

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

## Lesson 20

### KEY CONCEPTS

- Appropriate Government ■ Adolescent ■ Establishment ■ Occupier ■ Workshop ■ Artist ■ Family Enterprise
- Child Labour

### Learning Objectives

#### To understand:

- The legal frame work provided for law regulating Child and Adolescent Labour practices in India.
- The law on working abolition and prohibition of Child Labour practices
- The provisions relating to employment of adolescent in non-hazardous occupations and processes
- The important definitions and concepts
- The need for protecting and safeguarding the interest of Child Labour and Adolescents.
- To familiarize the students with the legal frame work stipulated under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986

### Lesson Outline

- Object, scope of the Act
- Definitions
- 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
- Lesson Round-Up
- Glossary
- Test Yourself

***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.***

## REGULATORY FRAMEWORK

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

### 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;
- (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 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
- 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.

### LESSON ROUND-UP

- 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.

### GLOSSARY

**Appropriate Government:** It 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:** A child is 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.



### KEY CONCEPTS

- Apprentice ■ Apprenticeship Training ■ Designated trade ■ Industry ■ Graduate or technician apprentice
- Technician (vocational) Apprentice ■ Worker ■ Trade Apprentice ■ Optional trade

### Learning Objectives

#### To understand:

- The legal frame work provided for law regulating regulate and control the programme of training of apprentices in India.
- The legal machinery for employers both in public and private sector establishments having requisite training infrastructure
- The important definitions and concepts
- To familiarize the students with the legal frame work pertaining to apprentice training under the Apprentices Act, 1961

### Lesson Outline

- Introduction
- Important Definitions
- Qualification for being engaged as an apprentice
- Contract of apprenticeship
- Obligations of Employers
- Obligations of apprentices
- Records and Returns
- Authorities under the Act
- Authority under the Act
- Offences and Penalties
- Lesson Round-Up
- Glossary
- Test Yourself

## REGULATORY FRAMEWORK

- Apprentices Act, 1961

*The Apprentices Act, 1961 enacted to regulate and control the programme of training of apprentices and for matters connected therewith. It extends to whole of India.*

## INTRODUCTION

The Apprentices Act, 1961 was enacted with the objective of regulating the programme of training of apprentices in the industry by utilising the facilities available therein for imparting on-the-job training. The Act was amended in 1973 and 1986 to include training of graduates, technicians and technician (vocational) apprentices respectively under its purview. It was further amended in 1997 and 2007 to amend various sections of the Act as regards definition of “establishment”, “worker”, number of apprentices for a designated trade and reservation for candidates belonging to Other Backward Classes, etc. Comparing the size and rate of growth of economy of India, the performance of Apprenticeship Training Scheme is not satisfactory and a large number of training facilities available in the industry are going unutilised depriving unemployed youth to avail the benefits of the Apprenticeship Training Scheme. Employers are of the opinion that provisions of the Act are too rigid to encourage them to engage apprentices and provision relating to penalty create fear amongst them of prosecution and they have suggested to modify the Apprentices Act suitably. In order to make the apprenticeship more responsive to youth and industry, the Apprentices Act, 1961 has been amended and brought into effect from 22nd December, 2014. The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.

## Definitions

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

**Apprentice** means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship. (Section 2(aa))

**Apprenticeship training** means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices. (Section 2 (aaa))

**Appropriate Government** means —

- (1) in relation to —
  - (a) the Central Apprenticeship Council, or
  - (aa) the Regional Boards, or
  - (aaa) the practical training of graduate or technician apprentices or of technician (vocational) apprentices, or;
    - (b) any establishment of any railway, major port, mine or oilfield, or
    - (bb) any establishment which is operating business or trade from different locations situated in four or more States, or
    - (c) any establishment owned, controlled or managed by —
      - (i) the Central Government or a department of Central Government,

- (ii) a company in which not less than fifty-one per cent of the share capital is held by the Central Government or partly by that Government and partly by one or more State Governments,
  - (iii) a corporation (including a co-operative society) established by or under a Central Act which is owned, controlled or managed by the Central Government;
- the Central Government;
- (2) in relation to —
- (a) a State Apprenticeship Council, or
  - (b) any establishment other than an establishment specified in sub-clause (1) of this clause, the State Govt; {Section 2(d)}.

Designated trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course which the Central Government, after consultation with the Central Apprenticeship Council, may, by notification in the Official Gazette, specify as a designated trade for the purposes of this Act. [Section 2(e)].

Employer means any person who employs one or more other persons to do any work in an establishment for remuneration and includes any person entrusted with the supervision and control of employees in such establishment. [Section 2 (f)]

Establishment includes any place where any industry is carried on and where an establishment consists of different departments or have branches, whether situated in the same place or at different places, all such departments or branches shall be treated as part of that establishment. [Section 2 (g)]

Graduate or technician apprentice means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade. [Section 2(j)]

Industry means any industry or business in which any trade, occupation or subject field in engineering or non-engineering or technology or any vocational course may be specified as a designated trade or optional trade or both. [Section 2(k)]

Optional trade means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act. [Section 2(II)]

Portal-site means a website of the Central Government for exchange of information under this Act. [Section 2(III)]

**Technician (vocational) apprentice** means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in designated trade. [Section 2(pp)]

Trade **Apprentice** means an apprentice who undergoes apprenticeship training in any designated trade. [Section 2(q)]

Worker means any person working in the premises of the employer, who is employed for wages in any kind of work either directly or through any agency including a contractor and who gets his wages directly or indirectly from the employer but shall not include an apprentice referred to in clause (aa). [Section 2(r)].

### Qualifications for being engaged as an apprentice

Section 3 of the Act provides that a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he —

- (a) is not less than fourteen years of age, and for designated trades related to hazardous industries, not less than eighteen years of age; and
- (b) satisfies such standards of education and physical fitness as may be prescribed: Provided that different standards may be prescribed in relation to apprenticeship training in different designated trades and for different categories of apprentices.

### Contract of apprenticeship

Section 4 of the Act deals with Contract of apprenticeship. Section 4 states that -

- (1) No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such person or, if he is minor, his guardian has entered into a contract of apprenticeship with the employer.
- (2) The apprenticeship training shall be deemed to have commenced on the date on which the contract of apprenticeship has been entered into under sub-section (1).
- (3) Every contract of apprenticeship may contain such terms and conditions as may be agreed to by the parties to the contract: Provided that no such term or condition shall be inconsistent with any provision of this Act or any rule made thereunder.
- (4) Every contract of apprenticeship entered into under sub-section (1) shall be sent by the employer within thirty days to the Apprenticeship Adviser until a portal-site is developed by the Central Government, and thereafter the details of contract of apprenticeship shall be entered on the portal-site within seven days, for verification and registration.
- (4A) In the case of objection in the contract of apprenticeship, the Apprenticeship Adviser shall convey the objection to the employer within fifteen days from the date of its receipt.
- (4B) The Apprenticeship Adviser shall register the contract of apprenticeship within thirty days from the date of its receipt.

As per section 4(6) where the Central Government, after consulting the Central Apprenticeship Council, makes any rule varying the terms and conditions of apprenticeship training of any category of apprentices undergoing such training, then, the terms and conditions of every contract of apprenticeship relating to that category of apprentices and subsisting immediately before the making of such rule shall be deemed to have been modified accordingly.

### Novation of contracts of apprenticeship

Section 5 of the Act provides that where an employer with whom a contract of apprenticeship has been entered into, is for any reason unable to fulfil his obligations under the contract and with the approval of the Apprenticeship Adviser it is agreed between the employer, the apprentice or his guardian and any other employer that the apprentice shall be engaged as apprentice under the other employer for the un-expired portion of the period of apprenticeship training, the agreement, on registration with the Apprenticeship Adviser, shall be deemed to be the contract of apprenticeship between the apprentice or his guardian and other employer, and on and from the date of such registration, the contract of apprenticeship with the first employer shall terminate and no obligation under the contract shall be enforceable at the instance of any party to the contract against the other party thereto.

**Regulation of optional trade**

Section 5A of the Act provides that the qualification, period of apprenticeship training, holding of test, grant of certificate and other conditions relating to the apprentices in optional trade shall be such as may be prescribed.

**Engagement of apprentices from other States**

Under section 5B the employer may engage apprentices from other States for the purpose of providing apprenticeship training to the apprentices.

**Period of apprenticeship training**

As per section 6 of the Act the period of apprenticeship training, which shall be specified in the contract of apprenticeship, shall be as follows —

- (a) In the case of trade apprentices who, having undergone institutional training in a school or other institution recognised by the National Council, have passed the trade tests or examinations conducted by that Council or by an institution recognised by that Council, the period of apprenticeship training shall be such as may be prescribed.
- (aa) in the case of trade apprentices who, having undergone institutional training in a school or other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority or courses approved under any scheme which the Central Government may, by notification in the Official Gazette specify in this behalf, have passed the trade tests or examinations conducted by that Board or State Council or authority or by any other agency authorised by the Central Government, the period of apprenticeship training shall be such as may be prescribed;
- (b) in the case of other trade apprentices, the period of apprenticeship training shall be such as may be prescribed;
- (c) in the case of graduate or technician apprentices, technician (vocational) apprentices and the period of apprenticeship training shall be such as may be prescribed.

**Number of apprentices for a designated trade and optional trade**

Section 8 empowers the Central Government to prescribe the number of apprentices to be engaged by the employer for designated trade and optional trade. Several employers may join together either themselves or through an agency, approved by the Apprenticeship Adviser, according to the guidelines issued from time to time by the Central Government in this behalf, for the purpose of providing apprenticeship training to the apprentices under them.

**Practical and basic training of apprentices**

Section 9 deals with practical and basic training of apprentices. Section 9 states that:

- Every employer shall make suitable arrangements in his workplace for imparting a course of practical training to every apprentice engaged by him.
- The Central Apprenticeship Adviser or any other person not below the rank of an Assistant Apprenticeship Adviser authorised by the State Apprenticeship Adviser in writing in this behalf shall be given all reasonable facilities for access to each such apprentice with a view to test his work and to ensure that the practical training is being imparted in accordance with the approved programme: Provided that the State Apprenticeship Adviser or any other person not below the rank of an Apprenticeship Adviser

authorised by the State Apprenticeship Adviser in writing in this behalf shall also be given such facilities in respect of apprentices undergoing training in establishments in relation to which the appropriate Government is the State Government.

- Such of the trade apprentices who have not undergone institutional training in a school or other institution recognised by the National Council or any other institution affiliated to or recognised by a Board or State Council of Technical Education or any other authority which the Central Government may, by notification in the Official Gazette, specify in this behalf, shall, before admission in the workplace for practical training, undergo a course of basic training and the course of basic training shall be given to the trade apprentices in any institute having adequate facilities.
- In the case of an apprentice other than a graduate or technician apprentice or technician (vocational) apprentice, the syllabus of and the equipment to be utilised for, practical training including basic training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- In the case of graduate or technician apprentices or technician (vocational) apprentices, the programme of apprenticeship training and the facilities required for such training in any designated trade shall be such as may be approved by the Central Government in consultation with the Central Apprenticeship Council.
- Recurring costs (including the cost of stipends) incurred by an employer in connection with basic training, imparted to trade apprentices other than those referred to in clauses (a) and (aa) of Section 6 shall be borne –
  - (i) If such employer employs two hundred and fifty workers or more, by the employer;
  - (ii) If such employer employs less than two hundred and fifty workers, by the employer and the Government in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone;
- Recurring costs (including the cost of stipends), if any, incurred by an employer in connection with practical training, including basic training, imparted to trade apprentices referred to in clauses (a) and (aa) of Section 6 shall, in every case, be borne by the employer.
- Recurring costs (excluding the cost of stipends) incurred by an employer in connection with the practical training imparted to graduate or technician apprentice technician (vocational) apprentices shall be borne by the employer and the cost of stipends shall be borne by the Central Government and the employer in equal shares up to such limit as may be laid down by the Central Government and beyond that limit, by the employer alone except apprentices who holds degree or diploma in non-engineering.

### Obligations of employers

Every employer shall have the following obligations in relation to an apprentice, namely: –

- to provide the apprentice with the training in his trade in accordance with the provisions of the Act and the rules made thereunder;
- if the employer is not himself qualified in the trade, to ensure that a person who possesses the prescribed qualifications is placed in charge of the training of the apprentice;
- to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade test of apprentices;
- to carry out his obligations under the contract of apprenticeship.

### Obligations of apprentice

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely :-

- to learn his trade conscientiously and diligently and endeavor to qualify himself as a skilled craftsman before the expiry of the period of training;
- to attend practical and instructional classes regularly;
- to carry out all lawful orders of his employer and superiors in the establishment; and
- to carry out his obligations under the contract of apprenticeship.
- Every graduate or technician apprentice, technician (vocational) apprentice undergoing apprenticeship training shall have the obligations to learn his subject field in engineering or technology or vocational course conscientiously and diligently at his place of training; to attend the practical and instructional classes regularly; to carry out all lawful orders of his employer and superiors in the establishment; to carry out his obligations under the contract of apprenticeship.

### Hours of work, overtime, leave and holidays

Section 15 of the Act deals with hours of work, overtime, leave and holidays. Section 15 provides that:

- (1) The weekly and daily hours of work of an apprentice while undergoing practical training in a workplace shall be as determined by the employer subject to the compliance with the training duration, if prescribed.
- (2) No apprentice shall be required or allowed to work overtime except with the approval of the Apprenticeship Adviser who shall not grant such approval unless he is satisfied that such overtime is in the interest of the training of the apprentice or in the public interest.
- (3) An apprentice shall be entitled to such leave and holidays as are observed in the establishment in which he is undergoing training.

### Apprentices are trainees and not workers

Every apprentice undergoing apprenticeship training in a designated trade in an establishment shall be a trainee and not a worker and the provisions of any law with respect to labour shall not apply to or in relation to such apprentice.

### Records and returns

Section 19 of the Act provides that every employer shall maintain records of the progress of training of each apprentice undergoing apprenticeship training in his establishment in such form as may be prescribed.

Until a portal-site is developed by the Central Government, every employer shall furnish such information and return in such form as may be prescribed, to such authorities at such intervals as may be prescribed.

Every employer shall also give trade-wise requirement and engagement of apprentices in respect of apprenticeship training on portal-site developed by the Central Government in this regard.

### Settlement of disputes

As per section 20 of the Act any disagreement or dispute between an employer and an apprentice arising out of the contract of apprenticeship shall be referred to the Apprenticeship Adviser for decision.

Any person aggrieved by the decision of the Apprenticeship Adviser may, within thirty days from the date of

communication to him of such decision, prefer an appeal against the decision to the Apprenticeship Council and such appeal shall be heard and determined by a Committee of that Council appointed for the purpose. The decision of the Committee and subject only to such decision, the decision of the Apprenticeship Adviser shall be final.

### **Holding of test and grant of certificate and conclusion of training**

Section 21(1) provides that every trade apprentice who has completed the period of training may appear for a test to be conducted by the National Council or any other agency authorised by the Central Government to determine his proficiency in the designated trade in which he has undergone apprenticeship training.

Every trade apprentice who passes the test referred to in sub-section (1) shall be granted a certificate of proficiency in the trade by the National Council or by the other agency authorised by the Central Government.

The progress in apprenticeship training of every graduate or technician apprentice shall be assessed by the employer from time to time. Every graduate or technician apprentice or technician (vocational) apprentice who completes his apprenticeship training to the satisfaction of the concerned Regional Board, shall be granted a certificate of proficiency by that Board.

### **Offer and acceptance of employment**

As per section 22(1) of the Act every employer shall formulate its own policy for recruiting any apprentice who has completed the period of apprenticeship training in his establishment.

Section 22(2) states that notwithstanding anything in sub-section (1), where there is a condition in a contract of apprenticeship that the apprentice shall, after the successful completion of the apprenticeship training, serve the employer, the employer shall, on such completion, be bound to offer suitable employment to the apprentice, and the apprentice shall be bound to serve the employer in that capacity for such period and on such remuneration as may be specified in the contract. Provided that where such period of remuneration is not, in the opinion of the Apprenticeship Adviser, reasonable, he may revise such period or remuneration so as to make it reasonable, and the period or remuneration so revised shall be deemed to be the period of remuneration agreed to between the apprentice and the employer.

### **Authorities under the Act**

In addition to the Government, there are the following authorities under the Act, namely : –

- (a) The National Council,
- (b) The Central Apprenticeship Council,
- (c) The State Council,
- (d) The State Apprenticeship Council,
- (e) The All India Council,
- (f) The Regional Boards,
- (g) The Boards or State Councils of Technical Education
- (h) The Central Apprenticeship Adviser,
- (i) The State Apprenticeship Adviser.

Every State Council shall be affiliated to the National Council and every State Apprenticeship Council shall be

affiliated to the Central Apprenticeship Council. Every Board or State Council of Technical Education and every Regional Board shall be affiliated to the Central Apprenticeship Council.

Each of the authorities specified above shall, in relation to apprenticeship training under the Act, perform such functions as are assigned to it by or under the Act or by the Government. However, a State Council shall also perform such functions as are assigned to it by the National Council and the State Apprenticeship Council and the Board or State Council of Technical Education shall also perform such functions as are assigned to it by the Central Apprenticeship Council.

### Offence and penalties

Section 30 deals with offences and penalties. Section 30 provides that-

- (1) If any employer contravenes the provisions of the Act relating to the number of apprentices which he is required to engage under those provisions, he shall be given a month's notice in writing, by an officer duly authorised in this behalf by the appropriate Government, for explaining the reasons for such contravention.
- (1A) In case the employer fails to reply the notice within the period specified under sub-section (1), or the authorised officer, after giving him an opportunity of being heard, is not satisfied with the reasons given by the employer, he shall be punishable with fine of five hundred rupees per shortfall of apprenticeship month for first three months and thereafter one thousand rupees per month till such number of seats are filled up.
- (2) If any employer or any other person –
  - (a) required to furnish any information or return- (i) refuses or neglects to furnish such information or return, or (ii) furnishes or causes to be furnished any information or return which is false and which is either knows or believes to be false or does not believe to be true, or (iii) refuses to answer, or give a false answer to any question necessary for obtaining any information required to be furnished by him, or
  - (b) refuses or willfully neglects to afford the Central or the State Apprenticeship Adviser or such other person, not below the rank of an Assistant Apprenticeship Adviser, as may be authorised by the central or the State Apprenticeship Adviser in writing in this behalf any reasonable facility for making any entry, inspection, examination or inquiry authorised by or under this Act, or
  - (c) requires an apprentice to work overtime without the approval of the Apprenticeship Adviser, or
  - (d) employs an apprentice on any work which is not connected with his training, or
  - (e) makes payment to an apprentice on the basis of piece-work, or
  - (f) requires an apprentice to take part in any output bonus or incentive scheme.
  - (g) engages as an apprentice a person who is not qualified for being so engaged, or
  - (h) fails to carry out the terms and conditions of a contract of apprenticeship he shall be punishable with fine of one thousand rupees for every occurrence.
- (2A) The provisions of this section shall not apply to any establishment or industry which is under the Board for Industrial and Financial Reconstruction established under the Sick Industrial Companies (Special Provisions) Act, 1985.

### LESSON ROUND-UP

- The Apprentices Act, 1961 was enacted to regulate and control the programme of training of apprentices and for matters connected therewith.
- The Apprentices (Amendment) Act, 2014 expanding the apprenticeship opportunities for youth. Non engineering graduates and diploma holders have been made eligible for apprenticeship. A portal is being setup to make all approvals transparent and time bound. Apprenticeship can be taken up in new occupations also.
- The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.
- Apprenticeship training means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.
- The Act makes it obligatory on part of the employers both in public and private sector establishments having requisite training infrastructure as laid down in the Act, to engage apprenticeship training.
- No person shall be engaged as an apprentice to undergo apprenticeship training in a designated trade unless such a person or, if he/ she is a minor, his/ her guardian has entered into a contract of apprenticeship with the employer.
- Every employer shall have the obligations in relation to an apprentice to provide the apprentice with training in his/ her trade in accordance with the provisions of this Act, and the rules made there under.
- Every trade apprentice undergoing apprenticeship training shall have the obligations, to learn his/ her trade conscientiously and diligently and endeavour to qualify himself/ herself as a skilled craftsman before the expiry of the period of training.

### GLOSSARY

**Apprentice:** The term apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

**Apprenticeship Training:** It means a course of training in any industry or establishment undergone in pursuance of a contract of apprenticeship and under prescribed terms and conditions which may be different for different categories of apprentices.

**Technician (vocational) Apprentice:** It means an apprentice who holds or is undergoing training in order that he may hold a certificate in vocational course involving two years of study after the completion of the secondary stage of school education recognised by the All-India Council and undergoes apprenticeship training in designated trade.

**Graduate or Technician Apprentice:** It means an apprentice who holds, or is undergoing training in order that he may hold a degree or diploma in engineering or non-engineering or technology or equivalent qualification granted by any institution recognised by the Government and undergoes apprenticeship training in any designated trade.

**Trade Apprentice:** It means an apprentice who undergoes apprenticeship training in any designated trade.

**Optional trade:** It means any trade or occupation or any subject field in engineering or non-engineering or technology or any vocational course as may be determined by the employer for the purposes of this Act.





# Labour Laws

## (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988

## Lesson 22

### KEY CONCEPTS

■ Employer ■ Form ■ Schedule Act ■ Small Establishment ■ Very Small Establishment ■ Exemption from maintenance of Register and Return ■ Penalty ■ Establishment ■ Registers ■ Returns

### Learning Objectives

#### To understand:

- The legal frame work provided for law regulating the furnishing of returns and maintenance of registers by Certain Establishments in India
- Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988
- The legal machinery for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws
- The important definitions and concepts
- To familiarize the students with the legal frame work stipulated under the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988

### Lesson Outline

- Introduction
- Definitions
- Schedule Act
- Small Establishment
- Very Small Establishment
- Exemption from maintenance of Register and Return
- Penalty
- Lesson Round-Up
- Glossary
- Test Yourself

## REGULATORY FRAMEWORK

- Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain establishments) Act, 1988

*The Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.*

## INTRODUCTION

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 amended the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Act, 1988.

The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. The Amendment Act now includes 7 more Labour Acts under the purview of the Principal Act. Also, the coverage of Principal Act has been expanded from the establishments employing upto 19 workers to 40 workers. The Amendment Act also gives an option to maintain the registers electronically and to file the returns electronically which leads to ease of compliance as well as better enforcement of the labour laws.

## Definitions

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

### Employer

Employer, in relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act {Section 2 (a)}.

### Establishment

Establishment has the meaning assigned to it in a Scheduled Act, and includes — (i) an “industrial or other establishment” as defined in Sec. 2 of the Payment of Wages Act, 1936 ; (ii) a “factory” as defined in Sec. 2 of the Factories Act, 1948 ;(iii) a factory, workshop or place where employees are employed or work is given out to workers, in any scheduled employment to which the minimum wages Act, 1948 , applies. (iv) a “plantation” as defined in Sec. 2 of the Plantations Labour Act, 1951; and (v) a “newspaper establishment” as defined in Sec. 2 of the Working Journalists and other Newspaper Employees (conditions of Service) and Miscellaneous Provisions Act, 1955{Section 2 (b)}.

### Form

Form means a Form specified in the Second Schedule (Section 2 (c)). Following forms are specified in the second schedule. They are as under:

- Form I -Annual Return(To be furnished to the Inspector or the authority specified for this purpose under the respective Scheduled Act before the 30th April of the following year)

- Form II -Register of persons employed-cum-employment card
- Form III- Muster roll-cum-wage register

### **Scheduled Act**

Scheduled Act means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder{Section 2 (d)}.

Following are the sixteen Acts specified in the first schedule. They are as under:

1. The Payment of Wages Act, 1936
2. The Weekly Holidays Act, 1942
3. The Minimum Wages Act, 1948
4. The Factories Act, 1948
5. The Plantations Labour Act, 1951
6. The Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955
7. The Motor Transport Workers Act, 1961
8. The Payment of Bonus Act, 1965
9. The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
10. The Contract Labour (Regulation and Abolition) Act, 1970
11. The Sales Promotion Employees (Conditions of Service) Act, 1976
12. The Equal Remuneration Act, 1976
13. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
14. The Dock Workers (Safety, Health and Welfare) Act, 1986
15. The Child Labour (Prohibition and Regulation) Act, 1986
16. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

### **Small establishment**

Small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months{Section 2 (e)}.

### **Very small establishment**

Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.{Section 2 (f)}.

### **Exemption from furnishing or maintaining of returns and registers required under certain labour laws**

Section 4(1) of the Act provides that notwithstanding anything contained in a Scheduled Act, on and from the commencement of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014, it shall not be necessary for an employer in relation to any small

establishment or very small establishment to which a Scheduled Act applies, to furnish the returns or to maintain the registers required to be furnished or maintained under that Scheduled Act.

It may be noted that such employer –

- (a) furnishes, in lieu of such returns, annual return in Form I; and
- (b) maintains at the work spot, in lieu of such registers, –
  - (i) registers in Form II and Form III, in the case of small establishments, and
  - (ii) a register in Form III, in the case of very small establishments.

Every such employer shall continue to issue wage slips in the Form prescribed in the Minimum Wages (Central) Rules, 1950 made under sections 18 and 30 of the Minimum Wages Act, 1948 and slips relating to measurement of the amount of work done by piece-rated workers required to be issued under the Payment of Wages (Mines) Rules, 1956 made under sections 13A and 26 of the Payment of Wages Act, 1936; and file returns relating to accidents under sections 88 and 88A of the Factories Act, 1948 and sections 32A and 32B of the Plantations Labour Act, 1951.

### Furnishing or maintaining of returns and registers in electronic form

As per Section 4 (2) of the Act, the annual return in Form I and the registers in Forms II and III and wage slips, wage books and other records, as provided in sub-section (1), may be maintained by an employer either in physical form or on a computer, computer floppy, diskette or other electronic media.

It may be noted that in case of computer, computer floppy, diskette or other electronic form, a printout of such returns, registers, books and records or a portion thereof is made available to the Inspector on demand.

Under section 4(3) the employer or the person responsible to furnish the annual return in Form I may furnish it to the Inspector or any other authority prescribed under the Scheduled Acts either in physical form or through electronic mail if the Inspector or the authority has the facility to receive such electronic mail.

### Penalty

As per section 6 of the Act, any employer who fails to comply with the provisions of the Act shall, on conviction, be punishable, in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty-five thousand, or with both

### LESSON ROUND-UP

- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988 provide for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. It extends to the whole of India.
- The Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by certain Establishments) Amendment Act, 2014 provides for the simplification of procedure for furnishing returns and maintaining registers in relation to establishments employing a small number of persons under certain labour laws. Now this Act may be called the Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

- Small establishment means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months.
- Very small establishment means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.
- Any employer who fails to comply with the provisions of the Act, shall, on conviction, be punishable in the case of the first conviction, with fine which may extend to rupees five thousand; and in the case of any second or subsequent conviction, with imprisonment for a period which shall not be less than one month but which may extend to six months or with fine which shall not be less than rupees ten thousand but may extend to rupees twenty- five thousand, or with both.

### GLOSSARY

**Employer:** In relation to a Scheduled Act, and in relation to any other Scheduled Act, means the person who is required to furnish returns or maintain registers under that Act.

**Scheduled Act:** It means an Act specified in the first Schedule and is in force on commencement of this Act in the territories to which such Act extends generally, and includes the rules made thereunder.

**Small Establishment:** It means an establishment in which not less than ten and not more than forty persons are employed or were employed on any day of the preceding twelve months.

**Very small establishment:** It means an establishment in which not more than nine persons are employed or were employed on any day of the preceding twelve months.

### TEST YOURSELF

*(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)*

1. State Establishment under the Act.
2. Distinguish between Small Establishment and Very Small Establishment
3. What do you mean by Schedule Act and list out the Act Specified under Schedule Act?
4. List out the Return and Register Specified under Second Schedule to the Act.
5. State the provision under the Act regarding exemption from maintenance of Register and Return by small and very small establishment.

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

## Lesson 23

### KEY CONCEPTS

- Sexual Harassment ■ Workplace Sexual Harassment ■ Vishaka Guidelines ■ Internal Complaints Committee
- Local Complaints Committee ■ Redressal of Complaints ■ Hostile Work Environment ■ Quid Pro Quo
- Aggrieved Women ■ Conciliation ■ Inquiry Report

### Learning Objectives

#### To understand:

- The legal framework provided for Sexual Harassment of Women at Workplace
- Important definitions
- Guidelines laid down by the Supreme Court in its landmark *judgement, Vishakha v. State of Rajasthan*
- The working and constitution of an Internal Complaints Committee (ICC) and Local Complaints Committee (LCC)
- The need of recognising the sensitivity attached to matters pertaining to sexual harassment

### Lesson Outline

- History of the Legislation
- Object of the Act
- Forms of Workplace Sexual Harassment
- Applicability
- Definitions
- Complaints Committees
- Complaint of sexual harassment
- Conciliation
- Appeal
- Duties of employer
- Duties and powers of District Officer
- Miscellaneous
- Case Laws
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

***An Act for provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of 'sexual harassment and or matters connected therewith or incidental thereto.***

## REGULATORY FRAMEWORK

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

## 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 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.

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 working women 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.

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 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 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 Mo 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**

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)**

“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, ad-hoc, 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;
  - 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 full 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 policies 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)]

**“Respondent”** means a person against whom the aggrieved woman has made a complaint under section 9.

[Section 2(m)]

**“Sexual harassment”** includes any one or more of the following unwelcome acts or behaviour (whether 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 David Limited vs. Anuradha Chowdhury and Ors., (2004) 2 CALLT 421 (HC)*].

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, entertainment, 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 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’.

**“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 COMMITTEE

The Act provides for two kinds of complaints mechanisms:

- (i) Internal Complaints Committee (ICC); and
- (ii) Local Complaints Committee (LCC).

### Constitution 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.

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

- a. **Presiding Officer:** a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees. However, 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.

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 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 Committee

According to section 6, every District Officer shall constitute in the district concerned, a committee to be known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal 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 Committee within a period of seven days. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

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

Pursuant to section 7, the Local 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 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
- 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.

## 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.

### **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 —

- 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 of ten 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.

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.

### **Determining 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 (1) of section 13 or subsection (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. 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 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 sub-section (1) 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 Districts 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.

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 Committee.

**Poser 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 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 (1) 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 (1) of section 11;
- f. the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- g. the relief to be recommended under clause (c) of sub-section (1) 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 (l) of section 21.

In 2019, POSH saw an amendment. In general notification issued by Women Development and Child Welfare Department it stated that all businesses in Telangana with ten or more employees are required to register their IC with the State Shebox portal by no later than July 15, 2019. This was done in an effort to help officials better monitor local firms' compliance levels, this is being done.

Maharashtra government also mandated all companies to complete and submit to the Sub-Divisional Magistrate by July 20, 2019, a form explaining their compliance status and internal committee.

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 Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

## CASE LAWS

### ***Binoy Jacob vs. State of Kerala and Ors. (01.11.2022 - KERHC): CrL.MC No. 847 of 2022***

In this case, petition has been filed to quash the proceedings on the ground that since the very same complaint raised by the 2nd respondent considered by the Internal Complaints Committee and found to be not proved, the criminal prosecution on same set of facts before a court will not stand. Court held that

*“Section 28 of the Act of 2013 stipulates that 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. Thus, it is clear that the action under the Act of 2013 by the employer and a complaint registered at the instance of the employee for the offence under the Indian Penal Code is independent to each other. Two fold actions are permissible for the sexual harassment complaint. Hence, both actions are independent and permissible under law. There is absolutely no bar in proceeding with the criminal prosecution initiated against the petitioner.”*

### ***Rayala Satyanarayana vs. SBI Funds Management Pvt. Ltd. and Ors. (19.10.2022 - APHC) : Writ Petition No. 8042 of 2019***

In this case, Andhra Pradesh High Court decided on whether the termination of services is, in fact, a major punishment, which cannot be imposed without conducting a separate departmental enquiry or without affording an opportunity of hearing or issuing a separate charge memo. Court held that Conclusions by Committee cannot be the basis for imposing a major penalty of removal from service, because it is a finding/report in an enquiry into the misconduct of the delinquent and cannot be treated as a mere preliminary investigation or inquiry leading to a disciplinary action. Court stated-

*“the conclusions arrived at by the Committee cannot be the basis for imposing a major penalty of removal from service, mainly on the ground that the conclusions arrived at by the Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action, but shall be treated as a finding/report in an enquiry into the misconduct of the delinquent. The impugned proceedings further suffer from severe illegality as the said proceedings were issued without there being any regular departmental enquiry and without giving any opportunity as per the Service Rules, which mandate that initiation of disciplinary proceedings is a mandatory requirement and without conducting any enquiry, no employee can be imposed any major penalties.”*

### LESSON ROUND-UP

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“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 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 employees 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.

### GLOSSARY

**Aggrieved Woman:** It means 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; in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

**Unorganised Sector:** It means 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.

**Quid Pro Quo:** It is a Latin phrase meaning ‘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:** It means creating a hostile, intimidating or an offensive work environment or any humiliating treatment likely to affect her health or safety.

### TEST YOURSELF

*(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)*

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 note on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
3. Write a brief note on constitution of Internal Complaints Committee under the Act.
4. Briefly explain the powers of Local Complaints Committee.
5. Explain sexual harassment at workplace.
6. Write a note on evolution of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with the help of case laws.

### LIST OF FURTHER READINGS

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

### OTHER REFERENCES (Including Websites and Video Links)

- <http://www.shebox.nic.in/home/notification>

## WARNING

### ***Regulation 27 of the Company Secretaries Regulations, 1982***

*In the event of any misconduct by a registered student or a candidate enrolled for any examination conducted by the Institute, the Council or any Committee formed by the Council in this regard, may suo-moto or on receipt of a complaint, if it is satisfied that, the misconduct is proved after such investigation as it may deem necessary and after giving such student or candidate an opportunity of being heard, suspend or debar him from appearing in any one or more examinations, cancel his examination result, or registration as a student, or debar him from re-registration as a student, or take such action as may be deemed fit.*

*It may be noted that according to regulation 2(ja) of the Company Secretaries Regulations, 1982, 'misconduct' in relation to a registered student or a candidate enrolled for any examination conducted by the Institute means behaviour in disorderly manner in relation to the Institute or in or around an examination centre or premises, or breach of any provision of the Act, rule, regulation, notification, condition, guideline, direction, advisory, circular of the Institute, or adoption of malpractices with regard to postal or oral tuition or resorting to or attempting to resort to unfair means in connection with writing of any examination conducted by the Institute, or tampering with the Institute's record or database, writing or sharing information about the Institute on public forums, social networking or any print or electronic media which is defamatory or any other act which may harm, damage, hamper or challenge the secrecy, decorum or sanctity of examination or training or any policy of the Institute.*

# EXECUTIVE PROGRAMME

## SETTING UP OF BUSINESS, INDUSTRIAL & LABOUR LAWS

### GROUP 1 • PAPER 3

*(This test paper is for practice and self-study only and not to be sent to the Institute)*

#### TEST PAPER

**Time allowed: 3 hours**

**Maximum Mark: 100**

**Total number of questions: 6**

**NOTE: Answer ALL Questions**

#### PART-I: SETTING UP OF BUSINESS (60 MARKS)

- 1(a) Launched on 16th January, 2016, the Startup India Initiative has rolled out several programs with the objective of supporting entrepreneurs, building a robust startup ecosystem and transforming India into a country of job creators instead of job seekers. To reduce the regulatory burden on Startups thereby allowing them to focus on their core business and keep compliance cost low, detailed Regulatory formalities requiring compliance with various labour and environment laws that are time consuming and difficult in nature have been mostly done away with.

Often, new and small firms are unaware of nuances of the issues and can be subjected to intrusive action by regulatory agencies. In order to make compliance for Startups friendly and flexible, simplifications are required in the regulatory regime. Accordingly, the process of conducting inspections have been made more meaningful and simpler. Startups have been allowed to self-certify compliance (through the Startup mobile app) with labour and environment laws. In case of the labour laws, no inspections will be conducted for a period of 3 years. Startups may be inspected on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer. In case of environment laws, Startups which fall under the 'white category' [as defined by the Central Pollution Control Board (CPCB)] would be able to self-certify compliance and only random checks would be carried out in such cases.

In view of the above, answer the following with reasons:

- (i) Whether a foreign company is eligible to get recognised as a Startups by Department for Promotion of Industries & Internal Trade (DPIIT) to avail tax benefits and ease of compliance from relevant laws or regulations?
- (ii) Whether Startup India Hub is a one-stop platform for all stakeholders in the Startup ecosystem?
- (iii) Whether Government of India flagship Schemes such as Startup India Seed Fund Scheme and Fund of Funds for Startups (FFS) Scheme etc. under Startup India initiative are fruitful.
- (iv) Whether investors particularly Venture Capitalists (VCs) add value to startups in a lot of ways?

*(3 Marks Each)*

- (b) XYZ Corporation Limited, is a resident company in India carrying on business for the last 20 years. The company is operating in various sectors e.g., power, infrastructure, ports, oil, telecommunications and IT etc. Now, the company is planning to make an investment of ₹ 10,000 crore in Brazil's solar power projects through the joint venture in Amazon Forest. The latest audited financial statements of the company revealed the following data as on 31st March, 2023:

Paid up Share Capital: ₹ 5,000 crore

Reserve & Surplus: ₹ 5,000 crore

Long-term Borrowings: ₹ 5,500 crore

Creditors: ₹ 300 crore

Referring to the provisions of the Foreign Exchange Management (Overseas Investment) Rules, 2022 and Foreign Exchange Management (Overseas Investment) Regulations, 2022, advise whether the company can make desired investment under the automatic route.

(3 Marks)

- 2(a) XYZ Pvt. Ltd., comprises of two members rest of which, one member left on 1st November, 2022. Seven months since then, company had only one member and the company were carrying on business. Discuss the consequences?
- (b) XYZ Limited is a company registered under the Companies Act 2013 in the year 2018. Now, XYZ Limited contemplates to convert itself into a Limited Liability Partnership. As a Company Secretary in Practice, advise XYZ Limited the procedure for conversion from the public limited company to a Limited Liability Partnership.
- (c) Mr. A desire to obtain an NBFC license (as Core Investment Company) from Reserve Bank of India (RBI). Mr. A approaches you. Considering yourself as a Practising Company Secretary advise Mr. A regarding due diligence process applicable to a Core Investment Company form of NBFC.

(5 Marks Each)

- 3(a) XYZ Inc. incorporated in United States of America involved in trading activities, established its branch office in New Delhi. The permission in this regard has been obtained from the RBI under the Foreign Exchange Management Act 1999. Discuss the permitted activities by the Reserve Bank of India for operating branch office in India.
- (b) The promoters of ABC Ltd. and XYZ Ltd. met for developing the Supply Chain Management System for packaged food items in specific geographical areas. ABC Ltd. is in logistic and marketing, however, XYZ Ltd. is a packaged food manufacturer. Both the promoters concluded that a separate Company be formed for running the business and an experienced manager shall be hired for promotion of the business. Mr. W is the friend of one of the promoters of ABC Ltd., and he advised for setting up a Contractual Joint Venture for a period of 25 years. Briefly explain the key characteristics of Contractual Joint Venture.
- (c) Mr. P has an expertise in the field of motor vehicle facilitation field, he possesses requisite qualification and experience in this field. Now in order to start his business venture, he consulted Mr. CS (Practising Company Secretary) for knowing of various forms of organizations and to select the best form, keeping in view their merits and demerits. In the capacity of Company Secretary, make Mr. P conversant of various forms of business organisations with their merits and demerits.

(5 Marks Each)

**Attempt all parts of either Q.No.4 or Q.No.4A**

- 4(a) XYZ Pvt. Ltd., is engaged in manufacture of engineering components. The Company has investment of ₹ 5 Crore and Turnover of ₹ 25 Crore. The Company wants to know their category as per definition of

- MSME. In case XYZ Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover, then will there be any difference in the answer?
- (b) Discuss the essential clauses of Limited Liability Partnership Agreement as enumerated in Schedule I of the LLP Act, 2008.
- (c) Nidhi Companies can provide loans to its members' subject to certain limits as per Nidhi Rules, 2014. Mr. S being a member of a Nidhi Company wants to know the limits mentioned under Nidhi Rules, 2014 and also seek your advice whether a second loan can be granted within limits specified, if first loan is overdue and remains unpaid.

(5 Marks Each)

**OR (Alternate question to Q.No.4)**

- 4A(i) ABC Charity is registered under a Section 8 of the Companies Act, 2013 with the object of promoting elementary education by arranging introductory courses at district levels. ABC Charity has been earning surplus. Of late, the affairs of the company are conducted fraudulently and dividend was paid to its members. A member decided to make a complaint with the Registrar of Company to curb the fraudulent activities by cancelling the licence of the company. In the meantime, the board of the company mulled over the option of merging with Stick Private Limited, a company engaged in the business of e-commerce.
- (a) Is there any provision under the Companies Act, 2013 to revoke the license? If so, state the provisions.
- (b) Whether the ABC Charity can be merged with Stick Private Limited, a company engaged in the business of e-commerce?
- (ii) PQR Pvt. Ltd. is having paid up share capital of ₹ 50 Lakh and annual turnover of ₹ 200 Lakh. It is a wholly owned subsidiary of XYZ Ltd. a listed company. In the given situation, can PQR Pvt. Ltd. be called a Small Company as per the provisions of the Companies Act, 2013.
- (iii) Entrepreneurs are required to obtain Statutory Clearances under various environment protection legislations for setting up an industrial project. Enumerate the legislations enacted for the protection of environment in India.

(5 Marks Each)

**PART-II: INDUSTRIAL AND LABOUR LAWS (40 MARKS)**

- 5(i) Maternity leave cannot be compared or equated with any other leave as it is the inherent right of every woman employee which cannot simply be denied on technical grounds. It would be preposterous to hold otherwise as it would militate against the very process designed by nature. If a woman employee is denied this basic human right it would be an assault on her dignity as an individual and thereby offend her fundamental right to life guaranteed under Article-21 of the Constitution, which has been interpreted to mean life with dignity.

A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilitate the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realise the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Social Security Code, 2020 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood

honourably, peaceably, undeterred by the fear of being victimised for forced absence during the pre or post-natal period.

*In view of the above facts, answer the following with reasons:*

- (a) Discuss the provisions relating to Nursing Break available under the Social Security Code, 2020.
- (b) Explain the right to maternity benefit under the Social Security Code, 2020. Also state the eligibility of such benefits.
- (c) Does an employer has to necessarily provide Crèche? *Whether the crèche facility applies to the criteria of 50 employees in each branch or company as a whole?*
- (d) Explain the provisions related to Notice of claim for maternity benefit and payment thereof under the Social Security Code, 2020.

*(2 Marks Each)*

- (ii) (a) Briefly Explain the provisions regarding labour as enumerated in Seventh Schedule to the Constitution of India.
- (b) What is a “fixed term employment”? State the rights available to the fixed term employed workers under the Industrial Relation Code, 2020.
- (c) Explain the provisions relating to floor wages under Code on Wages, 2019.
- (d) Explain the General and Specific Duties of Employer under the Occupational Safety, Health and Working Conditions Code, 2020.

*(3 Marks Each)*

**Attempt all parts of either Q. No. 6 or Q. No.6A**

- 6(i) Explain “Sexual Harassment” as defined under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?
- (ii) Draft a specimen Model Standing Order as per Industrial Relation Code, 2020, for your organization where you are employed as a Company Secretary.
- (iii) Who is responsible for payment of wages under the Contract Labour (Regulation and Abolition) Act, if contractor fails to make payment of wages to contract labour?
- (iv) Discuss the legal obligation of a “Very Small Establishment” under Labour Laws (Simplification of Procedure for Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988.

*(5 Marks Each)*

**OR (Alternate question to Q. No. 6)**

- 6A (a) Discuss the eligibility criteria for receiving Gratuity under the Social Security Code, 2020.
- (b) How the contract employees are protected and given their Provident Fund when the contractor is not paying the dues to the principal employer?
- (c) Discuss the benefits available to Gig & Platform worker under Social Security Code, 2020.
- (d) Can the Internal Complaint Committee (ICC) or Local Complaint Committee (LCC) recommend compensation payment of an amount to the aggrieved woman under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013? If yes, who will pay the compensation, on what basis and how?

*(5 Marks Each)*





