



Proposed Amendments to “The Protection Against Harassment of Women at the Workplace (Amendment) Act, 2021”

Submission to the Senate Standing Committee on Human Rights

6th December 2021

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Provisions of the Bill	Comments
Section 1 Short title and commencement	
The Act shall be called the Protection Against Harassment of Women at the Workplace (Amendment) Act, 2021.	No comments
It shall come into force at once.	No comments
Section 2 Amendment of section 1, Act IV of 2010	
In the Protection Against Harassment of Women at the Workplace Act 2010 (IV of 2010) hereinafter referred to as the said Act, in section 1, in sub-section (1) for the word “women” the word “Persons” shall be substituted.	No comments.
Section 3 Amendment of section 2, Act IV of 2010	
In the said Act, in section 2:- (a) In clause (e), for the words “a woman or man” the words “any person” shall be substituted and after the word “harassment” the expression “and shall include a former employee who has been removed or dismissed from service or has resigned, if the complaint is filed within ninety days of such removal or dismissal or resignation shall be inserted;	In clause (e), after the words “any person” the following shall also be added “ whether employed or not ” and after the word “harassment” the expression “ or sexist harassment ” shall also be included. <ul style="list-style-type: none">• <i>By adding these phrases, third parties who have been harassed at the workplace (such as students) will also be covered.</i>• The amended clause will read as follows:



	<p><i>“Complainant” means a person whether employed or not who has made a complaint to the Ombudsperson or to the Inquiry Committee on being aggrieved by an act of harassment or sexist harassment and shall include a former employee who has been removed or dismissed from service or has resigned, if the complaint is filed within ninety days of such removal or dismissal or resignation;</i></p>
<p>(b) for clause (f), the following shall be substituted, namely:-</p> <p>(f) “employee” includes regular, contractual, piece-rate, gig, temporary, part-time, freelance employee whether employed through express or implied contract on daily, weekly, monthly or hourly basis, and shall include a student, an intern, trainee, domestic worker, home-based worker or an apprentice.”;</p>	<p>In this proposed clause (f), after the term “contractual” the expression “sub-contractual” shall be added and after the term “apprentice” the expressions “whether for remuneration or not, or working on a voluntary basis or otherwise” shall be added.</p> <ul style="list-style-type: none"> • <i>It is preferred if this phrase is added to include those employees who are not receiving any remuneration for their work such as volunteers.</i> • The amended clause will read as follows: <i>“Employee” includes regular, contractual, sub-contractual, piece-rate, gig, temporary, part-time, freelance employee whether employed through express or implied contract on daily, weekly, monthly or hourly basis, and shall include a student, an intern, trainee, domestic worker, home-based worker or an apprentice, whether for remuneration or not, or working on a voluntary basis or otherwise”;</i>
<p>(c) in clause (g), in sub-clause (vi), the word “and” at the end shall be omitted and after sub-clause (vii), the following sub-clauses shall be added, namely:-</p> <p>“(viii) person discharging any contractual obligations with respect to his employees and expressly or impliedly procures the services or labour of</p>	<p>No comments.</p>



<p>persons whether as freelancers or part-time employees;</p> <p>(ix) a person who owns or manages an online or customer to customer or business to customer or any other virtual or remote business; and</p> <p>(x) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of home-based workers, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the home-based worker;”</p>	
<p>(d) in clause (h), the following shall be substituted namely;</p> <p>(h) “harassment” means any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.”</p>	<p>No comments.</p>
<p>(e) in clause (l), after the word “institution”, occurring at the end, the words ‘or online business’ shall be inserted;</p>	<p>No comments.</p>
<p>(f) in clause (m), the word “and” at the end shall be omitted and thereafter the following new clause shall be inserted;]</p> <p>“(ma) “sexist harassment” means discrimination on basis of sex and include any form of derogatory remarks, attitudes, gestures, words, actions, measures, policies, practices, signs whether written, verbal,</p>	<p>No comments.</p>



<p>visual or graphical, often rooted in stereotypical generalizations believed about gender in question, which may or may not be sexual in nature but which may embody discriminatory and prejudicial mind-set or notion resulting in discriminatory behavior on basis of sex against the complainant that causes interference with performances or create an intimidating hostile, offensive, unequal or unfair environment or opportunities, and includes the attempt to undermine the complainant and their chances of advancing or being promoted in their role or position on the basis of their sex”; and</p>	
<p>(g) for clause (n), the following shall be substituted, namely;</p> <p>(n) “workplace” means the place of work or any place where services are rendered or performed by professionals, including educational institutions, gigs, concerts, studios, court rooms, highways and shall include any building, factory, open area or a larger geographical area etc. where the activities of the organization or of employer are carried out and includes any situation this is linked to work or activity outside the office.”.</p>	<p>After the word “highways”, the following words shall be inserted: “any stadium, gymnasiums, art studios, sports or theatrical complex, competition or games venue, whether residential or not used for training, sports, rehearsals or other activities relating thereto;”</p> <ul style="list-style-type: none">• The amended clause will read as follows: <i>“Workplace means the place of work or any place where services are rendered or performed by professionals, including educational institutions, gigs, concerts, studios, courtrooms, highways, any stadium, gymnasiums, art studios, sports or theatrical complex, competition or games venue, whether residential or not used for training, sports, rehearsals or other activities relating thereto and shall include any building, factory, open area or a larger geographical area etc. where the activities of the organization or employer are carried out and includes any situation that is linked to work or activity outside the office.”</i>

Section 4
Amendment of section 8, Act IV of 2010



<p>In the said Act, in section 8,</p> <p>(a) in sub-section (1), for the word “employee”, the word “complainant” shall be substituted; and</p> <p>(b) after sub-section (5), the following sub-section shall be added, namely:-</p> <p>“(6) The Ombudsman shall decide a case or appeal, as the case may be, within a period of ninety days.”.</p>	<p>No comments.</p>
<p style="text-align: center;">Section 5 Amendment of section 9, Act IV of 2010</p>	
<p>In the said Act, in section 9, after the full stop at the end, the expression “The President or the Governor, as the case may be, shall decide such representation within ninety days” shall added.</p>	<p>No comments.</p>
<p style="text-align: center;">Section 6 Amendment of section 10A, Act IV of 2010</p>	
<p>In the said Act, after section 10, the following new section 10A shall be added, namely:-</p> <p>“10A. Punishment for filing malafide or false complaints.- Whoever files a malafide complaint shallor falsely charges any person of harassment under this Act, knowing that there is no just or lawful ground for such proceedings or charge against that person, after it is established that the complaint was malafide or false, be punished with fine which may extend to fifty thousand Ruppees.”.</p>	<p>This section must be omitted for the following reasons:</p> <ul style="list-style-type: none">• Section 5 of the Act already provides that an action can be taken against complainant for filing a false complaint. So, this will cause duplicity.• Section 5 is already used to threaten complainants for withdrawing complaints. If section 10-A is inserted, then it will be weaponized against survivors as well.• This provision does not explain what and how “mala fide” will be established? For example, in serval cases, the complaints are dismissed for lack of proof. Will such dismissal also mean that the complaint was filed with mala fide intention?• The term “lust” is quite problematic as it falsely assumes that harassment is about “lust” when it is in fact about “power and control”.
<p style="text-align: center;">Section 7 Amendment of Schedule, Act IV of 2010</p>	



<p>In the said Act, in the Schedule,- (A) in the first paragraph,- (a) for the word 'women' the word 'persons' shall be substituted;</p>	<p>No comments.</p>
<p>(b) in clause (ii), for definition of "harassment", the following definition shall be substituted, namely:- “(ii) “harassment” means any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demanding attitudes including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment.”;</p>	<p>No comments.</p>
<p>(c) clause (ii), substituted as aforesaid, in the explanation, for the words “three”, the words “several” shall be substituted and thereafter the following new sub-clause be added, namely:- “(ii-a) “sexist harassment” means discrimination on basis of sex and include any form of derogatory remarks, attitudes, gestures, words, actions, measures, policies, practices, signs whether written, verbal, visual or graphical, often rooted in stereotypical generalizations believed about gender in question, which may or may not be sexual in nature but which may embody discriminatory and prejudicial mindset or notion resulting in discriminatory behavior on basis of sex against the complainant that</p>	<p>No comments.</p>



<p>causes interference with performances or create an intimidating hostile, offensive, unequal or unfair environment or opportunities, and includes the attempt to undermine the complainant and their chances of advancing or being promoted in their role or position on the basis of their sex.”;</p>	
<p>(B) after sub-clause (c) under clause (ii), the following new sub-clause shall be added namely: -</p> <p>(a) “Discrimination on the basis of sex.- Discrimination on the basis of sex may or may not be sexual in nature but which undermines the complainant and their equal opportunities to advance and perform in the position, role or workplace in any way, such as wage discrimination or unequal pay, limiting the employee’s option for future promotion prospects or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his rights:</p> <p style="padding-left: 40px;">Provided that a single incident having the effect of making a person uncomfortable or creating a sense of fear or panic at the workplace is also harassment.</p>	<p>No comments.</p>
<p>(C) in clause (xi), after the full stop at the end, the following shall be added, namely:-</p> <p style="padding-left: 40px;">“Filing court-blast suits for defamation etc. are also retaliation. The Ombudsman or Inquiry Committee, as the case may be, should take notice of this in its proceedings.”; and</p>	<p>No comments.</p>
<p>(D) after clause (xiii), the following illustrations shall be added at the end of the Code of Conduct to provide examples of harassment that may take place, namely:-</p>	



“Illustrations of harassment, include but are not limited to,-

- (A) Employee A deliberately hinders a subordinate employee B’s chances of promotion as a result of not complying with employee A’s undue request (sexual) favors, Employee A is creating an intimidating work environment and therefore causing harassment.
- (B) Employer threatens an employee by using forged or fake documents and pictures to blackmail them from removal from service into compliance for undue requests, such an Employer is creating an intimidating work environment and is committing an act of harassment.
- (C) Employee A sends anonymous letters, pamphlets or emails defaming or character assassination of Employee B, Employee A is committing harassment.
- (D) A manager calls his associate or subordinate a “retard” and swears at him, the manager is creating a hostile work environment.
- (E) An employer uses vulgar language to address employees, the employer is committing an act of harassment.
- (F) A supervisor who uses his position of authority to subject employees to discriminatory conduct, leaving the employee feeling trapped and vulnerable is creating a hostile work environment.
- (G) Male employee forcing female subordinate employee to spend time with him after office hours for career progression, such male employee is committing an act of harassment.
- (H) A junior trainee was transferred to another department by a manager against her will as a punitive measure for not complying with



undue request for (sexual) favors, the manager is responsible for workplace harassment.

- (I) Comments on an individual's body, comments about an individual's sexual activity, deficiencies, or prowess; displaying sexually suggestive objects, pictures, or cartoons also constitute workplace harassment."



Further Amendments Proposed to “The Protection Against Harassment of Women at the Workplace Act, 2010” by Digital Rights Foundation

Act	Comments/Amendments
Section 3 Inquiry Committee	
(2) The Committee shall consist of three members of whom at least one member shall be a woman. One member shall be from senior management and one shall be a senior representative of the employees or a senior employee where there is no CBA. One or more members can be co-opted from outside the organization if the organization is unable to designate three members from within as described above. A Chairperson shall be designated from amongst them.	In sub-section (2), the following proviso be added after the words “among them”: <i>“Provided that preference shall be given to committee members who have been provided training on gender sensitization and harassment;</i> <i>Provided further that no committee member has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against any member;”</i>
	A new sub-section 5 shall be added: <i>“The Inquiry Committee will share with the Ombudsperson, data regarding the number, nature and disposals of complaints received by it, on a quarterly basis.”</i>
Section 4 Procedure for holding inquiry	
	A new sub-section (2a) shall be added: <i>“(2a) During the pendency of an inquiry, on a written request made by the complainant, the Inquiry Committee may recommend to the employer to:</i> <i>(i) transfer the accused person to another department;</i> <i>(ii) suspend the accused person;</i> <i>(iii) grant leave to the aggrieved person up to a period of three months; or</i> <i>(iii) take any measures that are just and appropriate for the protection and well-being of the aggrieved person.</i>



	<p><i>Provided that the leave granted to the aggrieved person under this section shall be in addition to the leave that person would be otherwise entitled.”</i></p>
<p>(4) The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties:-</p> <p>(i) Minor penalties–</p> <p>(a) censure;</p> <p>(b) withholding, for a specific period, promotion or increment;</p> <p>(c) stoppage, for a specific period, at an efficiency bar in the time-scale, otherwise than for unfitness to cross such bar; and</p> <p>(d) recovery of the compensation payable to the complainant from pay or any other source of the accused;</p> <p>(ii) Major penalties–</p> <p>(a) reduction to a lower post or time-scale, or to a lower stage in a time-scale;</p> <p>(b) compulsory retirement;</p> <p>(c) removal from service;</p> <p>(d) dismissal from service; and</p> <p>(e) Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.</p>	<p>In sub-section (4), the following proviso be added: <i>“Provided that the accused has to undergo intensive mandatory anti-harassment trainings.”</i></p>
<p>Section 5 Powers of the Inquiry Committee.</p>	
<p>Powers of the Inquiry Committee.– (1) The Inquiry Committee shall have power–</p> <p>(a) to summon and enforce attendance of any person and examine him on oath;</p> <p>(b) to require the discovery and production of any document;</p> <p>(c) to receive evidence on affidavits; and</p> <p>(d) to record evidence.</p>	<p>In sub-section (1), the following clause be added: <i>“(e) to directing the organization to produce any audio-visual evidence in its possession.”</i></p>



<p>(3) The Inquiry Committee may recommend to Ombudsperson for appropriate action against the complainant if allegations leveled against the accused found to be false and made with <i>mala fide</i> intentions.</p>	<p>This sub-section must be omitted as it is often weaponized against complainants.</p>
<p>Section 8 Ombudsperson to enquire into complaint</p>	
	<p>The following sub-section (5) shall be inserted: <i>“(5) During the pendency of an appeal, on a written request made by the aggrieved person, the Ombudsperson may direct the employer to:</i> <i>(i) transfer the accused person to another department;</i> <i>(ii) suspend the accused person;</i> <i>(iii) grant leave to the aggrieved person up to a period of three months; or</i> <i>(iii) take any measures that are just and appropriate for the protection and well-being of the aggrieved person.</i> <i>Provided that the leave granted to the aggrieved person under this section shall be in addition to the leave she would be otherwise entitled.”</i></p>
<p>Section 11 Responsibility of the Employer</p>	
	<p>The following sub-section (5) shall be inserted: <i>“(5) Every Employer shall:</i> <i>(i) organize awareness programs and training to sensitize its employees with provisions of the Act and shall provide orientation programs and training to members of the Inquiry Committees, conducted by trained experts from the panel of the Ombudsperson, on an annual basis, in the manner as may be prescribed in the rules made under this Act;</i> <i>(ii) provide necessary facilities to the Inquiry Committee for dealing with the complaint and conducting an inquiry;</i> <i>(iii) take all reasonable steps to provide a safe working place for its employees;</i></p>



	<p>(iv) assist in securing the attendance of respondent and witnesses before the Inquiry Committee; and</p> <p>(v) make available such information to the Inquiry Committee or the Ombudsperson, as the case may be, as it may require having regard to the complaint made under this Act.”</p>
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