

Thirteenth Kerala Legislative Assembly

Bill No. 43

**THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS
(SECOND AMENDMENT) BILL, 2011**

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BILL

further to amend the Kerala Shops and Commercial Establishments Act, 1960.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Shops and Commercial Establishments Act, 1960, for the purposes hereinafter appearing;

BE it enacted in the Sixty-second Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Shops and Commercial Establishments (Second Amendment) Act, 2011.

(2) It shall come into force at once.

2. *Insertion of New Chapter VA.*—After Chapter V of the Kerala Shops and Commercial Establishments Act, 1960 (34 of 1960), the following Chapter shall be inserted, namely:—

“CHAPTER V A

PREVENTIVE STEPS AGAINST SEXUAL HARASSMENT

20A. *Definitions.*—For the purpose of this Chapter,—

(a) “co-child employee” means, a person who has not completed his eighteenth year of age and who is wholly or principally employed in, or in connection with, any establishment and includes an apprentice;

(b) “sexual harassment” means sexual harassment against a woman employee or a woman employer or a co-child employee and includes unwelcome sexually determined behaviour (whether directly or by implication) such as,—

(i) physical contact and advances;

(ii) demand or request for sexual favours;

(iii) sexually coloured remarks;

- (iv) showing pornography;
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

20B. *Preventive steps against sexual harassment.*—(1) The employer or other responsible persons in an establishment shall take steps to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required such as,—

- (a) express prohibition of sexual harassment at work places and it shall be notified, published and circulated in all appropriate ways;
- (b) provide appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards a woman employee or a woman employer or a co-child employee at work place and no such employee should have reasonable ground to believe that he or she is disadvantaged in connection with his or her employment.

(2) Where the conduct of sexual harassment amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate action in accordance with the law by making a complaint with the appropriate authority ensuring that either the victim or the witness is not discriminated against. The victim of sexual harassment shall have the option to seek transfer of the perpetrator of sexual harassment or his or her own transfer.

(3) Without prejudice to any action that may be taken under sub-section (2), the employer shall initiate appropriate disciplinary action against the perpetrator of sexual harassment for misconduct in employment.

(4) Notwithstanding anything contained in the foregoing sub-sections, the employer shall give an opportunity to every victim of sexual harassment to file a complaint before the complaint redressal committee constituted for the purpose under sub-section (5) whether the act alleged to be a sexual harassment constitutes an offence or not under any law.

(5) A complaint redressal committee for every district shall be constituted in such manner as may be prescribed and it shall be under a woman official of the State Government not below the rank of a District Labour Officer.

(6) Every committee constituted under sub-section (5) shall consist of women members not less than half of its total strength and also members of non-governmental organization or similar organization familiar with the issue of sexual harassment.

(7) Every committee shall ensure the maintenance of confidentiality of the issue and make an annual report to the Government in such form and in such manner as may be prescribed.

(8) Every employer of an establishment shall allow to raise any issue of sexual harassment against any woman employee or a woman employer or a co-child employee, in the employer-employee meetings and in any other appropriate forum for discussion.

(9) Where sexual harassment is as a result of any act by any outsider of the establishment, the employer or the person in charge shall take all necessary and responsible steps to assist the victim in taking preventive steps.”.

STATEMENT OF OBJECTS AND REASONS

The Honourable Supreme Court of India had in their judgment dated 13th August, 1997 in Writ Petition (Criminal) No.66670 of 1992 (Original jurisdiction) defined what constituted sexual harassment in work places and has laid down certain guidelines to prevent such harassment. The Honourable Supreme Court had directed that these guidelines be strictly observed at the work places and other institutions until a legislation is enacted for the purpose for the preservation and enforcement of right to gender equality of working women under Article 14 of the Constitution of India.

2. It has come to the notice of the Government that working children are also sexually harassed in shops and establishments including hotels and restaurants as in the case of working women.

3. In the above circumstances, the Government have decided to incorporate provisions to prevent sexual harassment among working women including women employer and child employees by amending the Kerala Shops and Commercial Establishments Act, 1960.

4. The Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, when enacted and brought into operation, would not involve any expenditure from the Consolidated Fund of the State.

MEMORANDUM REGARDING DELEGATED LEGISLATION

1. Sub-section (5) of section 20B proposed to be inserted in the Act by clause 2 of the Bill seeks to empower the Government to make rules to prescribe the manner in which the complaint redressal committees are to be constituted for every district.

2. Sub-section (7) of section 20 B proposed to be inserted in the Act by clause 2 of the Bill seeks to empower the Government to make rules to prescribe the form of report and the manner in which it is to be submitted to the Government by the complaint redressal committee.

3. The matters in respect of which rules may be made are matters of procedure and are of routine or administrative in nature. Further, the rules, after they are made, are subject to scrutiny by the Legislative Assembly. The delegation of legislative power is thus, of a normal character.

SHIBU BABY JOHN

EXTRACT FROM THE KERALA SHOPS AND COMMERCIAL
ESTABLISHMENTS ACT, 1960

(ACT 34 OF 1960)

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CHAPTER V

EMPLOYMENT OF CHILDREN AND WOMEN

19. *Prohibition of employment of children.*—No child shall be required or allowed to work in any establishment except as an apprentice in such employment as may be specified by the Government.

20. *Prohibition of employment of women and persons below seventeen years during night.*—No women or any person who has not attained the age of seventeen shall be required or allowed to work whether as an employee or otherwise in any establishment before 5 a.m. or after 7 p.m.

CHAPTER VI

HEALTH AND SAFETY

21. *Cleanliness, ventilation and lighting.*—(1) The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed; and these methods may include lime washing, colour washing, painting, varnishing, disinfecting and deodorising.

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