

To:

Wednesday, March 28, 2007

The Secretary,  
Government of India,  
Ministry of Women and Child Development,  
Shastri Bhawan, 'A' Wing,  
Dr. Rajendra Prasad Road,  
New Delhi – 110 001

Sub : Comments and Suggestions on "Protection of Women against Sexual Harassment at Workplace Bill, 2007"

Dear Sir / Madam,

**Rakshak** is an International organization dedicated to prevention of Elder Abuse and was founded by a group of concerned Indian citizens positioned globally, comprising of Intellectuals from India's elite Institutions. It works in close conjunction with [498a.org](http://www.498a.org), a Leading International organization focused on researching the impact of misuse of gender-biased laws such as Section 498A of the Indian Penal Code. The organization seeks to address barriers to justice and equality perpetrated by misuse of Laws.

The Rakshak team hereby presents its submissions as comments and suggestions on WCD Ministry's proposed draft of **Protection of Women against Sexual Harassment at Workplace Bill, 2007**.

#### **A. Gender Neutrality**

##### Comments

- 1) All employers are committed to maintaining a workplace where **EACH** employee's privacy and personal dignity are respected and protected from offensive / threatening behavior, **irrespective of gender**.
- 2) It is incorrect to presume that only women are prone to sexual harassment. With growing urbanisation, mindless westernization, and an increasing number of employee workforce positioned globally the issue of sexual harassment at workplace has acquired new dimensions. Men are as prone to being sexually harassed as women are.
- 3) The Sexual Harassment at workplace policies prevalent in most of the nations today take cognizance of the facts mentioned above and are gender neutral. According to a report on Sexual harassment at workplace by United Nations Economic Commission of Europe - **Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, The Slovak Republic, Slovenia, Spain, Sweden and the United Kingdom** have policies for Sexual Harassment that are gender neutral. [4]
- 4) As per the Census of India 2001 data, men constitute 68.37% of the total workforce whereas women were 31.63%.
- 5) There are numerous studies which conclude that Men at workplace are being increasingly harassed and victimized:

- (a) In **United Kingdom**, a survey conducted by the UK Department of Trade and Industry reports that men constitute 41% of sexual harassment victims. [1]
- (b) In **Hong Kong**, a survey conducted by the Civic Party and Equal Opportunities Commission revealed that **one third of sexual harassment victims are males**. [2]
- (c) In **USA**, almost 16% of all sexual harassment complaints received by the Equal Employment Opportunities Commission (EEOC) are regarding sexual harassment of men. [3]

Therefore, any effort to prevent or eliminate sexual harassment at workplace should be applicable to employees, irrespective of gender, both in terms of responsibility and liability.

#### Suggestion # 1

*The Act should be made applicable to all employees, irrespective of gender. The word **woman** should be replaced by the word **employee** in all appropriate places in the Draft Bill so as to render the proposed draft gender neutral.*

#### Note

*For the remainder of this document, all references to gender specific terms in the draft bill would be considered replaced by gender neutral terms (aggrieved woman by **aggrieved person**, etc.)*

## **B. Committees**

### **B.1 Tenure of Committees**

#### Comments

The committees should not be permanent entities. This would help avoid any possibility of malpractice. Committees should be formed only when a complaint is received and appropriate action is warranted on it. They should be disbanded after appropriate action has been taken.

#### Suggestion # 2

*No committee be formed unless to hear a specific complaint.*

### **B.2 Remuneration for Committee members**

#### Comments

Section 4(3) and section 4(4) of the draft bill propose tenure and remuneration for the Committee members. It is strongly recommended that no remuneration or allowances should be made payable to any of the Committee members as it would encourage frivolous and malicious cases to justify such payments.

#### Suggestion # 3

*No remuneration, monetary or otherwise, be provided to the committee members or chairperson.*

## **B. 3 Constitution of committees**

### **B.3.1 Appointment of Committee Chairperson and Internal Committee members**

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Section 4(2)(a) of the draft bill states :- *"a Chairperson, from amongst employees, who shall be a senior level woman, committed to the cause of women. In case a senior level woman employee is not available, the Chairperson shall be appointed from a sister organization or a non-governmental organization"*

#### Comments

The above proposed section is based on an unjustified, untenable premise that only women are capable of arbitrating complaints of sexual harassment.

Both section 4(2)(a) and 4(2)(b) use the phrase '*committed to the cause of women*'. This phrase infact finds mention in several places in the draft bill and its connotation only suggests an inherent bias and prejudice against men. The committee members instead should be individuals with '*high integrity and a judicious approach*'.

#### Suggestion # 4

*Instead of being gender biased and committed to the "cause of women", the appointment of the Committee Chairperson and members should be on the basis of their integrity and their judicious approach.*

### **B.3.2 NGO Committee member**

In section 4(2)(c), the bill states :- *"one member from amongst such non-governmental organisations or associations or other interests committed to the cause of women, as may be specified: Provided that at least fifty per cent of the members so nominated shall be women"*

#### Comments

It would be inappropriate to include members external to the organization in question.

Members external to the organization should not be allowed to arbitrate on the issues that are internal to the organization. Members of women's groups or non-governmental organizations dealing with issues of violence against women may harbour an inherent bias against men and a fair and equitable probe may not be made available to male victims of sexual harassment. Unless proper checks and balances are built into the bill, the involvement of NGOs in governance is dangerous, as they have no accountability. There is a direct conflict of interest because such NGOs may have a vested interest in justifying their existence by entertaining frivolous complaints and blowing issues out of proportion that could have been easily dealt within the bounds of the organization. They may also encourage women who are not necessarily harassed, but have other grievances with the organization, to file sexual harassment complaints.

Another stipulation in this section requires that at least fifty per cent of the members so nominated shall be women.

#### Suggestion # 5,6,7

- *No members, external to the employer organization, be allowed in the committee.*
- *Any stipulation w.r.t. number of women in the Committee is unnecessary and makes a prejudiced assumption that only women are capable of arbitrating complaints. This, as well as the "commitment to the cause of women" is addressed by Suggestion #4.*
- *Treating the offence of sexual harassment as a psychosocial offence, it is more important to focus on the presence of **trained psychologists and behavioral therapists** or at the very least managers trained in conducting fact based investigations on the panel as opposed to the number of women.*

### B.3.3 Powers of the Committee

#### Comments

In sections 8(2), 10(1), 10(2), 11(2), 11(3), 11(4), 12(1), 12(2), the committee has been granted various powers to make appropriate recommendations to the employer or District Officer.

- i. From the proposed draft bill it is not clear if the employer is bound by the recommendations of the committee.
- ii. It is also not apparent if the committee has any judicial or administrative powers.
- iii. The process of appeals too is not clearly specified.
- iv. Would the recommendation of the committee be open to challenge in a court of law?
- v. Does the respondent have a right to legal counsel during the proceedings on the enquiry?
- vi. The power of the committee and the process of the enquiry of the complaint should be well defined.

#### Suggestion # 8

*The powers of the committee and the appeals process should be specified unambiguously. Inadequacies mentioned in (i) to (vi) above need to be addressed explicitly*

## C. Complaints

### C.1 Conciliation

In section 8 (1), the draft bill states – *"at the request of the aggrieved woman the Committee or the Local Committee, as the case may be, may, before initiating enquiry under this Act, take steps to settle the matter between her and the respondent through conciliation"*.

#### Comments

A complaint of sexual harassment is a serious complaint, and under no circumstances should the conciliation include any monetary settlements. It is an **outrage to the sensibilities of all self respecting men and women** that money can be considered as adequate redressal for their loss of dignity. Money cannot compensate for the harassment suffered by the victim in such cases. Moreover, monetary payments would only render the proposed statute open for abuse. The potential for misuse of this section would accordingly be very high.

#### Suggestion # 9

*Monetary compensation should not be a part of conciliation proceedings. This would to a large extent help avoid potential for misuse.*

### C.2 Time limit on Filing Complaints

#### Comments

A time limit within which the complaint needs to be filed from the time of alleged incident is of crucial significance in settling sexual harassment disputes. Justice should be meted out before any evidence is damaged, destroyed, rendered useless or fades away from memory. Infact the complaint should be lodged by the complainant **instantaneously and spontaneously** without any loss of time. **Any delay** on this score must be explained to the satisfaction of the concerned authority. In addition, the filing of the complaint needs to be time bound. For example, it would be ridiculous to entertain a complaint of sexual harassment after years of the alleged incident.

It is also important to remember that the guilty person should be visited with appropriate reformist action at the earliest, which can be made possible only when the complaint is filed instantaneously.

#### Suggestion # 10

*The complaint should be filed immediately on the occurrence of the alleged incident. Any complaint not filed within a stipulated time period (2 weeks) should be closely scrutinized for veracity before admission and the delay should be explained in writing by the complainant, to the satisfaction of the committee.*

### **C.3 Compensation**

#### **C.3.1 Financial Responsibility**

In section 11(3)(b), the draft directs – *“to deduct from the salary or wages of the respondent such sum of compensation to be paid to the aggrieved woman or to legal heirs, as it may determine, in accordance with the provisions of section 13; or to direct the respondent to pay such compensation to the aggrieved woman”*

#### Comments

Loss of salary or wages would be a huge encumbrance on the family of the respondent, potentially including children, who would face economic hardships and could even jeopardize their future. The respondent must not be individually responsible when he/she is in employment of the organization. It is the responsibility of the organization to police its own employees and ensure they follow the service rules. If they don't, the employer is responsible to pay the compensation to the victim. The employer can deal with the service aspects of the perpetrator separately in the best interest of their organization. In the western nations, the financial burden of a sexual harassment suit lies with the employer as it is the responsibility of the employer to provide a safe working environment to the employees. This fact is also clearly borne out in the report on Sexual harassment at workplace by United Nations Economic Commission of Europe. [4]

#### Suggestion # 11

*As prevalent in the western world, the Employer should bear the financial burden of the compensation ordered to the aggrieved person*

#### **C.3.2 Determination of Compensation**

#### Comments

All incentives for filing frivolous and malicious complaints should be eliminated. No committee should be empowered to issue any monetary compensation at any stage of the complaint. All avenues for extortion and blackmail should be shut down by divesting the committee of all power to order any monetary incentive to the complainant.

The committee should be given authority **only to investigate and submit a report**. The question of compensation must be decided by a legal authority whose decisions are available for review by higher judiciary.

#### Suggestion # 12

*The committee should be divested of all powers to order any monetary compensation at any stage of the proceedings.*

### **C.4 False and Malicious complaint**

In section 11(2), the bill states – *“Where the committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer or the District Officer that no action is required to be taken in the matter”*

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#### Comments

When the allegations of sexual harassment cannot be proved against the respondent, the committee should make an inquiry to determine if the complaint was false and malicious and if so, then it should recommend action against the complainant under section 12(1).

In section 12(1), the bill states that if a complaint is found to be false, the committee “*may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint*”.

The phrase ‘*may recommend*’ should be changed to **shall recommend** to ensure justice for a respondent falsely accused of sexual harassment.

#### Suggestion # 13

*Mandatory action be taken against the complainant when the complaint is found to be frivolous or malicious.*

#### Suggestion #14

*Falsely accused person should have the right to pursue justice in a court of law, and claim appropriate redressal as remedy for the mental trauma, pain, suffering, emotional distress **and social censure** caused to the falsely accused person.*

### **D. Submission of Enquiry Report**

#### Comments on Section 11(4)

On receiving the Enquiry Report from the Committee or the Local Committee, as the case may be, the employer or the District Officer should take **an independent decision** in accordance with law.

#### Suggestion # 15

*Section 11(4) should read as :*

*“Provided that where the employer or the District Officer is not in agreement with any conclusion arrived at or recommendation made by the committee or the Local Committee, he may alter the conclusion or recommendation after recording the reasons of his disagreement in writing.*

### **E. Right to the Enquiry Report**

Section 14 prohibits the publication or making known, the contents of complaint and enquiry proceedings.

#### Comments

When, either the complainant or the respondent wishes to approach any court of law for justice, they should have a right to the details and proceedings of the enquiry in the enquiry report to provide context to the judiciary.

#### Suggestion # 16

*In the event the complainant or the respondent wishes to pursue the matter in the judiciary, the enquiry report be provided to the concerned party.*

### **F. Periodic Review**

Periodically, this act should be reviewed so as to assess the susceptibility of this act against misuse and its efficacy in providing justice for genuine victims. The need to develop the infrastructure in terms of tools and resources for the

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collection of data in relation to sexual harassment cannot be overemphasized. There should be organizations having dedicated research personnel monitoring the issue on an ongoing basis.

Suggestion # 17

This act should be reviewed every 2 years to adjudicate its effectiveness and then re-ratified, failing which it should be deemed expired.

**G. Research Studies / Surveys**

The first and foremost step that the Ministry of women and child development must take is to conduct a national survey to ascertain the incidence of sexual harassment in India before attempting to introduce a sexual harassment bill. The lack of research on sexual harassment in India does imply that the introduction of the sexual harassment bill is not grounded strictly on research. The absence of a framework or approach to the conduct of quantitative research makes it impossible to develop a comprehensive overview of incidence or prevalence or nature of sexual harassment.

Suggestion # 18

*Quantitative Research be undertaken by the Govt. to determine the nature and extent of Sexual Harassment at workplace.*

Moreover any such research study must be conducted by a neutral organization with scientifically approved methodology. It should not be undertaken by groups that focus on the working conditions of women or on the issue of violence against women, as such a study is likely to provide skewed data with under-representation of the level and nature of male sexual harassment.

Section 2 (l) (iii) of the bill states – ““Workplace” means :- a house or dwelling place “

Section 2 (g) (ii) of the bill states – ““employer” means:- in any workplace not covered under clause (i), any person responsible for the management, supervision and control of the of the workplace”

This would seem to indicate that the Bill extends to domestic help as well. Does that mean that every household, that employs domestic help, needs to constitute a committee? Who would be on the committee?

Suggestion # 19

*The scope and ambit of the Sexual harassment bill needs to be appropriately defined. In particular, Households and home dwellings need to be excluded from the list of workplaces, as it imposes considerable responsibilities on the household (including constitution of committees etc.), the execution of which may not be feasible.*

**H. Socio-cultural Considerations**

The definition of sexual harassment as formulated in the sexual harassment bill includes not only overt but also implied actions and threats. To define sexual harassment in terms of someone's perception rather than on objective grounds leaves room for a person to manipulate the system for personal gain or to wreak vengeance. There is need to clearly delineate incidents of bad taste or socio-cultural misunderstanding from the more serious forms of sexual harassment. For example, while being kissed on the cheek is a form of greeting in some countries it may be deemed inappropriate in other nations. Shaking of hands is extremely common form of greeting at workplace, but put in Indian context, not everybody is comfortable with it. This can by no means be considered sexual harassment. The bill should specifically mention the actions that are acceptable or not acceptable at workplace.

Suggestion # 20

*The bill should clearly and unambiguously state the actions that amount to sexual harassment and the actions which can not be construed as sexual harassment.*



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## I. Summary of Recommendations

1. The Act should be made applicable to all employees, irrespective of gender. The word woman should be replaced by the word employee in all appropriate places in the Draft Bill so as to render the proposed draft gender neutral.
2. No committee be formed unless to hear a specific complaint.
3. No remuneration, monetary or otherwise, be provided to the committee members or chairperson.
4. Instead of being gender biased and committed to the “cause of women”, the appointment of the Committee Chairperson and members should be on the basis of their integrity and their judicious approach.
5. No members, external to the employer organization, be allowed in the committee.
6. Any stipulation w.r.t. number of women in the Committee is unnecessary and makes a prejudiced assumption that only women are capable of arbitrating complaints. This, as well as the “commitment to the cause of women” is addressed by Suggestion #4.
7. Treating the offence of sexual harassment as a psychosocial offence, it is more important to focus on the presence of trained psychologists and behavioral therapists or at the very least managers trained in conducting fact based investigations on the panel as opposed to the number of women.
8. The powers of the committee and the appeals process should be specified unambiguously.
9. Monetary compensation should not be a part of conciliation proceedings. This would to a large extent help avoid potential for misuse.
10. The complaint should be filed immediately on the occurrence of the alleged incident. Any complaint not filed within a stipulated time period (2 weeks) should be closely scrutinized for veracity before admission and the delay should be explained in writing by the complainant, to the satisfaction of the committee.
11. As prevalent in the western world, the Employer should bear the financial burden of the compensation ordered to the aggrieved person.
12. The committee should be divested of all powers to order any monetary compensation at any stage of the proceedings.
13. Mandatory action be taken against the complainant when the complaint is found to be frivolous or malicious.
14. Falsely accused person should have the right to pursue justice in a court of law, and claim appropriate redressal as remedy for the mental trauma, pain, suffering, emotional distress and social censure caused to the falsely accused person.
15. Section 11(4) should read as :  
“Provided that where the employer or the District Officer is not in agreement with any conclusion arrived at or recommendation made by the committee or the Local Committee, he may alter the conclusion or recommendation after recording the reasons of his disagreement in writing.
16. In the event the complainant or the respondent wishes to pursue the matter in the judiciary, the enquiry report be provided to the concerned party.
17. This act should be reviewed every 2 years to adjudicate its effectiveness and then re-ratified, failing which it should be deemed expired.
18. Quantitative Research be undertaken by the Govt. to determine the nature and extent of Sexual Harassment at workplace.
19. The scope and ambit of the Sexual harassment bill needs to be appropriately defined. In particular, Households and home dwellings need to be excluded from the list of workplaces, as it imposes considerable responsibilities on the household (including constitution of committees etc.), the execution of which may not be feasible.
20. The bill should clearly and unambiguously state the actions that amount to sexual harassment and the actions which can not be construed as sexual harassment.



## J. Conclusion

Sexual Harassment at workplace is a complex subject and caution needs to be exercised when framing such laws. The challenges related to such policies are very clearly brought out by a US Govt. body in a report to the US president and members of US congress [5].

It is needless to say that Law and policies require that harassers be dealt with irrespective of sex. It is equally important to maintain perspective and a sense of fairness for all. Investigations of alleged incidents should be fair, thorough and prompt and the investigators must be experienced in conducting fact-based investigation of sexual harassment charges. It is important to remember that sexual harassment is an easy charge for a vindictive person to make. Hence, any attempt at framing such policies should be done with due care and forethought.

Thanking you,

Regards,

Anupama Singh

## References

- [1] Survey conducted by the UK Dept of Trade and Industry, which concludes that 41% of sexual harassment victims are males, as reported in the Observer: [http://observer.guardian.co.uk/uk\\_news/story/0,,1805397,00.html](http://observer.guardian.co.uk/uk_news/story/0,,1805397,00.html)
- [2] Survey conducted by the Hong Kong Civic Party and Equal Opportunities Commission, which reveals that one third of sexual harassment victims are males, as reported by IANS: <http://in.news.yahoo.com/070206/43/6btXH.html>
- [3] The US Sexual harassment policy, which is gender neutral and shows that about 16% of all complaints are from males, as published on The U.S. Equal Employment Opportunity Commission : [http://www.eeoc.gov/types/sexual\\_harassment.html](http://www.eeoc.gov/types/sexual_harassment.html)
- [4] A Report on Sexual Harassment in the Workplace in EU Member States by United Nations Economic Commission of Europe (UNECE), which mentions the relevant Sexual Harassment policies at EU member nations. It is interesting to note that EU nations have a gender neutral Sexual Harassment policy. <http://www.unece.org/stats/gender/publications/Multi-Country/SexualHarassmentReport.pdf>
- [5] "Sexual Harassment in the Federal Workplace: Trends, Progress and Continuing Challenges" by U.S. Merit Systems Protection Board submitted to the US President and the Members of US Congress. <http://www.mspb.gov/studies/sexhar.pdf>