

Nepal introduces legislation to address sexual harassment at workplace

May 08, 2016

The Government of Nepal has enacted a specific legislation addressing sexual harassment at workplace with the objective to protect the right of every individual to work in a safe environment. The Sexual Harassment at Workplace Prevention Act, 2015 (2071) (“**Sexual Harassment Prevention Act**” or “**Act**”) came into effect on February 20, 2015 (Falgun 08, 2071). This Legal Update attempts to highlight some of the salient features of the Act.

Applicability and Scope

Sexual Harassment Prevention Act prevents sexual harassment at “workplace”; defined to include any place used by (a) government entities, (b) entities owned (fully or partly) by government, (c) corporate bodies or institutions established in accordance with the prevailing laws; and (d) any firm, institution or corporate body registered or licensed to carry out any business, trade, or provide services (together the “**Entities**”), in the course of conducting their business. The Act appears to provide for a broad definition of workplace as far as the physical location is concerned, therefore, in the event such entities have been operating out of tents following the earthquake (as was the case with many government entities), such tents would also be regarded as “workplace” for the purpose of the Act. However, when it comes to the Entities to which the workplace relates to, the Act limits the definition only to the organized sector and appears to exclude entities operating in the informal sector.

The Act affords protection to employees, and workers employed by the entities (including contract workers), as also to customers (and persons accompanying such customers) who may visit the workplace to avail of any services. Unlike the corresponding legislation in some other jurisdiction such as India, the Sexual Harassment Prevention Act is gender-neutral and is not limited to female workers.

Meaning of Sexual Harassment

Pursuant to Section 4 of the Sexual Harassment Prevention Act any of the following unsolicited acts committed by, or caused to be committed by, any person in abuse of his/her position, power or by imposition of any type of coercion, undue influence, or enticement would constitute sexual harassment:

- (a) Physical contact and advances;
- (b) Showing or displaying of pornographic material,

- (c) Expressing sexual motives by way of written, verbal, or non-verbal means,
- (d) Demand or proposal for sexual favours; and
- (e) Flirting or harassing with sexual motive.

The said Section clarifies that in the event any of the above acts are done for educational purpose or in the course of treatment or providing protection to the employees, then such acts should not be regarded as sexual harassment. Therefore, as an example, if any pictures are displayed in the course of raising awareness of reproductive health, the mere display of such pictures should not constitute sexual harassment for the purpose of the Act.

Responsibilities and Duties of the Employer

The Act imposes certain duties and responsibilities on the employer, including:

- (a) Incorporating the necessary provisions relating to the prevention of sexual harassment into the internal employment rules;
- (b) Disseminating information to create awareness on the issues and implications of workplace sexual harassment;
- (c) Making necessary arrangements for preventing the recurrence of sexual harassment;
- (d) Providing the victims with the necessary psychological treatment; and
- (e) Making an arrangement of victims to make anonymous complaints;
- (f) Providing information to the victims on the procedure for filing of complaints.

Complaint Mechanism under the Act

The Sexual Harassment Prevention Act envisages two internal and external complaint mechanisms. Under the internal complaint handling mechanism the employer or the manager having the authority to decide on administrative matters, or head of the department of the entity handling administrative matters; such as the HR department (the “**Manager**”), handles the complaints. While under the external complaint handling mechanism, the Chief District Officer (“**CDO**”) of the concerned district is the initial complaint handling authority. The Act does not require the

complainant to exhaust one complaint handling mechanism in order to be eligible to make complaint under the other.

In the context of internal complaint handling mechanism, the Act does not specifically require the employer to constitute a complaint handling committee within the entity, with the specific responsibility to handle the complaints. Formation of such committee would be important to ensure the streamlining of complaint handling process, quick handling of complaints, as also give clarity to victims as to who they should approach.

Under the internal complaint handling mechanism, the employer / manger has the power to do any of the following in the course of handling of any complaint of occurrence of sexual harassment:

- (a) Reconciliation between the victim and the accused with mutual consent of the parties;
- (b) Require the perpetrator to apologize to the victim;
- (c) Arrange for reasonable compensation from the perpetrator to the victim; and
- (d) Take departmental action against the perpetrator pursuant to the internal employee service rules.

Punishment under the Act

Section 12 of the Act provides that any person who has committed sexual harassment under the Act may be punished with imprisonment of up to 6 months, and / or fine of up to Nepalese Rupees 50,000. The said Section also provides that any employer failing to comply with the duties and responsibilities imposed by the Act, may be punished with fine of up to Nepalese Rupees 25,000. In case of repeated offence, double the punished provided in the foregoing may be applicable. To clarify, the aforesaid punishment under the Act may be imposed by the external complaint handling authority only.

The external complaint handling authority may also require the person who has committed sexual harassment under the Act to provide compensation to the victim for any physical or mental harm caused, and the actual expenses incurred by the victim in the course of filing and defending of his/her complaint.

Victim Protection

The Sexual Harassment Prevention Act provides a number of provisions intended to protect the victims of sexual harassment, and create an environment at the workplace

where the victims feel encouraged to file complaints against any occurrence of sexual harassment.

As an example, the Sexual Harassment Prevention Act prevents the complainant from being dismissed, transferred or in any other way, penalized on the account of his/her complaint. In converse, the Act in fact, provides that the perpetrator may be transferred to another branch or department of the Entity, and away from the victim.

In addition to protection of the victim, the Act also provides for mechanism to control / prevent false claims being made under the Act; any person who knowingly makes false complaint of sexual harassment is subject to fine up to Nepalese Rupees 10,000. Such deterrent provision would discourage false claims and any abuses of the provisions of the Act.

Remedy Available under Other Laws

Prior to the enactment of the Sexual Harassment Prevention Act, the Chapter on Acts done with Sexual Intent (*Asaya Karani ko Mahal*) of *Muluki Ain* was the only law that dealt with the offenses related to sexual harassment. The said provisions of *Muluki Ain* prohibits any person from committing offenses with sexual intent and broadly covers the acts falling within the definition of sexual harassment under the Sexual Harassment Prevention Act. The said provisions provide for a higher imprisonment of up to one year and fine of up to Nepalese Rupees 10,000 (as opposed to imprisonment of up to 6 months, and / or fine of up to Nepalese Rupees 50,000 under the Sexual Harassment Prevention Act), as well as reasonable compensation to the victim. However, the Chapter does not impose any obligations on the employers, and does not contemplate men to be victims of sexual harassment.

It is important to note that the Sexual Harassment Act does not prevent the aggrieved party from initiating legal proceedings under *Muluki Ain*. Therefore, the victim may seek remedies either under Sexual Harassment Prevention Act or under *Muluki Ain*, depending on the remedies and protection he/she is seeking.