

## **The Sexual Harassment at Workplace (Prevention) Act, 2014 (2071)**

### **Date of Authentication and Publication**

21 November, 2014 (2071/8/5)

### **Amending Act**

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| 1. An Act to Amend Some Nepal Acts, 2016 (2072)                                   | 25 February, 2016 (2072/11/13) |
| 2. An Act to Amend Some Nepal Acts to Correspond to the Constitution, 2019 (2075) | 3 March, 2019 (2075/11/19)     |

### **Act No. 7 of the Year 2013 (2071)**

### **An Act to Provide for The Prevention of Sexual Harassment At Workplace**

**Preamble:** Whereas, it is expedient to make necessary provisions for the prevention of sexual harassment at workplace by ensuring the right of every person to work in a safe, fair and dignified environment,

Now, therefore, be it enacted by the Constituent-Assembly in capacity of Legislative-Parliament, pursuant to Article 83 of the Interim Constitution of Nepal, 2007 (2063).

1. **Short Title and Commencement:** (1) This Act may be called “The Sexual Harassment at Workplace (Prevention) Act, 2014 (2071).”

(2) This Act shall come into force from the ninety-first day of its authentication.

2. **Definition:** Unless the subject or context otherwise requires, in this Act,-

- (a) “Complaint Hearing Officer” means the Officer as referred to in Section 14.
- (b) “Employee” means the incumbent employee or worker in a workplace.
- (c) “Workplace” means the following body, institution or firm and also includes a place used in course of performance of work of such a body, institution or firm:-

- (1) a government body,
  - (2) a corporate body having partial or full ownership of the Government of Nepal,
  - (3) a body or a corporate body established pursuant to prevalent laws,
  - (4) a firm, body or a corporate body permitted or registered pursuant to prevalent laws to conduct any business, transaction or to deliver any service.
- (d) “Sexual Harassment” means any act as referred to in Section 4.
- (e) “Manager” means the Officer with the authority to take the final decision on matters relating to the administrative or business work, activity of any workplace, or delegated with the authority for that purpose and also includes the In-Charge of the Branch or Unit, if such a workplace has any Branch or Unit, elsewhere.
- (f) “Customer” means a person present at the workplace with the intention of receiving any form of service and also includes a person present in the workplace, with such a person.
3. **Not to commit or cause to Commit Sexual Harassment:** No person shall commit or cause to be committed sexual harassment in workspace.
4. **To be considered as Sexual Harassment:** (1) If anyone commits or causes to be committed, the following acts by abusing one’s position, power or authority to any employee or customer in the workplace by creating any form of pressure, influence or enticement or by discouraging, it shall be considered that sexual harassment has been committed: -
- (a) To touch or attempt to touch any organ of the body with sexual intent,
  - (b) To use or display word, picture, newspaper, audio, visual, other information technology, medium, object or material related to obscene and sexual activity,
  - (c) To display or express obscene and sexual intent by writing, speaking or gesticulating,
  - (d) To make an offer for sexual activity,

(e) To tease or annoy with sexual intent

(2) Notwithstanding anything contained in clauses (a), (b) or (c) of sub-section (1), anything done in course of educational, informative, research oriented, treatment or lifesaving activity shall not be considered to be a sexual harassment.

5. **Responsibility of the Manager:** (1) The Manager shall, in order to ensure or to prevent that sexual harassment does not occur at workplace, do the followings:-

- (a) To make necessary provisions in the law on terms and conditions of service of the employees on prevention of sexual harassment,
- (b) To create alertness among the employees and customers in order to ensure that sexual harassment does not occur,
- (c) To adopt necessary reformative measures in order to ensure that sexual harassment is not repeated,
- (d) To provide psychological counselling services to the victim, as per necessity,
- (e) To maintain a grievance box in the workplace.

(2) The Manager shall clearly inform the victim about the time limit for complaint against sexual harassment, procedures and complaint hearing authority.

6. **Hearing of a Complain:** (1) If anyone commits any form of sexual harassment to any employee or customer in the workplace, the victim employee, customer or anyone, as the case may be, may file a written or oral complain on their behalf to the manager against such a person, within fifteen days.

(2) The Manager shall, if any complaint is filed pursuant to sub-section (1), conduct investigation immediately on that matter.

(3) The Manager shall, if it is found by the investigation conducted pursuant to sub-section (2), that the accused has sexually harassed the complainant employee or customer, perform or cause to perform, any or all of the following actions:-

- (a) To conduct conciliation between the victim and accused, if both parties agree to it,
- (b) To cause the accused to apologize to the victim,
- (c) To reprimand the accused person not to repeat such an act again,

- (d) To order for reasonable compensation to be paid to the victim from the accused,
- (f) To take departmental action against the accused in accordance to the laws relating to the terms and conditions of service.

(4) The Manager shall finalize the complain made pursuant to sub-section (1), within fifteen days from the date of complain.

7. **Complain may be filed:** (1) Notwithstanding anything contained in Section 6, if anyone commits sexual harassment to any employee or customer, in any form in the workplace, the victim employee, customer or anyone else on his or her behalf may file a complaint with evidence to the complaint hearing authority, within ninety days from the date on which sexual harassment has been committed against such a person.

(2) The victim employee, customer or anyone else on his or her behalf may file a complaint to the complaint hearing authority from the date of expiry of the time limit, if the complain made pursuant to Section 6 has not been finalized by the manager and, if any party is not satisfied with the decision of the Manager made pursuant to same Section, within seventy days of such a decision.

(3) The concerned person may file a complain to the complaint hearing authority against the manager, if the manager does not comply with the responsibilities or other provisions under this Act or the direction given by the complaint hearing authority or a body that causes inspection or monitoring, pursuant to Sections 9 and 10.

8. **Conciliation may be done:** (1) The victim of sexual harassment and the accused may file a joint petition to the complaint hearing authority for conciliation, with the agreement of both parties.

(2) The complaint hearing authority shall, if a joint petition is filed pursuant to sub-section (1), have to cause conciliation of the parties with necessary consultation.

(3) No fine in any form shall be levied for conducting conciliation pursuant to sub-section (2).

9. **Protection of Complainant:** (1) The manager shall not, remove an employee from service, take other departmental action or take any other actions against him or her including transfer, promotion of the concerned person that may impact his or her career development, merely on that ground that a complaint has been filed under this Act.

(2) If the manager takes any action against any employee, such employee, contrary to sub-section (1), such an employee may file a petition to the complaint hearing authority setting out such a matter.

(3) While investigating the petition filed pursuant to sub-section (2), if the details of the petition seem to be reasonable, the complaint hearing authority shall give an order to the concerned manager to revoke or correct such a decision.

(4) If the complaint hearing authority issues an order referred to in sub-section (3), the concerned manager shall enforce such a decision upon expiry of time limit for appeal or if an appeal has been filed, within fifteen days of a decision over such an appeal.

(5) If any employee for the reason having made a complain pursuant to this Act, feels unsecure in any way in the workplace, such an employee may file a petition to the manager requesting for the security.

(6) The manager shall, if a petition referred to in sub-section (5), has been received, make proper arrangements for the security of such an employee in the workplace.

(7) If the manger fails to provide arrangement for the security of the employee filing a petition as referred to in sub-section (5) or if the manager himself or herself is the accused party, such an employee may request for his or her security to the local security agency and if such a request for security has been made the security agency shall make arrangements for the security of the concerned.

(8) The manger shall, if it is proved that an employee has committed sexual harassment and it does not seem appropriate to retain such an employee in the same office, transfer such an employee if the manager is empowered to do so himself or herself, or if the transfer is to be conducted by other officer or agency, write for the transfer to such an officer or agency, as the case may be.

- 10. To Conduct or Cause to Conduct Inspection and Monitoring:** The National Women's Commission or the higher body of the agency where the Manager is engaged shall, conduct or cause to be conducted inspection and monitoring, in regard to whether or not the manager has complied with the responsibilities and other provisions in this Act or Rules and Code of Conduct framed under to this Act,.

**11. Report To Be Submitted:** (1) The person assigned for inspection and monitoring as referred to in Section 10, setting out the following matters; shall upon completion of inspection and monitoring submit a report to the concerned body:-

- (a) The responsibilities or other provisions complied with or not, by the concerned Manager,
- (b) Matters concerning attention to the concerned Manager for compliance with the responsibilities or other provisions,
- (c) Other necessary matters.

(2) If, upon examination of the report received pursuant to sub-section (1), it is found that the Manager has not complied with the responsibilities or other provisions under this Act or Rules and Code of Conduct framed under this Act, the body conducting or causing to conduct the inspection and monitoring shall give directions to the manager to comply with such responsibilities or other provisions.

(3) It shall be the duty of the concerned Manager to comply with the directions given pursuant to sub-section (2).

(4) If the matters set out in the report received pursuant to sub-section (1), requires for policy decision to be made by any agency, the agency conducting or causing to conduct the inspection and monitoring shall write to the concerned agency for necessary policy decisions.

Provided that, if the matter requires to take such a policy decision to be made by it, necessary actions shall be initiated to make a decision.

**12. Punishment:** (1) If anyone is convicted of committing sexual harassment against an employee or customer one shall be liable to the punishment, considering nature of an offense, with imprisonment not exceeding six months or with fine not exceeding fifty thousand rupees or with both.

(2) If any manager is found to have failed to comply with the responsibilities or other provisions under this Act, he or she shall be liable to the punishment with fine not exceeding twenty-five thousand Rupees.

(3) If the manager fails to comply with the directions given by the complaint hearing authority or agency conducting or causing to conduct inspection or monitoring under Sections 9 or 10, he or she shall be liable to fine not exceeding twenty-five thousand Rupees.

(4) If the person convicted pursuant to this Section, commits such a punishable offense again, he or she shall be liable to the punishment with double sentence for each time.

(5) If any one is found to have filed a false complaint deliberately pursuant to this Act, he or she shall be liable to the fine not exceeding ten thousand Rupees.

(6) If any employee or person is convicted pursuant to this Section, the complaint hearing authority shall inform the concerned agency of the same.

**13. To Recover Compensation:** If upon investigation of the complaint filed pursuant to this Act, the accused person is convicted for sexual harassment, the complaint hearing authority shall punish such a person pursuant to Section 12 and order to recover the following compensation or amount to the victim:-

- (a) Physical or mental damage, if any, reasonable compensation for such damage,
- (b) The actual expenses incurred while making a complaint or in defending such a complaint.

**14. Complaint Hearing Authority:** (1) The Chief District Officer of the concerned District shall have the authority to initiate the proceedings and adjudicate the complaint filed under this Act.

(2) Notwithstanding anything contained in sub-section (1), the Principal Secretary of the concerned Province<sup>3</sup> shall have the authority to initiate the proceedings and adjudicate the complaint filed against the Chief District Officer.

**15. Procedures Relating to the Hearing of Complaint:** (1) The complaint hearing authority, while initiating the proceedings and adjudicating the complaint filed pursuant to Section 7, shall follow the procedures as set out in the Summary Procedures Act, 1971 (2028).

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<sup>3</sup> Amended by An Act to Amend Some Nepal Acts to Correspond to the Constitution, 2019 (2075).

(2) If the victim has requested in writing, the complaint hearing authority shall have to proceed the hearing of the complaint in camera.

16. **Appeal:** The person who is not satisfied with the decision of the complaint hearing authority pursuant to this Act may make an appeal, to the concerned District Court\* within thirty-five days of such decision.
17. **Enforcement of a decision or conciliation:** (1) The enforcement of a decision or conciliation made pursuant to this Act, shall be a duty of the concerned manager.
- (2) If the manager does not enforce the decision or conciliation pursuant to sub-section (1), the concerned complainant, may file a petition to the complaint hearing authority by setting out the same details thereof.
- (3) Upon receipt of a petition referred to in sub-section (2), the complaint hearing authority shall enforce such a decision or conciliation in accordance with the prevalent laws.
- (4) Notwithstanding anything contained in sub-section (1), if the accused person is the manager, the complaint hearing authority shall itself, enforce the decision or conciliation within sixty days.
18. **To Include in the Curriculum of Training:** Each training providing body shall include the subject relating to sexual harassment and the prevention thereof, in the curriculum of the training.
19. **Not to bar institution of a case under prevailing laws:** If any act or action considered to be an offense under this Act is also punishable under other prevailing laws, institution of a case and punishment under such laws, shall not be considered to have been barred by this Act.
20. **Prevailing Law to be Applicable:** In matters specifically provided for in this Act, this Act shall be applicable and in other matters it shall be in accordance with the prevalent laws.

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\* Amended by Some Nepal Acts Amending Act, 2016 (2072)



**21. Code of Conduct may be framed:** (1) The Government of Nepal shall frame and introduce necessary Code of Conduct with regard to the prevention of sexual harassment.

(2) Each manager shall, in accordance with the nature of the workplace, have to frame and introduce separate Code of Conduct, subject to the Code of Conduct framed under sub-section (1).

(3) It shall be the duty of all concerned, to comply with the Code of Conducts framed pursuant to sub-sections (1) and (2).

**22. Power to frame rules:** The Government of Nepal may, in order to implement this Act, frame necessary rules.