

## Is Section 2(n) of the Act has limited definition?

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What is Sexual Harassment is defined in section 2(n) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Whether the definition is limited or not, is deliberated in the Judgement of Hon'ble Kerala High Court in the case of "*Dr.Prasad Pannian Vs Central University of Kerala....*

### Para 7.

There is no dispute to the fact that sexual harassment of women at workplace results in violation of fundamental rights of equality, enshrined under Articles 14 and 15 of the Constitution of India and her right to live with dignity under Article 21 of the Constitution.

It is to ensure a safe environment free from sexual harassment for women that the Act had been formulated. Section 2(n) defines sexual harassment as under:-

2. Definitions. (n) "sexual harassment" includes any one or more of the following unwelcome acts or behavior (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."

Apparently it is an inclusive definition and only a few unwelcoming acts or behaviour had been mentioned at subclauses (i) to (v).

There might be other instances as well. Any such behaviour which is unwelcome could be either direct or indirect. Sub-clauses (i) to (v) are only instances of unwelcome acts or behaviour, but while interpreting a statute, we will have to derive the meaning of the word "sexual harassment" taking into account sub-clauses (i) to (v) as well. Sub-clauses (i) to (v) are all illustrations.

But when an allegation of sexual harassment is made, though not coming within the parameters as specified in sub-clauses (i) to (v), the act should have something to do with a sexual advance either directly or by implication.

Going by the statute, only a few unwelcome acts had been delineated under sub-clauses (i) to (v). It is possible that there might be other unwelcome acts or behaviour which would amount to a sexual advance or demand which the woman feels to be annoyed on account of the fact that she is a woman.

**Para 8.** Section 3 creates an absolute prohibition to subject a women to sexual harassment at workplace. There also, sub-section (2) of Section 3 emphasises on any act or behaviour of sexual harassment. Clauses (i) to (v) are instances which may occur in a workplace. But still, a bare reading of sub-section (2) indicates that the circumstances mentioned in clauses (i) to (v) are not exhaustive. The words 'among other circumstances' clarifies the said position. Any such circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual harassment alone can be treated as sexual harassment. In other words, any act which tends to affect the women in the form of clauses (i) to (v) in Section 3(2) would amount to sexual harassment only if such eventualities occur and should be in relation to or connected with any act or behavior of sexual harassment. The purport of Section 3(2) is that, if any of the eventualities mentioned under clauses (i) to (v) or any other circumstances occur, it should be in relation to or connected with any act or behaviour of sexual harassment.

**Para 9.** Therefore, in order to constitute sexual harassment, definitely there should be an attempt on the part of the wrongdoer to do some act which was unwelcome or by way of behaviour, either directly or by implication makes the victim to feel that it amounts to sexual harassment

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