

Sexual Harassment at Workplace

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right.”



Prevent, Prohibit and Redress Sexual Harassment – The New Legislation

- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“Act”) has been made effective from December 9, 2013. The rules under the Act have also been notified on even date.
- The objective of the Act is protection of women against sexual harassment workplace.
- Contains obligations for all categories of employers.
- All provisions in this Act are in addition to and not in derogation of any law



Genesis of the Act

CONSTITUTIONAL PROVISIONS

Equality before law for women (**Article 14**)

Non-discrimination on basis of gender (**Article 15**)

Right to a life of dignity (**Article 21**)

VISHAKA AND OTHERS V. STATE OF RAJASTHAN AND ORS (1997)

Supreme Court laid down binding guidelines for an employer to prevent and redress sexual harassment at workplace.

Lack of compliance/ implementation of the guidelines of the Supreme Court because of poor enforcement.

CRIMINAL LAW (AMENDMENT) ACT, 2013

Notified amendments to the Indian Penal Code, 1860 ("IPC"), the Indian Evidence Act, 1860 and the Code Of Criminal Procedure, 1973 w.e.f February 3, 2013.

Introduced provisions for crime against women including provisions against voyeurism, stalking sexual harassment of women etc.

ENACTMENT OF LEGISLATION

Several crimes against women during 2012-13 led to a major public outcry forcing the government to refocus on pro- woman laws and enact the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

What is Sexual Harassment

Definition of the term “Sexual Harassment”

- Sexually coloured remarks;
- Physical contact and advances;
- Showing pornography;
- A demand or request for sexual favours;
- Any other unwelcome physical, verbal/non verbal conduct being in nature.

Circumstances amounting to “Sexual Harassment”

- Implied or explicit promise of preferential treatment in employment; or
- Implied or explicit threat of detrimental treatment in employment or about present or future employment status; or
- Interference with work or creating an intimidating or offensive or hostile work environment; or
- Humiliating treatment likely to affect health or safety.



Instances of Sexual Harassment

- **Physical:** Touching inappropriately, violating physical space, brushing up against a person, caressing, assault impeding or blocking movement, hugging
- **Verbal/Written:** Comments about clothing, personal behavior, about a person's body, passing lewd remarks, sexual jokes or innuendos, sending emails or text messages of sexual nature, asking uncomfortable personal questions
- **Visual:** Sexually oriented gestures, showing pornographic pictures, staring at female colleagues, display of sexually suggestive objects.



It is the perception that matters

Whether or not harassment occurred must be taken from the **Victim's perspective**



- ◆ The intent of the alleged harasser is irrelevant!
- ◆ What matters is the **impact** of your actions.

Important concepts under the Act

Who is an “Aggrieved Woman”?

Section 2(a) of the Act:

- a) Covers all women irrespective of age or employment status , whether in the organized or unorganized, public or private sectors; and
- b) Covers clients, vendors, service providers, customers and domestic workers as well

What is “Workplace”?

- a) Any organisation, undertaking, establishment enterprise, institution, office, unit or branch etc. (whether owned or controlled by public sector or private sector or an NGO);
- b) hospitals and nursing homes;
- c) any other place where woman visits including transportation provided by employer for undertaking such journey and
- b) Dwelling place/house



Constitution of Complaints Committee

Internal Complaints Committee

Every employer with a business or enterprise having more than 10 workers will have to constitute a committee known as internal complaints committee (ICC) to look into all complaints of sexual harassment at the workplace. Where the offices or administrative units of workplace are located at different places, the employer will constitute a committee in all such offices and administrative units

Local Complaints Committee

In every district, the District Officer will constitute a committee known as the 'Local Complaints Committee' ("LCC") to receive complaints committee (ICC) establishments where there is no internal complaints committee or there being a complaint against the employer himself.



The ICC or the LCC shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer. The District Officer is required to forward the report to the State Government

Members of the Internal Complaints Committee

The constitution of the ICC shall be as follows:

- A Women presiding officer employed at a senior level at workplace
- Not less than 2 members who have experience in social work or have legal knowledge and are preferably committed to the cause of women;
- 1 member from NGOs or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment;

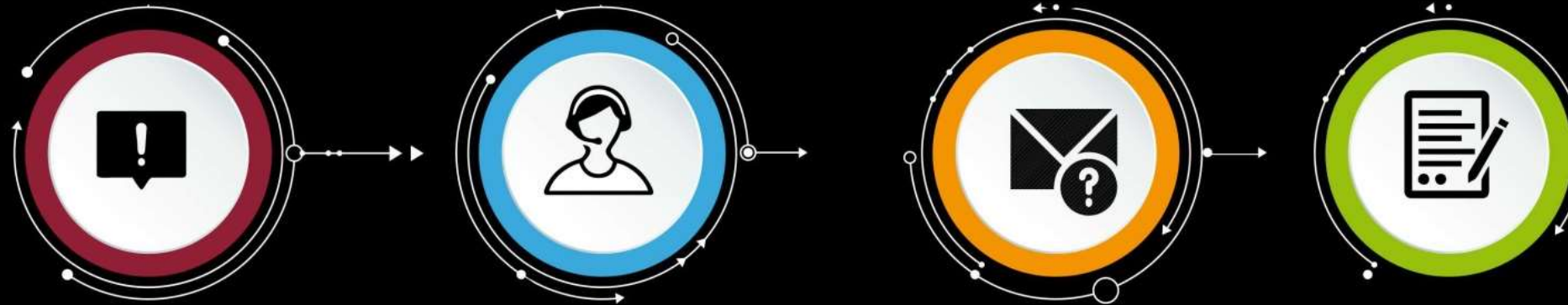
subject always to at least half the members of the Complaints Committee being women.

In case of a complaint where the accused is senior in position to any of the members of the Complaints Committee, the employer to ensure that such member is replaced with another employee who is either at same level or senior to the alleged accused within the organization.

Term of the Members: The presiding officer and every member of the ICC shall hold office for a period not exceeding three years from the date of their nomination.



Procedure for handling a sexual harassment complaint



Complaint to be made to the ICC within 3 months from the date of incident (the time limit may be extended by another 3 months if ICC satisfied with the reason for delay)

Initiate inquiry and attempt settlement through Conciliation (at the request of the woman & no monetary settlement should be basis for conciliation)

Inquiry report to be provided to the employer or district officer within 10 days of completion of inquiry and the employer to implement the recommendation within 60 days

Interim relief in the form of transfer, leave, not allowing the respondent to review the aggrieved woman's performance etc.

No legal representative allowed during the proceedings

Duties of Employer under the Act

- Provide a safe working environment at the workplace
- Provide assistance to the woman if she chooses to file a complaint in relation to the offence under the Indian Penal Code, 1860
- Organize workshops and training programs in accordance with the Rules at regular intervals for sensitizing the employees to initiate action under the Indian Penal Code, 1860 against the perpetrators regarding the provisions of the Act
- Provide necessary facilities/information to the ICC for dealing with complaint and conducting enquiry
- Assist in securing the attendance of respondent and witnesses before the ICC
- Display at any conspicuous place in the workplace, the order constituting the ICC and the penal consequences.
- Treat sexual harassment as misconduct under the service rules and initiate action for misconduct
- Monitor the timely submission of reports by the ICC

Thank You