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**Hutatma Rajguru Mahavidyalaya, Rajgurunagar**

**Tal.Ked, Dist.Pune.410505**

**DEPARTMENT OF BBA**

**SYBBA**

**SEM-III**

**SUBJECT – LEGAL ASPECTS IN HUMAN RESOURCES**

**PROF. L. S. SALUNKE**

**CHAPTER NO. 3 THE PAYMENT OF GRATUITY ACT, 1927**

**The Payment of Gratuity Act, 1972**

The Payment of Gratuity Act, 1972, a social security measure, was passed by Parliament in August 1972. It came into force on 16th September, 1972. Prior to the enactment of this Act, there was no Central Act to regulate the payment of gratuity to industrial workers. This Central Law aids to have a uniform pattern of payment of gratuity to the employees throughout the country. It also avoids different treatment to the employees of establishments having branches in more than one State.

This Act provides for retirement benefit to the employees, with long and unblemished service to the employer. In other words, gratuity is a reward for long and meritorious service. Every employee irrespective of his remuneration is entitled to receive gratuity if he has rendered continuous service for 5 years or more.

• **Sec 1: Short Title, Extent and Application**

• The Act extends to whole of India. But in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

• It shall apply to- o every factory, mine, oilfield, plantation, port and railway company.

Every shop or establishment in which ten or more employees are/ were employed on any day during the preceding 12 months.

• Central Government may by notification extend the coverage of this Act to any other establishment employing 10 or more employees.

• The Act Continues to be applicable to any establishment or 'institution even if the number falls below 10 subsequent to its coverage.

• The Act does not apply to –

* Apprentices and
* Persons who hold civil posts under the Central Government or state Government and are governed by any other Act for payment of gratuity.

The Government may exempt an establishment from the provisions of this Act, if its employees are in receipt of gratuity benefits not less favorable than the benefits provided by this Act.

**Section 2: Definitions**

**(a) "Appropriate Government" means,**

(i) in relation to an establishment-

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than One State,

(c) of a factory belonging to, or under the control of the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government.

(ii) in any other case, the State Government;

**(b)** "**completed year of service**" means continuous service for one year.

**(c) "continuous service**" means continuous service as defined in section 2A.

**(d) "controlling authority"** means an authority appointed by the appropriate Government under section 3.

**e) "employee"** means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield/ plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether. or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity,

**(f) "employer**" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State

Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned.

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive office of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person;

**(g)** "**factory**" has the meaning-assigned to it in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

**(h)** "**family**", in relation to an employee, shall be deemed to consist of -

(i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the widow and children of his predeceased son, if any,

(ii) in the case of a female employee, herself, her husband, her children, whether married or unmarried, her dependent parents and the dependent parents of her husband and the widow and children of her predeceased son, if any.

**Explanation** : Where the personal law of an employee permits the adoption by him of a child, any child lawfully adopted by him shall be deemed to be included in his family, and where a child of an employee has been adopted by another person and such adoption is, under the personal law of the person making such adoption, lawful, such child shall be deemed to be excluded from the family of the employee.

**(i)** "**Major Port**" has the meaning assigned to it in clause (8) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

**(j)** "**Mine**" has the meaning assigned to it in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952);

**(k)** "**Notification**" means a notification published in the Official Gazette;

**(l)** "**Oilfield**" has the meaning assigned to it in clause (e) of section 3 of the Oilfields

(Regulation and Development) Act, 1948 (53 of 1948);

**(m)** "**Plantation**" has the meaning assigned to it in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951) ;

**(n)** "**Port**" has the meaning assigned to it in clause (4) of section 3 of the Indian Ports Act, 1908 (15 of 1908);

**(o)** **'Prescribed"** means prescribed by rules made under this Act;

(p) **"Railway Company"** has the meaning assigned to it in clause (5) of Section 3 of the Indian Railways Act, 1890 (9 of 1890);

q) **'Retirement"** means termination of the service of an employee otherwise than on superannuation;

(r) **"Superannuation"**, in relation to an employee, means the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment;

(s) **"Wages"** means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes &arness alloyance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance.

**What is meant by Continuous Service?**

**Section 2A states :**

(1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act;

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer—

(a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) 190 days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and

(ii) 240 days, in any other case;

(b) for the said period of six months, if the employee during the period of six calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than—

(i) 95 days' in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week.

* + 1. he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;
    2. he has been on leave with full wages, earned in the previous year;
    3. he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed such period as may be notified by the Central Government from time to time

(3) where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five per cent of the number of days on which the establishment was in operation during such period.

**Main Provisions of the Act**

**Section 4: Payment of Gratuity**

C (1) Gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than 5 years. Termination of employment can result from

Superannuation

• Retirement/ Resignation

• Death/ Disablement due to accident/ disease.

The provision of continuous service of 5 years shall not be necessary where termination of employment happened due to death or disablement. In case of death, the amount of gratuity will be paid to nominee. If no nomination is made, gratuity shall be paid to the legal heirs. Where the nominee or heir is a minor, the amount must be deposited with the Controlling Authority. The Controlling Authority shall invest the funds in the best interest of minor. Minor can use these funds when he attains majority.

Under explanation to Section 4 (1) disablement means such disablement as incapacitates an employee from the work which he was capable of performing before the accident or disease resulting in such disablement.

If an employee had joined a job on 01-08-2005 and retired or got his job terminated on 30-04-2019, with last drawn basic Salary of Rs 30,000 and Dearness Allowance of Rs. 13000, his Gratuity will be:

(Rs. 30,000 + Rs. 13000) x 15/26 x 14 = Rs. 347,307.70/-

Note: Here the employee has completed 14 years of service. The seven months of his first year (August 2005 to March 2006) is to be counted as one year as it is more than six months of service.

But in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of 7 days wages for each season.

**Illustration:**

For seasonal employees, 7 days wages for each season of service completed by the employee is considered for calculation. Rest of the formula is same as monthly-rated employees.

For example: If a seasonal employee retires after working from 2006 to 2016, working one season each year, with Rs. 11000 Basic and Rs. 7000 Dearness Allowance, his gratuity will be

7/26 x (Rs„ 11000 + 7000) x 11 Rs, 53,307.70/-

Note: Here the employee has worked for one season every year. Hence, the total season is Jl.

(3) The amount of gratuity payable to an employee shall not exceed 20 lakh rupees. Payment of Gratuity (Amendment) Act, 2018.

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period Subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

In Y.K. Singla v. Punjab National Bank and others (2006) 8 SCC 514, it was held that the employee has to make a choice between the two (Act/ contract) for drawing the benefit of gratuity and the choice has a statutory protection under sub-Section

(5) Section 4 of the Act.

(6) Forfeiture of gratuity-

(a) the gratuity of an employee, whose services have been terminated because of wilful commission or negligence causing any damage or loss to property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee shall be wholly forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such is committed by him in the course of his employment.

**Section 4A: Compulsory Insurance**

(1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of, the Central Government or a State Government, shall, subject

to the provisions of sub-section (2), obtain an insurance in the manner prescribed, for his liability for payment towards the gratuity under this Act, from the Life

Insurance Corporation of India established under the L.I.C. of India Act, 1956 (31 of 1956) or any other prescribed insurer:

Provided that different dates may be appointed for different establishments or class of establishments or for different areas,

(2) The appropriate Government may, subject to such conditions as may be prescribed exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section/ every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this section unless he has taken an insurance or has established an approved gratuity fund.

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken or, as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance or by way of contribution to an approved gratuity fund, he shall be liable to pay the amount of gratuity due, including interest, if any, for delayed payments to the controlling authority.

(6) Whoever contravenes the provisions of sub-section (5) shall be punishable with fine which may extend to Rs. 10,000 and in the case of a continuing offence with a further fine which may extend to Rs. 1000 for each day during which the offence continues.

**Section 5: Power to Exempt**

The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

**Section 6: Nomination**

(1) Each employee, who has completed one year of service, shall make a nomination in Form F to the employee, ordinarily within 90 days of the completion of 1 year of service.

(2) An employee may, in his nomination, distribute the amount of gratuity payable to him under this Act amongst more than one nominee.

(3) If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void.

(4) If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

(5) A nomination may be modified by an employee at any time, after giving to his employer a written notice of his intention to do so.

(6) If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest.

(7) Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

.**Section 7: Determination of the amount of gratuity**

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity. (ordinarily within 30 days)

(2) As soon as gratuity becomes payable, the employer shall determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits as that Government may, by notification, specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling aUthority such amount as he admits to be payable by him as gratuity.

4 (b) Where there is a dispute with regard to any matter specified in this clause, the employer or employee or any other person raising the dispute may make an application to the controlling authority for •deciding the dispute.

4 (c) The Controlling Authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the amount of gratuity payable to an employee and if, as a result of such inquiry any amount in excess of the amount deposited by the employer is found to be payable, the controlling authority shall direct the employer to pay such amount as is in excess of the amount deposited by him.

4 (d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

4 (e) As soon as may be after a deposit is made, the controlling authority shall pay the amount of the deposit—

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or the guardian of such nominee or heir of the employee. if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

**Section 7(5): Powers of Controlling Authority**

The controlling authority for the purpose of conducting an inquiry as to the amount of gratuity payable to an employee shall have the same powers as are vested in a court, under the Code of Civil Procedure, 1908, namely:

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses.

Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code.

**Appeal:**

Any person aggrieved by an order of Controlling Authority may, within sixty days from

the date of the receipt of the order, prefer an appeal to the Regional Labour Commissioner of the area, who has been appointed as the appellate authority by the Central Government

The appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days. Sec, 7(7)

But no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under Section 7(4), or deposits with the appellate authority such amount.

The appropriate Government or the appellate authority, as the case may be, mayr after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

In Chamaraja M.C. v. Hind Nippor lndustrial (P) Ltd. (2007) LLJ 787 (S.C.) Court held that while interpreting the provisions of a beneficial legislation, such as Payment of Gratuity Act, 1972 a liberal view had to be taken.

**Section 7A: Appointment of Inspectors**

The appropriate Government may, by notification, appoint as many Inspectors, as it deems fit, for the purposes of this Act. It may by order, define the area to which the authority of an Inspector so appointed shall extend. Where 2 or more Inspectors are appointed for the same area, also provide by such order, for the distribution or allocation of work to be performed by them under this Act. Every Inspector shall be deemed to be a public servant.

**Section 7B: Powers of Inspectors**

In order to ascertain that the provisions of this Act or the conditions, if any, have been complied with, Inspectors may exercise all or any of the following powers.

(a) require an employer to furnish such information as he may consider necessary;

(b) enter and inspect, at all reasonable hours any premises of or place in any factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies,

(c) —examine the employer or any person whom he finds in such premises or place and who he has reasonable cause to believe is an employee, employed therein.

(d) make copies of, or take extracts from, any register, record, notice or other document, as he may consider relevant, and where required search and seize such register, record, notice or other document as he may consider relevant in respect of that offence.

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

Any person required to produce any register, record, notice or other document by an

Inspector shall be deemed to be legally bound to do so under the Indian Penal Code 1860)

**Section 8: Recovery of Gratuity**

If the amount of gratuity payable under this Act is not paid by the employer to the employee or any other person entitled on his behalf, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector. The Collector shall recover the same with compound interest, at such rate as the Central Government may, by notification, specify. The amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act. Collector will treat it as arrears of land revenue and pay the same to the person entitled thereto.

The Controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate.

**Section 9: Penalties**

Employer who avoids the payment of the gratuity to the employees, shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.

If any person makes false statements or false representations, they shall be punishable with imprisonment for a term which may extend to 6 months, or with fine which may extend to 10,000/- rupees or with both.

Employer who disobeys the rules and regulation of the Act, shall be punishable with imprisonment for a term which shall not be less than 3 months but which may extend to one year, or with fine which shall not be less than 10,000/- rupees but which may extend to 20,000/- rupees, or with both.

**Section 10: Exemption of Employer from Liability in Certain Cases**

Where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing pf his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court—

(a) that he has used due diligence to enforce the execution of this Act, and

(b) that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence:

In order to prove himself, the employer may be examined on oath and his evidence and witnesses shall be subject to cross-examination by the prosecutor. If the person charged as the actual offender by the employer cannot be brought before the court at the appointed time, the court shall adjourn the hearing for a period not exceeding 3 months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

**Section 11: Cognizance of Offences**

(1) No court shall take cognizance of any offence punishable under this Act unless a complaint is made by the authority of the appropriate Government. Where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a magistrate having jurisdiction to try the offence.

(2) 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.

**Section 12: Protection of Action taken in Good Faith——**

No suit/ legal proceeding shall lie against the controlling authority or any other person for any act done by them in good faith.

**Section 13: Protection of gratuity**

Gratuity payable under this Act shall not be liable to attachment.

**Section 15: Power to make Rules**

Appropriate Government may make, rules for the purpose of carrying out the provisions of this Act. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session .immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

**3.2 Sexual Harassment of Women at Workplace**

**(Prevention, Prohibition and Redressal) Act 2013**

* **Introduction**

**• Main Features of the Act**

* **Provisions**

**• Vishaka Guidelines**

'The meaning and content of the fundamental rights guaranteed in the Constitution of

India are of sufficient amplitudes to encompass all facets of gender equality

Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan

**Introduction and Meaning:**

The Sexual Harassment at WorkplaCe (Prohibition, Prevention and Redressal) Act, 2013 (SHW Act) was enacted by the Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith. It consists of 30 Sections divided in 8 Chapters. It came into force on 9th December2013.

**Purpose of the Act:**

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act will contribute to the realization of their right to gender equality' life and liberty, equality in working conditions everywhere, The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

**Definitions:**

**Sexual harassment: Sec. 2 (n)**

It 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

* + 1. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

**Workplace: Sec. 2 (o)**

(i) 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;

(ii) 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, entertain mental, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

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

(v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;

(vi) a dwelling place or a house.

**Aggrieved woman: Sec. 2 (a)**

1. 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;
2. (ii) in relation to dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

**Respondent: Sec. 2(m)**

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

**Section 3: Prevention of sexual harassment**

No woman shall be subjected to sexual harassment at any workplace. Following act or behaviour may amount to sexual harassment:

(i) promise of preferential treatment in her employment; or

(ii) threat of detrimental treatment in her employment; or

(iii) threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.

**CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE: Section 4**

(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee" for every administrative unit.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

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

Term of office: Every member of ICC shall hold office for a term not exceeding 3 years, from the date of their nomination,

Fees or allowances: Members appointed from amongst the NGO shall be paid fees by the employer, as may be prescribed.

Removal from ICC: Where the Presiding Officer or any Member of ICC:

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or

(c) he has been found guilty in any disciplinary proceedings or

(d) has so abused his position as to render his continuance in office prejudicial to the public' interest, such Presiding Office or Member, as the case may be, shall be removed from the Committee and the casual vacancy shall be filled by fresh nomination.

**constitution OF LOCAL COMPLAINTS COMMITTEE: Section 5**

The appropriate Government may notify a District Magistrate/Additional District Magistrate or the Collector/ Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

**Constitution of LCC:**

Every District Officer shall constitute 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.

(2) The District Officer shall designate one nodal officer, in rural area, to receive complaints and forward the same to the concerned Local Committee, within a period of seven days.

The Local Committee shall consist of the following members to be nominated by the District Officer, namely: —

Payment of Gratuity Act, 1972

Term of office: Every member of LCC shall hold office for a term not exceeding 3 years, from the date of their nomination.

Fees or allowances: Members appointed from amongst the NGO shall be paid fees as may be prescribed.

Removal from LCC: Where the Presiding Officer or any Member of LCC, — (a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or

(c) he has been found guilty in any disciplinary proceedings 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, shall be removed from the Committee and the casual vacancy shall be filled by fresh nomination.

**Complaint of sexual harassment: Who and When**

Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee/ the Local Committee, within a period of three months from the date of incident. Where aggrieved woman is unable to make complaint due to death or mental incapacity, hef legal heir may make a complaint. (Section 9)

Members of both the Committees are expected to render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee/ the Local Committee may, for satisfactory reasons extend the time limit not exceeding three months.

**Conciliation:**

Conciliation is an informal manner of settlement of dispute. If the aggrieved woman requests for conciliation, Committee may discharge the option of conducting further inquiry. But, no monetary settlement shall be made as a basis of conciliation. (Section 10)

If the case is settled through conciliation, a settlement agreement is entered into and copy thereof is forwarded to the employer or District Officer.

The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement to the aggrieved woman and the respondent.

**Inquiry into complaint: (Section 11 to 18)**

The ICC/ LCC as the case may be shall-

where the respondent is an employee, proceed to make inquiry into the complaint, in such manner as may be prescribed or

• where the respondent is a domestic worker, forward the complaint to the police, within a period of seven days,

If any terms or conditions of the settlement agreement are not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or forward the complaint to the police,

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 patties enabling them to make representation against the findings before the

**Committee.**

When the respondent is convicted of the offence, the court may order payment of such sums as it may consider appropriate, to the aggrieved woman.

ICC/ LCC shall have same powers as that of a Civil Court.

The inquiry shall be completed within a period of ninety days and Inquiry Report shall be forwarded by Committee, within 10 days from completion of inquiry, to the employer/ District Officer.

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. Such leave is in addition to any other entitled leave.

Employer shall implement the recommendations and send report to the Committee's.

If the allegation against the respondent has been proved, Committee shall recommend the employer or District Officer to-

• Take action for sexual harassment as a misconduct or

• To deduct certain sum of money from salary/ wages of the respondent.

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

Action may be taken against the aggrieved woman on a false or malicious complaint/ evidence being filed.

Section 16 prohibits publication of the identity and addresses of the aggrieved woman. respondent and witnesses or making known contents of complaint and inquiry proceedings to the public, press and media in any manner.

**Duties of employer: Section 19**

Every employer shall—

(b) display at any conspicuous pface consequences of sexual harassments and members of ICC Committee;

(c) organise workshops and awareness programmes;

(d) provide necessary facilities to the ICC or the LCC, as the case may ber 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 it may require;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other jaw for the time being in force;

(h) if the aggrieved woman so desires, cause to initiate action under the Indian Penal Code against the perpetrator;

(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.

**Penalty:**

' Penalty for non-compliance of the provisions of this Act on employer may extend to fifty thousand rupees.

• 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

• cancellation, of his licence or withdrawal/ or non-renewal, or approval. or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

**Landmark Case of Vishaka v. State of Rajasthan:**

In 1992, a rural level change agent, Bhanwari Devil was engaged by the state of Rajasthan as a Sathin (friend) to work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a one-year old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. That omission came at great cost - Bhanwari was subsequently gang raped by those very men. The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace.

Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as a violation of women's fundamental right to equality and that all workplaces/establishrnents/ institutions be made accountable and responsible to uphold these rights.

Vishaka triggered a national consciousness on an issue that was, until then, not given its due importance. Following up on Vishaka, the Supreme Court of India enlarged the scope of sexual harassment by ruling that physical contact was not essential to be considered an act of sexual harassment.

It included:

1. A definition of sexual harassment

2. Shifting accountability from individuals to institutions

3. Prioritizing prevention

4. Provision of an innovative redress mechanism

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life. It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses. It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a third party person/NGO expert on the issue, to prevent any undue pressure on s the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors. Vishaka established that international standards/law could serve to expand the scope of India's Constitutional guarantees and fill in the gaps wherever they exist.