of earned leave and leave on medical certificate taken together shall not exceed a hundred and twenty days at any one time.

(4) A working journalist shall be entitled at his option to convert leave on medical certificate on one-half of the wages to half the amount of leave on full wages.

(5) The ceiling laid down in the provisos to sub-rule (1) and sub-rule (3) on the accumulation and total duration of leave may be relaxed by the competent officer in the cases of working- journalists suffering from lingering illness such as tuberculosis.

(6) Leave on medical certificate or converted leave on medical certificate referred to in sub-rules (1) and (4) may be granted to a working journalist at his request not withstanding that earned leave is due to him.

29. Maternity leave. –

(1) A female working journalist who has put in not less than one year's service in the news paper establishment in which she for the time being employed shall be granted maternity leave on full wages for a period which he may extend unto three months from the date of its commencement or six weeks from the date of confinement whichever be earlier.

(2) Leave of any other kind may also be granted in continuation of maternity leave.

(3) Maternity leave shall also be granted in cases of miscarriage, including abortion, subject to the condition that the leave does not exceed six weeks.

30. Quarantine leave. –

Quarantine leave on full wages shall be granted by the news paper establishment on the certificate of the authorised medical practitioner designated as such under rule 24 or where, there is no such authorised medical practitioner by a district public health officer or other Municipal Health Officer of similar status, for a period not exceeding twenty-one days, or, in exceptional circumstances, thirty days. Any leave necessary for quarantine purposes in excess of that period shall be adjusted against any other leave that may be due to the working journalist.

31. Extraordinary leave. -A working journalist who has no leave to his credit may be granted extraordinary leave without wages at the discretion of the newspaper establishment in which such working journalist is employed.

32. Leave not due. -A working journalist who has no leave to his credit may be granted at the discretion of the newspaper establishment in which such working journalist is employed leave not due.

33. Study leave. -A working journalist may be granted study leave with or without wages at the discretion of the newspaper establishment in which such working journalist is employed.

34. Casual leave. –

(1) A working journalist shall be eligible for casual leave at the discretion of the newspaper establishment for fifteen days in a calendar year:

Provided that not more than five days' casual leave shall be taken at any one time and such leave shall not be combined with any other leave.

(2) Casual leave not availed of during a calendar year will not be carried forward to the following year.

35. Wages during casual leave. –A working journalist on casual leave shall be entitled to wages as if he was on duty.

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LESSON ROUND UP

- The Working Journalists & other Newspaper Employees (Conditions of service) and Miscellaneous Provisions Act, 1955 extends to the whole of India, except the state of Jammu & Kashmir.
- The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, together with the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules 1975, covers rights of journalists like leave (including maternity) and holidays, payment of gratuity, retrenchment, hours of work, compensation for overtime and the setting-up of a wage board.
- "Working Journalists" means a person whose principal avocation is that of a journalist and (who is employed as such, either whole-time or part -time in, or in relation to, one or more newspaper establishment), and includes an editor , a leader writer , news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person whoa) is employed mainly in a managerial or administrative capacity or b) being employed in a supervisory capacity, performs, either by the nature of duties attached to his office of by reasons of the power vested in him, and function mainly of a managerial nature.
- Section 25-F of the Industrial Dispute Act, 1947, in its application to working journalist, shall be construed as in Cl. (a) thereof, for the period of notice referred to therein in relation to the retrenchment of a workman, the following periods in relation to the retrenchment of a working journalist has been substituted, namely - a) six months, in case of an editor, b) three months, in case of any other working Journalists.
- The Act also makes provisions for payment of gratuity, hours of work, leave, overtime work for working journalist.
- Industrial Employment (Standing Orders) Act, 1946 and The Employees' Provident Funds Act, 1952 shall apply to every newspaper establishment wherein twenty or more newspaper employees or persons are employed respectively.
- If any employer contravenes any of the provisions of this Act or any rule or order made thereunder, he shall be punishable with fine which may extend to two hundred rupees.

SELF -TEST QUESTIONS

1. Define (i) Newspaper (ii) Newspaper Employee (iii) Newspaper Establishment (iv) Wages.
2. Write a brief note on definition of working journalist under the Act.
3. Briefly explain the applicability of Industrial Dispute Act, 1947 to working journalist.
4. Enumerate the provision of leave applicable to working journalist under the Act and rules made thereunder.
5. Which other Acts are applicable to newspaper establishment?
6. Mention the registers to be maintained by newspaper establishments under the Act.

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Section VI

The Weekly Holidays Act, 1942

LESSON OUTLINE

- Learning Objectives
- History of the Legislation
- Applicability of the Act
- Definitions
- Closing of Shops
- Weekly holidays in shops, restaurants and theatres
- Additional half day closing or holiday
- No deduction or abatement to be made from wages
- Inspectors
- Powers of Inspectors
- Penalties
- Rules
- Powers of exemptions and suspensions
- LESSON ROUND UP
- SELF TEST QUESTIONS

LEARNING OBJECTIVES

This Act provides weekly holidays to persons employed in shops, restaurants and theatres. It comes into force only after State Government notification specifying all State or a specified area for the applicability of this Act.

Employees of these establishments are entitled for one holiday in a week with wages under this Act. State Government can additionally give half day leave in a week under this Act. The Management staff is not entitled under this Act.

The Act provides for closure of every shop for one whole day in a week in shops restaurants and theatres. The Act is not applicable to those employed in management or confidential capacity in shops, restaurants and theatres. Employer shall pay wages like other working days for this one whole day leave. The Act also provides for appointment of Inspectors for the purpose of the Act. The state government has the powers to, make rules and regulation, as it may seem necessary.

Students must be familiar with the concepts of this Act as being one of the important Act w.r.t. unorganized labour.

An Act to provide for the grant of weekly holidays to persons employed in shops, restaurants and theatres.

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INTRODUCTION

As would appear from a study of the growth of labour legislation at the Centre and in our province particularly, though workers in factories and in industrial undertakings had their conditions of work, regulated, shop assistants and commercial employees had no benefit of legislation, until they were granted holidays under the Weekly Holidays Act, 1942. The Weekly Holidays Bill having been passed by the Legislature received its assent on 3rd April, 1942. It came on the Statute Book as the Weekly Holidays Act, 1942.

The Act is repetitive with the Shop and Establishment Acts (of all States), which mandatorily prescribe a close day for all shops and establishments. It also only applies to specific areas notified by state governments. For example in 2008, the coverage of the Act was particular to 7 areas in Karnataka (Murnad, Bhagamandala, Napoklu, Ammathi, Ponnampet and Hudikeri in Kudagu District and Munirabad and Kinnal in Raichur District) in the Port Blair Municipal Areas of Andaman and Nicobar Islands.

The conditions of employment of the persons working in Shops and Commercial Establishments in the country are being largely governed by the Acts passed by the respective State Governments and the rules framed there under. The Weekly Holidays Act, 1942 is a Central Act which facilitates grant of weekly holidays for the employees covered under the respective State Acts. The Weekly Holidays Act, 1942, provides for the grant of weekly holidays to persons employed in Shops and Commercial Establishments, etc., is operative only in those States which notify its application to specified areas within their jurisdiction

APPLICABILITY OF THE ACT

The Act applies to persons employed in shops, restaurants and theartres.

It extends to the whole of India

It shall come into force in a State or in a specified area within a State only if the State Government by notification in the Official Gazette so directs. {Section 1(3)}.

The Act is not applicable to the persons employed in a confidential capacity or in a position of management in any shop, restaurant or theatre.

Bhanwar Lal and ors. Vs. State of Rajasthan and anr., Civil Writ Petn. No. 265 of 1956, Rajasthan High Court held that “The provisions of the Weekly Holidays Act prevail over the provisions of the Ajmer Shops and Commercial Establishments Act, 1956. The provisions of the the Ajmer Shops and Commercial Establishments Act, 1956 are also of no effect in so far as they are repugnant to the provisions of the Weekly Holidays Act. The Provincial Government had been given the power by Section 1(3) of the Weekly Holidays Act to bring it into force by notification in the official Gazette, but it had no power to withdraw its application.”

Shiravanthe Ananda Rao vs State of Mysore: It was held that the Weekly Holidays Act is a piece of legislation which Parliament was competent to enact under entry 24 of List III - Concurrent List of the Schedule VII - read with Article 246(2) of the Constitution.

DEFINITIONS (SECTION 2)

‘Establishment’

Establishment means a shop, restaurant and theatre {Section 2(a)}

‘Day’

‘Day’ means a period of twenty-four hours beginning at midnight {Section 2(b)}

‘Restaurant’

Restaurant means any premises in which business is carried on principally or wholly the business of supplying meals or refreshments to the public or a class of the public for consumption on the premises but does not include a restaurant attached to a theatre {Section 2(c)}

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"Shop"

Shop includes any premises where any retail trade or business is carried on, including the business of a barber or hairdresser, and retail sales by auction, but excluding the sale of programmes, catalogues and other similar sales at theatres {Section 2(d)}

"Theatre'

Theatre includes any premises intended principally or wholly for the presentation of moving pictures, dramatic' performances or stage entertainments {Section 2(e)}

'Week'

Week means a period of seven days beginning at midnight on Saturday. {Section 2(f)}

CLOSING OF SHOPS

Section 3 of the Act provides for that every shop shall remain entirely closed on one day of the week and the day of such weekly closure shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop. The shopkeeper shall not alter the day so specified more often than once in three months.

WEEKLY HOLIDAYS

Section 4 of the Act states that every person employed otherwise than in a confidential capacity or in a position of management in any shop, restaurant or theatre shall be allowed in each week a holiday of one whole day. But this mandatory provision of weekly holiday is not applicable to

- (i) any person whose total period of employment in the week including any days spent on authorized leave is less than six days or
- (ii) a person who is entitled to an additional holiday or
- (iii) a person employed in a shop who has been allowed a whole holiday on the day on which the shop has remained dosed in pursuance of Section 3.

ADDITIONAL HALF-DAY CLOSING OR HOLIDAY

Section 5 specifies the power of the State Government to notify additional half-day closing or holiday. The State Government may, by notification in the Official Gazette, require in respect of shops or any specified class of shops that they shall be closed at such hour in the afternoon of one week-day in every week in addition to the day provided for by Section 3 as may be specified by the State Government. and, in respect of theatres and restaurants or any specified class of either or both, that every person employed therein otherwise than in a confidential capacity or in a position of management shall be allowed in each week an additional holiday of one half-day commencing at such hour in the afternoon as may be fixed by the State Government.

The State Government may, for the purposes of this section, fix different hours for different shops or different classes of shops or for different areas or for different times of the year.

Display of notice of such additional closure: The weekly day on which a shop is closed in pursuance of a requirement under sub-section (1) shall be specified by the shopkeeper in a notice permanently exhibited in a conspicuous place in the shop and such notice shall not be altered by the shop-keeper more often than once in three months.

NO DEDUCTION OR ABATEMENT TO BE MADE FROM WAGES

Section 6 prohibits any deduction or abatement of the wages of any person employed in an establishment to which this Act applies on account of any day or part of a day on which the establishment has remained closed

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or a holiday has been allowed in accordance with Sections 3, 4 and 5. This provision is applicable even if such person is employed on the basis that he would not ordinarily receive wages for such day or part of a day. Despite of any such condition of employment, he shall nonetheless be paid for such a day or part of a day the wages he-would have drawn had the establishment not remained closed or the holiday not been allowed on that day or part of a day.

The provisions of section 3 are applicable both to shops which have employees as also to shops which have no employees and are managed by the owners themselves. But so far as the provisions of sections 4, 5 and 6 are concerned, they are specifically in respect of shops which have employees. (*State of Bihar vs Gopal Singh, Patna High Court, 20 Nov. 1956*)

INSPECTORS

Section 7 mentions about the authority of the State Government to appoint Inspectors for the purpose of the Act. According to this section, the State Government may, by notification in the Official Gazette, appoint persons to be inspectors for the purposes of this Act within such local limits as it may assign to such person. Every inspector appointed under this section shall be deemed to be a public servant within the meaning of Section 2 1 of the Indian Penal Code 1860.

POWERS OF INSPECTORS

Section 8 of the Act states that subject to any rules made in this behalf by the State Government, an inspector may, within the local limits for which he is appointed,-

(a) enter and remain in any establishment to which this Act applies with such assistants, if any, being servants of the Government, as he thinks fit ;

(b) make such examination of any such establishment and of any record, register or notice maintained therein in pursuance of rules made under clause (c) of sub-section (2) of Section 10, and take on the spot or otherwise such evidence of any person as he may deem necessary for carrying out the purposes of this Act;

(c) exercise such other powers a.~ may be necessary for carrying out the purposes of this Act.

Sub-section 2 of section 8 provides for that any person having the custody of any record, register or notice maintained in pursuance of rules made under clause (c) of sub-section (2) of Section 10 shall be bound to produce it when so required by the Inspector, but no person shall be compellable to answer any question if the answer may tend directly or indirectly to incriminate himself.

PENALTIES

According to section 9 of the Act, the proprietor or other person responsible for the management of the establishment shall be punishable with fine which may extend, in the case of the first offence, to twenty-five rupees, and, in the case of a second or subsequent offence, to two hundred and fifty rupees for the following contraventions in respect of that establishment:

(i) the provisions of Section 3, or Section 4,

(ii) requirement imposed by notification under Section 5, or

(iii) Section 6, or

(iv) the rules made under clause (c) sub-section (2) of Section 10.

RULES

Section 10 provides for the power of the State Government to make rules for carrying out the purposes of this

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Act subject to the condition of previous publication by notification in the Official Gazette,

In particular and without prejudice to the generality of foregoing power, such rules may-

(a) define the persons who shall be deemed to be employed in a confidential capacity or in a position of management for the purpose of Sections 4 and 5 ;

(b) regulate the exercise of their powers and the discharge of their duties by inspectors ;

(c) require registers and records to be maintained and notices to be displayed in establishments to which this Act applies and prescribe the forms and contents thereof.

Every rule made by the State Government under this Act shall be laid, as soon as may be after it is made, before the State Legislature.

POWERS OF EXEMPTION AND SUSPENSION

According to Section 11 of the Act, the Central Government in respect of establishments under its control, and the State Government in respect of all other establishments within the State may, subject to such conditions, if any, as it thinks fit to Impose, exempt any establishment to which this Act applies from all or any specified provisions of this Act, and may, on any special occasion in connection with a fair or festival or a succession of public holidays, suspend for a specified period the operation of the Act.

LESSON ROUND UP

- Weekly Holidays Act, 1942 is an Act which provides for the grant of weekly holidays to persons employed in shops, restaurants and theatres.
- The Act becomes applicable in a State only by way of the State Government Notification
- Every employee other than the one employed in a confidential capacity or managerial position is entitled to a holiday of one whole day in each week.
- The weekly day off has to be specified by the shop-keeper by a notice permanently exhibited in a conspicuous place in the shop, which is not to be changed by the shop-keeper more than once in three months.
- Contravention of the relevant provisions of the Act is punishable with fine upto twenty-five rupees, in the case of first offence and upto two hundred and fifty rupees in the case of second or subsequent offence.

SELF TEST QUESTIONS

1. List out the persons to whom Weekly Holidays Act, 1942 is applicable.
2. What are the provisions for holidays and additional holidays in shops under the Weekly Holidays Act, 1942?
3. What are the provisions for weekly closure of restaurants and theatres under the Weekly Holidays Act, 1942?
4. What are the penalties for contravention of the Weekly Holidays Act, 1942?

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Section VII

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

LESSON OUTLINE

- Learning Objectives
- History of the Legislation
- Object of the Act
- Applicability of the Act
- Definitions
- Complaints Committees
- Constitution of Internal Complaints Committee
- Constitution of Local Complaints Committee
- Grants and audit
- Complaint of sexual harassment
- Conciliation
- Inquiry into complaint
- Duties of employer
- Duties and powers of District Officer
- Miscellaneous
- Compliances by the Employer
- Disclosure Requirements under the Annual Report of Companies
- Other Laws Pertaining to Workplace Sexual Harassment
- LESSON ROUND UP
- SELF-TEST QUESTIONS

LEARNING OBJECTIVES

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed by the Parliament and came into force from 9th December 2013. It was enacted to ensure a safe working environment for women. It provides for protection to women at their workplace from any form of sexual harassment and for redressal of any complaints they may have launched. The Act was formed on the basis of the guidelines laid down by the Supreme Court in its landmark judgement, Vishakha v. State of Rajasthan (where sexual harassment was first defined) but is much wider in scope, bringing within its ambit the domestic worker as well. The Ministry Women and Child Development made the rules with regard to the same effective from the same date. These rules are called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (the "Rules").

Sexual harassment has been defined as "unwelcome acts of behaviour (whether directly or by implication) namely (a) physical contact and advances or, (b) a demand or request for sexual favours or, (c) making sexually coloured remarks or, (d) showing pornography or, (e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature."

The Act mandates the constitution of an Internal Complaints Committee (ICC) by the employer in every one of his offices and also mandates that the Presiding Officer shall be a woman.

The Act also mandates for the constitution of a Local Complaints Committee (LCC) which receives complaints from establishments where ICC has not been constituted due to having less than 10 workers or if the complaint is against the employer himself.

Recognising the sensitivity attached to matters pertaining to sexual harassment, the Act attaches significant importance to ensuring that the complaint and connected information are kept confidential. The Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005.

The students must be familiar with the provisions of the Act as it is going to affect their daily life at workplace.

An Act 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.

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HISTORY OF THE LEGISLATION

Sexual harassment of a woman in workplace is of serious concern to humanity on the whole. It cannot be construed to be in a narrow sense, as it may include sexual advances and other verbal or physical harassment of a sexual nature. The victims of sexual harassment face psychological and health effects like stress, depression, anxiety, shame, guilt and so on.

"...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree" Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013

Sexual harassment results in violation of the fundamental rights of a woman to equality under Articles I4 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;

The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of Vishaka v. State of Rajasthan, 1997 6 SCC 241: AIR 1997 SC 3011 ("Vishaka Judgment"), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment ("Vishaka Guidelines") which were being followed by employers until the enactment of the Act.

The Vishaka Judgement In 1992, Bhanwari Devi, a dalit woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of workingwomen in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka. The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment,

'Sexual Harassment' includes such unwelcome sexually determined behavior (whether directly or by implication) as:

a. Physical contact and advances

b. A demand or request for sexual favours;

c. Sexually coloured remarks;

d. Showing pornography;

e. Any other unwelcome physical, verbal or nonverbal conduct of sexual nature.

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Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing salary or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.'

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council v. A.K Chopra,(1999) 1 SCC 759*. In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that "sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her."

In light of the above judgment, the very first efforts, towards implementing a law for protection of women from sexual harassment at workplace, were taken in 2007 when the Protection of Women against Sexual Harassment at Workplace Bill, 2007, was introduced in the Parliament. However, this Bill never saw the light of the day. On December 7, 2010, the Protection of Women against Sexual Harassment at Work Place Bill, 2010 (the "Original Bill") was introduced in Lok Sabha and was referred to a Parliamentary Standing Committee on Human Resource Development, led by Shri Oscar Fernandes ("Standing Committee"), on December 30, 2010 for examination, and the Standing Committee came out with its report in December, 2011.

Further to the report, subsequent changes were made to the Original Bill, including to the title of the Bill, which was changed to Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2013 (the "Bill"). The change of title clearly reflects the objective of the Ministry for passing this legislation i.e. to not just focus on redressal of complaints of sexual harassment but also focus on prevention and prohibition of sexual harassment.

As already stated above, since several bills related to prevention of sexual harassment, one after the other, were always pending in either of the Houses of the Parliament (the Lok Sabha or the Rajya Sabha), Medha Kotwal Lele, coordinator of Aalochana, a centre for documentation and research on women filed a petition in the Supreme Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. The Supreme Court was specifically required to consider whether individual state governments had made the changes to procedure and policy required by the Vishaka Guidelines or not.

The Supreme Court then, in Medha Kotwal Lele vs. Union of India, AIR 2013 SC 93 stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. Further, the Court held that a number of states were falling short in this regard and reiterated that there is an obligation to prevent all forms of violence. It stated that "lip service, hollow statements and inert

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and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women".

This case further stated that States governments must make the necessary amendments to the Central Civil Services (Conduct) Rules, 1964 and Standing Orders within two months of the date of judgment and entrusted a responsibility upon the Bar Council of India to ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka Guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes were required to ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the Vishaka Guidelines.

The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India.

So, it was expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") was enacted by the Ministry of Women and Child Development, India in 2013 – after 16 years of the Supreme Court judgment in the case of Vishaka & Ors. vs. State of Rajasthan & Ors. (1997 (7) SCC 323). The Act came into force w.e.f. 9th December, 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("POSH Rules"). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("Criminal Law Amendment Act") which has criminalized offences such as sexual harassment, stalking and voyeurism.

Object of the Act

The Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment.

The Preamble of the Act reads as under:

"An Act 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 a woman to equality under articles 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 are universally recognised human rights by international conventions and instruments such as Convention 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."

What is Workplace Sexual Harassment?

Workplace sexual harassment is sexual, unwelcome and the experience is subjective. It is the impact and not intent that matters and it almost always occurs in a matrix of power. The impact of sexual harassment at workplace is far reaching and is an injury to equal right of women. Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in

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today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth and puts them through physical and emotional suffering.

FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally workplace sexual harassment refers to two common forms of inappropriate behaviour:

- Quid Pro Quo (literally 'this for that') - Implied or explicit promise of preferential/detrimental treatment in employment - Implied or express threat about her present or future employment status
- Hostile Work Environment - Creating a hostile, intimidating or an offensive work environment - Humiliating treatment likely to affect her health or safety.

Applicability of the Act

According to section 1, the Act extends to the whole of India.

As per the Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment. Given that the definition does not necessitate the woman to be an employee, even a customer/ client who may be sexually harassed at a workplace can claim protection under the Act.

In order for a woman to claim protection under the Act, the incident of sexual harassment should have taken place at the 'workplace'.

The Act applies to both the organized and unorganized sectors (self-employed or having less than 10 workers) in India. It inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.

Definitions (Section 2)

In this Act, unless the context otherwise requires, some of the important definitions are as follows:—

"aggrieved woman" means—

i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;{Section 2(a)}

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act. It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

"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;

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b. by the State Government, the State Government;

ii. in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

i.e. for the private sector, appropriate Government is the concerned State Government. {Section 2(b)}

"domestic worker" means

- a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or ful1 time basis,
- but does not include any member of the family of the employer;

{Section 2(e)}

"employee" means

- a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and
- includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

{Section 2(f)}

"employer" means:' –

i. in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, 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.

Explanation. – For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of polices for such organisation;

iii. in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

{Section 2(g)}

The employer is duty bound to initiate disciplinary action against the officer involved in sexual harassment, as it involves human dignity of women enshrined under Articles 14, 15 and 21 of the Constitution and the inquiry must be fair and reasonable.

vi) "respondent" means a person against whom the aggrieved woman has made a complaint under section 9; {Section 2(m)}

vii) "sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether

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directly or by implication) namely: –

i. physical contact and advances; or

ii. a demand or request for sexual favours; or

iii. making sexually coloured remarks; or

iv. showing pornography; or

v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

{Section 2(n)}

The POSH Act defines 'sexual harassment' in line with the Supreme Court's definition of 'sexual harassment' in the Vishaka Judgment. The definition of 'sexual harassment' under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. The definition also includes reference to creating an 'intimidate, offensive or hostile working environment'. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

The Act has defined what constitutes sexual harassment under Section 2 (n) and under Section 3, has further widened the definition of sexual harassment by providing that any of the following circumstances, related to sexual harassment, may also amount to Sexual Harassment: (1) implied or explicit promise of preferential treatment in the victim's employment; (2) implied or explicit threat of detrimental treatment in the victim's employment; (3) implied or explicit threat about the victim's present or future employment status; (4) interferes with the victim's work or creating an intimidating or offensive or hostile work environment for her and (5) humiliating treatment likely to affect the victim's health or safety.

The definition is very wide, as it provides for direct or implied sexual conduct, which may mean that what is "implied" sexual behaviour for one person, may not be the same for another person. Hence, the implied behaviour will depend only upon the interpretation of a person. The definition also provides that harassment may be a verbal or non-verbal conduct. Hence, a mere statement in a case where the plaintiff requested defendant No. 1 to instruct the attendants to switch off the A. C. Machine, but in reply defendant No. 1 said "… come close to me, you will start feeling hot", can also be construed to be sexual harassment (*Albert Davit Limited vs. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)*).

The absence of any actual physical contact or the attempt to molest the complainants need not detain one in reading the writing on the wall, as it were. The Petitioner was well past middle age and a teacher who certainly had great influence on the complainants. The lack of details of possible physical advances and any groping and other stealthy sexual advances on occasion, seemingly accidental or by design would hardly be expected to be narrated by the two women. It is, therefore, necessary to read between the lines and understand the difficulty with which the complainants have even ventured to submit the said complaint and only after they had resigned from their positions and were out of the reach of the Petitioner (*Dr. S. Thippeswamy Vs. Mangalore University Mangalagangothry, 2011 (4) KCCRSN 403*).

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Sexual harassment is a subjective experience.

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held "We therefore prefer to analyze harassment from the [complainant's] perspective. A complete understanding of the [complainant's] view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. ... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive." *Dr. Punita K. Sodhi v. Union of India & Ors.* W.P. (C) 367/2009 & CMS 828, 11426/2009 On 9 September, 2010, in the High Court of Delhi

viii) According to section 2(o) "workplace" includes –

a. any department, organisation, undertaking, establishment, enterprise, institution, 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;

b. any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, industrial, health services or financial activities including production, supply, sale, distribution or service;

c. hospitals or nursing homes;

d. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

e. any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

f. a dwelling place or a house;

Workplace [section 2 (o)] has been defined as private sector organisation / private venture / undertaking / enterprise / institution / establishment / society / trust / non-governmental organisation / unit or service provider and places visited by employee (arising out of or during the course of employment, including transportation provided by employer for undertaking journey). Hence, if harassment takes place even during transportation or during a lunch meeting at a restaurant, the same will be covered under the Act.

As such, a logical meaning should be given to the expression "workplace" so that the purpose for which those guidelines have been framed, is not made unworkable. Workplace cannot be given a restricted meaning so as to restrict the application of the said guidelines within the short and narrow campus of the school compound. Workplace should be given a broader and wider meaning so that the said guidelines can be applied where its application is needed even beyond the compound of the workplace for removal of the obstacle of like nature which prevents a working woman from attending her place of work and also for providing a suitable and congenial atmosphere to her in her place of work where she can continue her service with honour and dignity.

In the case of *Saurabh Kumar Mallick* v. *Comptroller & Auditor General of India*, WP(C) No. 8649/2007, the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual

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harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no 'favour' could be extracted by the respondent from the complainant and thus the alleged act would not constitute 'sexual harassment'. The Delhi Court while considering this matter held this as 'clearly misconceived'. The Delhi Court observed that 'the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term 'workplace' by confining the meaning to the commonly understood expression "office". It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of videoconferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'workplace' but at his 'residence' and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'.

(ix) "unorganised 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. {Section 2(p)}

Complaints Committees

The Act provides for two kinds of complaints mechanisms:

(i) Internal Complaints Committee (ICC) and

(ii) Local Complaints Committee (LCC).

Constitution of Internal Complaints Committee

According to section 4 the Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment. The section provides for the following regarding the ICC:

1. Mandatory constitution of Internal Complaints Committee by order in writing:

   Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

   Provided 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.

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2. **Composition of the ICC**: The Internal Committee shall consist of the following members to be nominated by the employer, namely: –

   a. a Presiding Officer who shall be a 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 (l):

      Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

   b. **Members**: 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. External member one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

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

3. **Tenure of office:**

   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. **Fees of external members:**

   The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

5. Casual vacancy in the office of Presiding Officer or any member of Internal Committee:

   Where the Presiding Officer or any Member of the Internal Committee-

   a. contravenes the provisions of section 16; or

   b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

   c. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

   d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, 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 in accordance with the provisions of this section.

In Vidya Akhave ("Petitioner") v. Union of India and Ors, Writ Petition 796 of 2015, The Bombay High Court ("Court") ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee ("ICC") in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

Constitution of Local Complaints Committee

At the district level, the Government is required to set up a 'Local Complaints Committee' ("LCC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint

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is against the employer. The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee. The provisions of the Act w.r.t. LCC are as follows:

(i) Notification of District Officer.

According to section 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.

(ii) Constitution and jurisdiction of Local Complaints Committee

According to section 6, every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

(iii) Composition, tenure and other terms and conditions of Local Complaints Committee

Pursuant to section 7, 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 women 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 organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

   Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge. It is provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

d. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio. {Section 7(1)}

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 specified by the District Officer. Where the Chairperson or any Member of the Local Complaints Committee commits any of the following acts, he shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section:

a. contravenes the provisions of section 16; or

b. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

c. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

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d. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be,

The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Grants and audit

In accordance with section 8, the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in section 7.

The State Government may set up an agency and transfer the grants so made to that agency. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to section 7. The accounts of such agency 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.

COMPLAINT

Complaint of sexual harassment

Section 9 of the Act provides for the procedure for filing and hearing of complaints under the Act as follows:

1. Any aggrieved woman may make, in writing, a complaint of sexual harassment at work place to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

   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:

   Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

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.

   Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. In fact the more prompt the complaint is, the more authentic can it be treated.

   In *Manjeet Singh vs Indraprastha Gas Limited 236 (2017) DLT 396,* the Delhi High Court observed that anonymous complaints under the Act are bound to be rejected.

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.

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Conciliation

According to section 10, the Internal Committee or, as the case may be, the Local Committee, may, before initiating an 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. It is provided that no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been so arrived, 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. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement so recorded to the aggrieved woman and the respondent. No further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be in case where such settlement is arrived.

Inquiry into complaint

Section 11 of the Act states the procedure for conducting inquiry into the complaint made under the Act. Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable.

It is 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 or, as the case may be, forward the complaint to the police.

It is provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

The POSH Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:-

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.

Such an inquiry shall be completed within a period of ninety days.

Inquiry into Complaint

Action during pendency of inquiry

Section 12 provides for the relief that can be given by IC to the aggrieved woman during pendency of inquiry. During the pendency of an 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 –

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a. transfer the aggrieved woman or the respondent to any other workplace; or

b. grant leave to the aggrieved woman up to a period of three months; or

c. grant such other relief to the aggrieved woman as may be prescribed.

The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

On such recommendation of the Internal Committee or the Local Committee, as the case may be, the employer shall implement the recommendations so made and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Inquiry report

Section 13 of the Act provides for the action report to be submitted by IC or LC after conducting inquiry under the Act. 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 findings to the employer, or as the case may be, the District Officer within a period often days from the date of completion of the inquiry and such report be made available to the concerned parties.

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 in the matter.

Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has 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 provisions 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 as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

It is 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 sum to the aggrieved woman. It is provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

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

Punishment for false or malicious complaint and false evidence

There are strict provisions under section 14 of the Act for false or malicious complaint and false evidence under the Act. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false 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 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.

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It is provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section. It is provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

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.

Determination of compensation

Section 15 provides that for the purpose of determining the sums to be paid to the aggrieved woman 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 status of the respondent; (e.) feasibility of such payment in lump sum or in installments.

Prohibition of publication or making known contents of complaint and inquiry proceedings

According to section 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.

It is 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.

Penalty for publication or making known contents of complaint and inquiry proceedings

According to section 17, where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with 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.

Appeal

Section 18 provides for the appeal by aggrieved person under the Act. Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or subsection (l) 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. Such appeal shall be preferred within a period of ninety days of the recommendations.

Duties of employer

The law has provided for several duties of the employer under section 19 of the Act. Such duties begin at the time when an employer has to set up an internal complaints committee to ensure that aggrieved can file

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their complaints and seek redressal to such complaints and end at the time when the employer has provided certain data, in accordance with the provisions of the law, in relation to sexual harassment in its annual report. According to the section, 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 penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (I) of section 4;

c. organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an 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 or the Local 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 chooses to file a complaint in relation to the offence under the Indian Penal Code 1860 or any other law for the time being. in force;

h. cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

j. monitor the timely submission of reports by the Internal Committee.

Duties and powers of District Officer.

Section 20 cast upon the following mandatory duties on the District Officer who shall, –

a. monitor the timely submission of reports furnished by the Local Committee;

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

MISCELLANEOUS

Committee to submit annual report

According to section 21, 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.

The District Officer shall forward a brief report on the annual reports so received to the State Government.

Employer to include information in annual report

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

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Appropriate Government to monitor implementation and maintain data.

Pursuant to the provisions of section 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.

Appropriate Government to take measures to publicise the Act

In accordance with section 24, the appropriate Government may, subject to the availability of financial and other resources, – (a.) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace, (b.) formulate orientation and training programmes for the members of the Local Complaints Committee.

Power to call for information and inspection of records

Section 25 lists out the power of the appropriate Government under the Act. 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, –

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

b. authorise 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.

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.

Penalty for non-compliance with provisions of Act.

Section 26 provides for a penalty with a fine up to rupees fifty thousand 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 there under.

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 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;

In addition to above, he shall be liable for cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, by the Government or local authority ,as the case may be, for carrying on his business or activity.

Cognizance of offence by courts

According to section 27, every offence under this Act are non-cognizable which means one cannot be arrested without a warrant. No court shall take cognizance of any offence punishable under this Act or any rules made

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there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf. 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.

Act not in derogation of any other law.

Section 28 states that the purpose of the Act is to provide additional safeguard to women at work. According to the section, the provisions 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.

Power of appropriate Government to make rules.

Section 29 states that the Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

a. the fees or allowances to be paid to the Members under sub-section (4) of section 4;

b. nomination of members under clause (c) of sub-section (I) of section 7;

c. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

d. the person who may make complaint under sub-section (2) of section 9;

e. the manner of inquiry under sub-section (I) of section 11;

f. the powers for making an inquiry under clause (c) of sub-section (2) of section I I;

g. the relief to be recommended under clause (c) of sub-section (I) of section 12;

h. the manner of action to be taken under clause (i) of sub-section (3) of section 13;

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

j. the manner of action to be taken under section 17;

k. the manner of appeal under sub-section (1) of section 18;

l. the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and

m. The form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (I) of section 21.

In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Central Government made the following rules, namely:

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) RULES, 2013

The important provisions of the rules are reproduced below:

2. Definitions- In these rules, unless the context otherwise requires, -

f. "Special educator" means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;

3. Fees or allowances for Member of Internal Committee.

a. The Member appointed from amongst non-Government organizations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the

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reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

b. The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. Person familiar with issues relating to sexual harassment.

Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of Section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following.-

a. a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;

b. a person who is familiar with labour, service, civil or criminal law.

5. Fees or allowances for Chairperson and Members of Local Committee.

a. The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.

b. The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of Section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

c. The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).

6. Complaint of sexual harassment.

For the purpose of sub-section (2) of Section 9.-

a. where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by

   i. her relative or friend; or

   ii. her co-worker; or

   iii. an officer of the National Commission for Women or State Women's Commission; or

   iv. any person who has knowledge of the incident, with the written consent of the aggrieved woman;

b. where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by.-

   i. her relative or friend; or

   ii. a special educator; or

   iii. a qualified psychiatrist or psychologist; or

   iv. the guardian or authority under whose care she is receiving treatment or care; or

   v. any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

c. where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be

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filed by any person who has knowledge of the incident, with her written consent;

d. where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

7. Manner of inquiry into complaint.

a. Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

b. On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (a) to the respondent within a period of seven working days.

c. The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

d. The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

e. The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

g. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

g. In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

8. Other relief to complainant during pendency of inquiry – The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to

a. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;

b. restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

9. Manner of taking action for sexual harassment.– Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

10. Action for false or malicious complaint or false evidence.–Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false 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 District Officer, as the case may be, to take action in accordance with the provisions of Rule 9.

11. Appeal.

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Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (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 appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

12. Penalty for contravention of provisions of Section 16

Subject to the provisions of Section 17, if any person contravenes the provisions of Section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

13.Manner to organize workshops, etc.

Subject to the provisions of Section 19, every employer shall

a. formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;

b. carry out orientation programmes and seminars for the Members of the Internal Committee;

c. carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

14. Preparation of annual report. – The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details.-

a. number of complaints of sexual harassment received in the year;

b. number of complaints disposed off during the year;

c. number of cases pending for more than ninety days;

d. number of workshops or awareness programme against sexual harassment carried out;

e. nature of action taken by the employer or District Officer be considered necessary; d. conduct capacity building and skill building programmes for the Members of the Internal Committee;

f. declare the names and contact details of all the Members of the Internal Committee;

Compliances by the Employer

1. Constitution of the Internal Complaints Committee

Every employer, with more than 10 employees, shall constitute an 'Internal Complaints Committee' at the workplace and wherein the offices or administrative units of workplace are located at different places, he will, constitute a committee in all such offices and administrative units.

2. Preparation of an Annual Report by the employer

The act casts a duty on employers to include information pertaining to the number of cases filed and disposed of by them in their Annual Report. Organisations which are not under a requirement to prepare an Annual Report have to furnish this information directly to the Local Complaints Committee, which will prepare an Annual Report of its own to be forwarded to the appropriate government.

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Disclosure Requirements under the Annual Report of Companies
The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013 mandates that all companies need to make necessary disclosure about compliance with the said law in their Annual Report as per section 22 and 28 of the Act as follows: (i) Employer to include information in Annual Report (Section 22): The employer shall include in its report the number of cases filed, if any, 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. (ii) Act not in derogation of any other law (Section 28): The provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Accordingly companies would need to incorporate the said information in their Annual Report to be filed with Registrar of Companies for the year ending 31st march, 2015. The disclosure can be made as follows: Disclosure under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. "The Company has in place an anti -sexual harassment policy in line with the requirements of The Sexual Harassment of Women at the Workplace (Prevention, Prohibition & Redressal) Act, 2013. Internal Complaints Committee (ICC) has been set up to redress complaints received regarding sexual harassment. All employees (permanent, contractual, temporary, trainees) are covered under this policy. The following is a summary of sexual harassment complaints received and disposed off during each Calendar year: • No. of complaints received. • No. of complaints disposed off."

OTHER LAWS PERTAINING TO WORKPLACE SEXUAL HARASSMENT

I. Industrial Employment (Standing Orders) Act, 1946

The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable. The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (Standing Orders Rules) prescribe a list of acts constituting misconduct and specifically includes sexual harassment. The Model Standing Orders not only defines sexual harassment in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that sexual harassment is not limited to women under the Standing Orders Rules.

II. Indian Penal Code, 1860

The following offences are held to be cognizable and punishable with fine/and imprisonment under the Code:

(i) Outraging the modesty of a woman u/s 354.

(ii) Sexual harassment by a man u/s 354-A.

(iii) Assault or use of criminal force to woman with intent to disrobe u/s 354-B.

(iv) Voyeurism u/s 354-C.

(v) Stalking u/s 354-D.

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(vi) Insulting the modesty of a woman u/s 509.

LESSON ROUND UP

- The Act has been introduced to curb sexual harassment at workplace – 'sexual harassment' is defined as any advances to establish physical contact with a woman, a demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other form of physical, verbal or non-verbal conduct of sexual nature. The following circumstances amongst others constitute may also constitute as forms of sexual harassment, – implied or explicit promise of preferential/detrimental treatment at the workplace, implied or explicit threat about her present or future employment status, interference with her work and/or creating an intimidating or offensive or hostile work environment for her, and humiliating treatment likely to affect her health or safety.
- The Act will ensure that women are protected against sexual harassment at all work places, be it public or private, organised sector or even the unorganised sector, regardless of their age and status of employment. The act also covers students in schools and colleges, patients in hospital as well as a woman working in a dwelling place or a house.
- The Act creates a mechanism for redressal of complaints and safeguards against false or malicious charges. Under the Act, employers who employ 10 employers or more and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If, however, they still fail to form a Committee, they can be held liable for a greater fine and may even lead to cancellation of their business license. Every employer with a business or enterprise having more than 10 workers will have to constitute a committee known as 'Internal Complaints Committee'(ICC) to look into all complaints of sexual harassment at the workplace. Further, in every district, a public official called the District Officer will constitute a committee known as the 'Local Complaints Committee' (LCC) to receive complaints against establishments where there is no Internal Complaints Committee or there being a complaint against the employer himself. This committee would further handle all complaints of sexual harassment in the domestic sphere as well as those coming from the unorganised sector.
- An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.
- Before initiating action on a complaint, the ICC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement.
- Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000.
- Employers who fail to comply will be punished with a fine that may extend to Rs. 50,000. If any employer who has been convicted earlier of an offence subsequently commits a repeat offence he will be liable for twice the punishment, which may have been imposed on a first conviction. Further, his license for carrying on business may even be cancelled.

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SELF-TEST QUESTIONS

1. Highlight the importance of "Vishaka Judgment" in enactment of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".
2. Write a brief note on constitution of Internal Complaints Committee under the Act.
3. Briefly explain the powers of Local Complaints Committee.
4. What are the punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment?
5. Explain sexual harassment at workplace.

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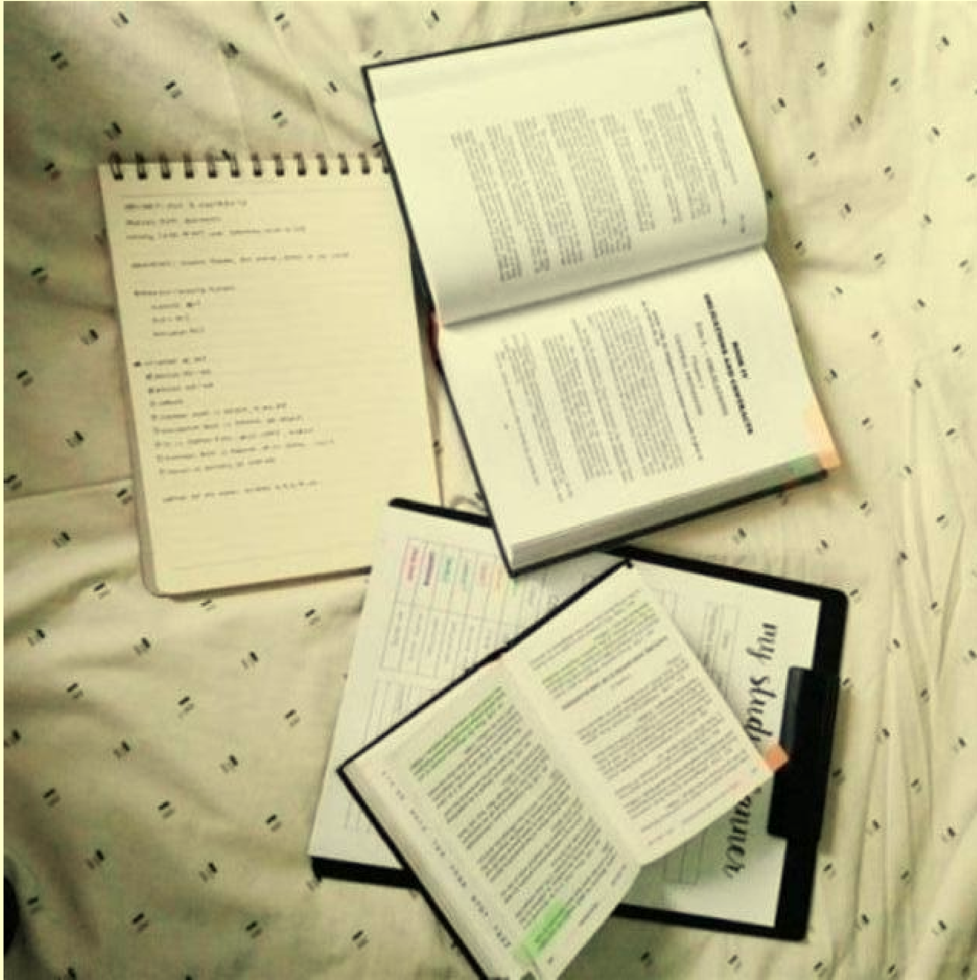

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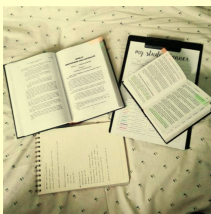

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Section VIII

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

LESSON OUTLINE

- Learning Objectives
- Object, scope of the Act
- Appropriate Government
- Adolescent
- Child
- Day
- Establishment
- Workshop
- Occupier
- Prohibition of employment of children in any occupations
- Prohibition of employment of adolescent in any occupations
- Prohibition of employment of adolescent in certain hazardous occupations and processes
- Regulation of Conditions of Work of adolescent
- Hours and Period of work
- Weekly holidays
- Maintenance of register
- Penalties

LEARNING OBJECTIVES

Child labour is a concrete manifestation of violations of a range of rights of children and is recognised as a serious social problem in India. Working children are denied their right to survival and development, education, leisure and play, and adequate standard of living, opportunity for developing personality, talents, mental and physical abilities, and protection from abuse and neglect. Even though there is increase in the enrolment of children in elementary schools and increase in literacy rates, child labour continues to be a significant phenomenon in India.

As per Article 24 of the Constitution, no child below the age of 14 years is to be employed in any factory, mine or any hazardous employment. Further, Article 39 requires the States to direct its policy towards ensuring that the tender age of children is not abused and that they are not forced by economic necessity to enter avocations unsuited to their age or strength. Recently, with the insertion of Article 21A, the State has been entrusted with the task of providing free and compulsory education to all the children in the age group of 6-14 years.

Consistent with the Constitutional provisions, Child Labour (Prohibition and Regulation) Act, 1986 was enacted. Further, Government in 2016 amended the Child Labour (Prohibition & Regulation) Act, which came into force w.e.f. 1.9.2016. After the Amendment, the Child Labour (Prohibition & Regulation) Act, 1986 renamed as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. The Act regulates employment of adolescent in non-hazardous occupations and processes.

In this lesson, students will be acclimatized with the legal frame work stipulated under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 prohibits employment of children below 14 years in hazardous occupations and processes and regulates the working conditions in other employments.

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INTRODUCTION

The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.

It prohibits employment of children in all occupations and processes to facilitate their enrolment in schools in view of the Right of Children to Free and Compulsory Education Act, 2009 and to prohibits employment of adolescents (persons who have completed fourteenth year of age but have not completed eighteenth year) in hazardous occupations and processes and to regulate the conditions of service of adolescents in line with the ILO Convention 138 and Convention 182, respectively.

Definition

Section 2 of the Act defines various terms used in the Act, some of the definitions are given here under:

Appropriate Government means, in relation to an establishment under the control of the Central Government or a railway administration or a major port or a mine or oilfield, the Central Government, and in all other cases, the State Government.

Adolescent means a person who has completed his fourteenth year of age but has not completed his eighteenth year.

Child means a person who has not completed his fourteenth year of age or such age as may be specified in the Right of Children to Free and Compulsory Education Act, 2009, whichever is more.

Day means a period of twenty-four hours beginning at midnight.

Establishment includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating-house, theatre or other place of public amusement or entertainment.

Occupier in relation to an establishment or a workshop, means the person who has the ultimate control over the affairs of the establishment or workshop.

Workshop means any premises (including the precincts thereof) wherein any industrial process is carried on, but does not include any premises to which the provisions of Sec. 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

Prohibition of employment of children in any occupations and processes

Section 3 of the Act provides that no child shall be employed or permitted to work in any occupations or process except:-

(a) helps his family or family enterprise, which is other than any hazardous occupations or processes set forth in the Schedule, after his school hours or during vacations;

(b) works as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus, subject to such conditions and safety measures, as may be prescribed.

However no such work shall effect the school education of the child.

It may be noted that the expression:

(a) "family" in relation to a child, means his mother, father, brother, sister and father's sister and brother and mother's sister and brother;

(b) "family enterprise" means any work, profession, manufacture or business which is performed by the members of the family with the engagement of other persons;

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(c) ''artist'' means a child who performs or practices any work as a hobby or profession directly involving him as an actor, singer, sports person or in such other activity as may be prescribed relating to the entertainment or sports activities falling under clause (b) of sub-section (2).''

Prohibition of employment of adolescents in certain hazardous occupations and processes

Section 3A provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule.

The hazardous occupations or processes set forth in the Schedule are as under:

(1) Mines.

(2) Inflammable substances or explosives.

(3) Hazardous process.

Explanation. – For the purposes of this Schedule, "hazardous process" has the meaning assigned to it in clause (cb) of the Factories Act, 1948.

However, the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under the Act.

Hours and Period of work

Section 7 provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that :

– No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.

– No adolescent shall be required or permitted to work overtime.

– No adolescent shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

Weekly holidays

As per section 8 every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Notice to Inspector

Section 9 provides that every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars namely:

– The name and situation of the establishment;

– The name of the person in actual management of the establishment;

– The address to which communications relating to the establishment should be sent; and

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– The nature of the occupation or process carried on in the establishment.

Maintenance of register

Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment showing –

– the name and date of birth of every adolescent so employed or permitted to work;

– hours and periods of work of any such adolescent and the intervals of rest to which he is entitled;

– the nature of work of any such adolescent; and

– such other particulars as may be prescribed

Display of notice containing abstract of sections 3A and 14

Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every station on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of Sections 3A and 14.

Penalties

Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such children shall not be punished unless they permit such child for commercial purposes in contravention of the provisions of section 3.

Whoever employs any adolescent or permits any adolescent to work in contravention of the provisions of section 3A shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both. However; the parents or guardians of such adolescent shall not be punished unless they permit such adolescent to work in contravention of the provisions of section 3A.

The parents or guardians of any child or adolescent shall not be liable for punishment, in case of the first offence.

Whoever, having been convicted of an offence under section 3 or section 3A commits a like offence afterwards; he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.

The parents or guardians having been convicted of an offence under section 3 or section 3A, commits a like offence afterwards, he shall be punishable with a fine which may extend to ten thousand rupees.

Whoever fails to comply with or contravenes any other provisions of the Act or the rules made thereunder, shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

District Magistrate to implement the provisions

Section 17A of the Act provides that the appropriate Government may confer such powers and impose such duties on a District Magistrate as may be necessary, to ensure that the provisions of this Act are properly carried out and the District Magistrate may specify the officer, subordinate to him, who shall exercise all or any of the powers, and perform all or any of the duties, so conferred or imposed and the local limits within which such powers or duties shall be carried out by the officer as may be prescribed.

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LESSON ROUNDUP

- The Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 enacted to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes and the matters connected therewith or incidental thereto. It extends to whole of India.
- Adolescent shall not permit to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- Every adolescent employed in an establishment is entitled in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.
- Every occupier in relation to an establishment who employs, or permits to work, any adolescent shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice.
- Every occupier in respect of adolescent employed or permitted to work in any establishment, maintained a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment.
- Contravention of the provisions of Section 3 of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years, or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.
- Contravention of the provisions of Section 3A of the Act shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years or with fine which shall not be less than twenty thousand rupees but which may extend to fifty thousand rupees, or with both.

SELF TEST QUESTIONS

1. Enumerate the constitutional provisions on Child Labour Prohibition.
2. State the provisions regarding prohibition of employment of adolescent in certain occupations and processes under the Act.
3. Write short notes on “workshop’’ and “establishment”.

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Lesson 4

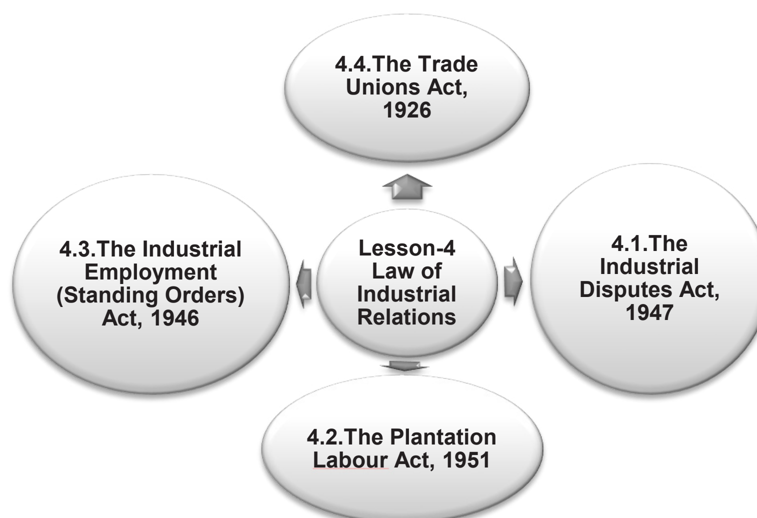
Law of Industrial Relations

The employer-employee relationship has to be conceived of as a partnership in a constructive endeavour to promote the satisfaction of the economic needs of the community in the best possible manner. The dignity of labour and the vital role of the worker in such a partnership must be recognised. In dealing with the worker it has not only to be borne in mind that his energy and skill are the most precious assets of the nation, but also that his personality is an object of care and respect and of equal significance and worth with that" of any other element in the community.

Industrial relations have to be so developed that the worker's fitness to understand and carry out his responsibility grows and he is equipped to take an increasing share in the working of industry. There should be the closest collaboration through consultative committees at all levels between employers and employees for the purpose of increasing production, improving quality, reducing costs and eliminating waste.

The worker's right of association, organisation and collective bargaining as the fundamental basis of the mutual relationship. The attitude to trade unions should not be just a matter of toleration. They should be welcomed and helped to function as part and parcel of the industrial system.

If any differences arise between the parties, they should be examined and settled in a spirit of reasonable adjustment with an eye to the good of industry and the wellbeing of the community. In the last resort differences may be resolved by impartial investigation and arbitration. The intervention of the State and imposed settlements may become necessary at times. The stress of the administration as well as, the efforts of parties should, however, be for avoidance of disputes and securing their internal settlement.



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Section I

Industrial Disputes Act, 1947

LESSON OUTLINE

- Learning Objectives
- Introduction
- Object and significance of the Act
- Important Definitions
- Types of Strike and their Legality
- Legality of Strike
- Dismissal etc. of an Individual workman to be deemed to be an Industrial Dispute
- Authorities under the Act and their Duties
- Reference of Disputes
- Voluntary Reference of Disputes to Arbitration
- Procedure and Powers of Authorities
- Strikes and Lock-outs
- Justified and unjustified strikes
- Wages for Strike period
- Dismissal of workmen and illegal strike
- Justification of Lock-out and wages for Lock-out Period
- Change in Conditions of Service
- Unfair Labour Practices
- Penalties
- Schedules

LEARNING OBJECTIVES

Industrial disputes are the disputes which arise due to any disagreement in an industrial relation. Industrial relation involves various aspects of interactions between the employer and the employees. In such relations whenever there is a clash of interest, it may result in dissatisfaction for either of the parties involved and hence lead to industrial disputes or conflicts. These disputes may take various forms such as protests, strikes, demonstrations, lock-outs, retrenchment, dismissal of workers, etc

Industrial Disputes Act, 1947 provides machinery for peaceful resolution of disputes and to promote harmonious relation between employers and workers. The Act is a benign measure which seeks to pre-empt industrial tensions, provide the mechanics of dispute resolutions and set up the necessary infrastructure so that the energies of partners in production may not be dissipated in counter productive battles and assurance of industrial may create a congenial climate. The Act enumerates the contingencies when a strike or lock-out can be lawfully resorted to, when they can be declared illegal or unlawful, conditions for laying off, retrenching, discharging or dismissing a workman, circumstances under which an industrial unit can be closed down and several other matters related to industrial employees and employers.

Under the Act various Authorities are established for Investigation and settlement of industrial disputes. They are Works Committee; Conciliation Officers; Boards of Conciliation; Court of Inquiry; Labour Tribunals; Industrial Tribunals and National Tribunals.

The knowledge of this legislation is a must for the students so that they develop a proper perspective about the legal frame work stipulated under the Industrial Disputes Act, 1947.

The Industrial Disputes Act, 1947 is the legislation for investigation and settlement of all industrial disputes.

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INTRODUCTION

The first enactment dealing with the settlement of industrial disputes was the Employers' and Workmen's Disputes Act, 1860. This Act weighed much against the workers and was therefore replaced by the Trade Disputes Act, 1929. The Act of 1929 contained special provisions regarding strikes in public utility services and general strikes affecting the community as a whole. The main purpose of the Act, however, was to provide a conciliation machinery to bring about peaceful settlement of industrial disputes. The Whitely Commission made in this regard the perceptive observation that the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for their settlement.

The next stage in the development of industrial law in this country was taken under the stress of emergency caused by the Second World War. Rule 81-A of the Defence of India Rules was intended to provide speedy remedies for industrial disputes by referring them compulsorily to conciliation or adjudication, by making the awards legally binding on the parties and by prohibiting strikes or lock-outs during the pendency of conciliation or adjudication proceedings and for two months thereafter. This rule also put a blanket ban on strikes which did not arise out of genuine trade disputes.

With the termination of the Second World War, Rule 81-A was about to lapse on 1st October, 1946, but it was kept alive by issuing an Ordinance in the exercise of the Government's Emergency Powers. Then followed the Industrial Disputes Act, 1947. The provisions of this Act, as amended from time to time, have furnished the basis on which industrial jurisprudence in this country is founded.

OBJECT AND SIGNIFICANCE OF THE ACT

The Industrial Disputes Act, 1947 makes provision for the investigation and settlement of industrial disputes and for certain other purposes. It ensures progress of industry by bringing about harmony and cordial relationship between the employers and employees. Definitions of the words 'industrial dispute, workmen and industry' carry specific meanings under the Act and provide the framework for the application of the Act.

In the case of *Workmen of Dimakuchi Tea Estate* v. *Dimakuchi Tea Estate*, AIR 1958 S.C. 353, the Supreme Court laid down following objectives of the Act:

- **(i) Promotion of measures of securing and preserving amity and good relations between the employer and workmen.**
- **(ii) Investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade union or federation of trade unions or an association of employers or a federation of associations of employers.**
- **(iii) Prevention of illegal strikes and lock-outs.**
- **(iv) Relief to workmen in the matter of lay-off and retrenchment.**
- **(v) Promotion of collective bargaining.**

This Act extends to whole of India. The Act was designed to provide a self-contained code to compel the parties to resort to industrial arbitration for the resolution of existing or apprehended disputes without prescribing statutory norms for varied and variegated industrial relating norms so that the forums created for resolution of disputes may remain unhampered by any statutory control and devise rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice. This being the object of the Act, the Court by interpretative process must strive to reduce the field of conflict and expand the area of agreement and show its preference for upholding agreements sanctified by mutuality and consensus in larger public interest, namely, to eschew industrial strife, confrontation and consequent wastage (*Workmen, Hindustan Lever Limited* v. *Hindustan Lever Limited,* (1984) 1 SCC 728).