



NTUI Comments on the Sexual Harassment Bill

The recent Sexual Harassment Bill to be taken up by parliament in the upcoming session is a welcome step undertaken by the Ministry of Women and Child Development. However such an act, if it were to indeed come into existence, would only mean something significant for women workers if stringent steps are taken to implement it and the responsibilities of the employers are upheld.

We have seen in many cases, progressive acts coming through without any effect on the ground due to shoddy or delayed implementation. The most important aspect to implementation is that it is imperative to have in writing in the Act itself that following that passage and notification of the Sexual Harassment Bill into an Act, a specific timeframe within which Local Officers and Local Complaints Committees will be instituted in all districts, and another timeframe for establishments to institute Internal Complaints Committees. Failure to do so must attract criminal liability on the part of the concerned person/establishment responsible for the institution of such committees and officers.

Notwithstanding implementation, the bill itself does have some discrepancies that need to be addressed including:

- Definition of hostile work environment. A hostile work environment should already be pre-supposed when an act of sexual harassment occurs. It doesn't get created *because* of the act, it already exists. A hostile work environment is one in which unreasonable pressure on women, intimidation, and the reduced ability to perform exist...all of which lead to harassment. This should be clearly defined in the Act.
- Under Section 5 i.e. Appointment of District Officer, we ask that an officer or representative of the state be made available for every 5000 workers, else the complaints mechanism at the state level goes out of the reach of women especially in the unorganised sector.
- Regarding the constitution of both the Internal Complaints Committee [Section 4] and the Local Complaints Committee [Section 6], it is extremely important to give the complainant the choice to have a member of her choice on a committee, i.e. *amicus*, during Complaint of Sexual Harassment [Section 7], the Conciliation phase [Section 8] or the Enquiry into a Complaint [Sections 9] since it ensures at least to some extent that, in situations where the complainant faces the huge power imbalance between an employer and an employee, her case will be represented adequately. Thus we ask that a new section be added clearly

indicating this provision for *amicus* for the complainant in Sections 4 and 6 and that Sections 7, 8 and 9 be modified accordingly.

The question of misuse is bound to come up as an argument against such a provision, but this cannot be the paradigm of the debate, since of the small number of cases that do come into light, almost none are misusing the law. Plus a provision for *amicus* for the complainant will give more courage for women to come out with sexual harassment that they're suffering.

Another strong reason for *amicus* is there have been many cases where the representative from the "expert group" often tends to be someone from an NGO that has been launched by the corporations themselves or a spurious entity meant to benefit the establishment. The provision for *amicus* mitigates this from happening to some extent. Furthermore it is a clear way in which illiterate women can ensure that they have someone they trust on the committee.

- Regarding the procedure for lodging a complaint, the Internal Complaints Committee should also have the power to act *suo motto* if they have reason to believe that women are not filing complaints due to grave danger or fear of repercussions, and not just the Local Officer/Complaints Committee.
- It should be mandated that a copy of the written complaint should be made available immediately to the aggrieved woman following lodging of a complaint [Section 7]
- Regarding Conciliation [Section 8], adequate steps should be taken to ensure that the complainant is not under threat or pressure to pursue this route. Also the issue may be resolved internally as per the request of the complainant, but an enquiry should still be mandated. Should some element of wrongdoing towards the complainant be discovered during a post-resolution enquiry, then the Complaints Committee should be given the power to act *suo motto* to pursue the case, frame charges, complete a report and bring justice to the aggrieved woman.
- The committee conducting the enquiry has more power during the investigation than after the enquiry has been done, during which it can only recommend actions. This could mean that even after guilt of the perpetrator has been established, there might still not be any action taken. Once a report is prepared, then the Disciplinary Authority should be mandated to act upon it within a certain timeframe and the recommendations of the committee to the satisfaction of the complainant. [Section 11]
- Section 12(1), stating that if the allegation is found to be false a woman can be punished, is highly disturbing and must be struck down. It is highly unlikely that, in a society where a victim of sexual assault or harassment is stigmatised and further victimised, there would be someone willing to go through all that just to make up a case. Furthermore this creates enormous space for employers to

manipulate the committee, and the evidence to stack it against the woman. Having such a measure against the aggrieved woman is completely antithetical to the bill, and will only ensure that women refrain from making complaints due to the fear that employers or the committee will act against them. Thus Section 12(1) must be struck down completely.

- There is nothing detailed with respect to the employer or head of establishment himself being the perpetrator. Liability should be much more stringent since there is lesser possibility that she can stay on in the same job and thus compensation should be very large since apart from sexual harassment to the aggrieved woman this also contravenes the responsibilities of the employer in creating a safe working environment, and endangers other women workers in the establishment as well. In such a scenario, the Local Complaints Committee should have the authority to proceed with much more comprehensive investigations since this could potentially affect a much larger number of workers. [Chapter V]
- Should the complaint be withdrawn for any reason then the committee should be given the powers to carry on with the case *suo motto*, especially if there is evidence that pressure was brought on to the complainant to withdraw the case
- “Sexual harassment” should be defined clearly, clarifying that it is the perception of the woman in determining whether any conduct was sexually coloured and unwelcome
- Burden of proof should rest with the alleged perpetrator and not with the victim, when an aggrieved person either files a complaint or claims compensation in an appropriate court of law after submitting an authorised or certified report of the Complaints Committee
- The onus should be on the head of the establishment to prove that he/she had taken all reasonable measures to comply with duties of the establishment as per the Act and employers cannot abrogate themselves of responsibilities if sexual harassment is committed
- It is very important that all the progressive features under “Rules of Evidence before Complaints Committee” from the 2005 Bill such as sensitivity to the complainant; non-permissibility of evidence/examination based on aggrieved woman’s character, personal/sexual life and history; taking note of socioeconomic conditions and hierarchy etc. should be incorporated in full in the present Bill. Sensitivity and non-permissibility of evidence related to the aggrieved woman’s character or personal/sexual life and history is particularly critical, otherwise this form of undermining women has been used very often in courts running under patriarchal norms to quash proceedings of sexual violence. This will also be a clear attempt through stated law to address patriarchy within society and this should be encouraged. This should be added to Chapter V of the present version of the Bill.

- There should be adequate protection for Complainant/Witness/Supporters to not be penalised and no attempts to recover costs by either the employer or the state if complaint is dismissed. This should be added to Chapter IV.
- The Act should not be in derogation of any other Law, and instead should be in addition to other laws and a provision added that the aggrieved woman can take up other proceedings in addition to any ones taken under this Act. This must be added to Chapter VI
- Under List of Employments in the Unorganised Sector, Agricultural fields, cow shed, poultry sheds etc or other premises where agricultural work is done should be added to definition of establishment