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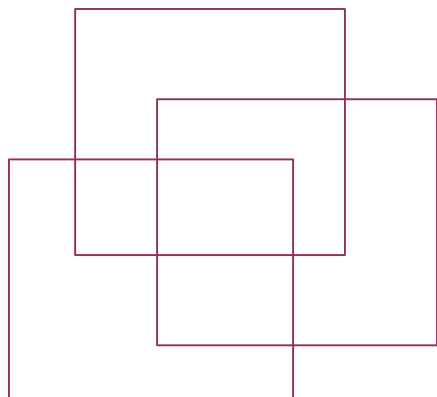
# Preventing and Responding to Sexual Harassment at Work:

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*Guide to the Sexual Harassment of Women at Workplace*

*(Prevention, Prohibition and Redressal)*

*Act, 2013, India*



# **Preventing and Responding to Sexual Harassment at Work: Guide to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, India**

ILO DECENT WORK TEAM FOR SOUTH ASIA AND COUNTRY OFFICE FOR INDIA

## FOREWORD

The term sexual harassment may be new to many in India but unwanted and unwelcome acts of a sexual nature, also known as “eve-teasing”, are not a new phenomenon in India as in other parts of the world. It is a reality for many women in India. While the majority of cases of sexual harassment in the workplace are perpetuated by men against women, no woman or man should have to tolerate such conduct as it violates the respect and dignity of the victim, and has negative effects on individuals, enterprises and society. Recognizing the need to suppress such conduct, many countries in Asia have taken legislative action to prohibit sexual harassment at the workplace, and this year, India has taken further substantial measures by approving the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

This Act was passed by the Lok Sabha and the Rajya Sabha on 3 September 2012 and 26 February 2013 respectively, and notified on 23 April 2013. It recognizes that sexual harassment results in the violation of a woman’s fundamental right to equality under Articles 14, 15 and 21 - which provide for equality under the law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and protection of life and personal liberty. The Act provides protection against sexual harassment of women at work and for the prevention and redressal of complaints of sexual harassment within the workplace. The Act uses the same definition of sexual harassment that was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan (1997)*, and is an important step in addressing gender-based discrimination and violence in India, even if some legislative gaps remain as it protects only women (and not men) from sexual harassment at workplace.

The Government of India and in particular the Ministry of Labour and Employment (MoLE) has expressed firm commitment to address the issue of sexual harassment, because it impedes women’s equal access to, equitable treatment and opportunities in employment. The commitment was articulated at the Tripartite Inter-ministerial Task Force on Gender Equality at the Workplace in its second meeting on 15 March 2012. In response, draft guidelines for Labour Commissioners and Internal Complaint Committee on the prevention and redress of sexual harassment at the workplace were developed based on the *Vishaka* Guidelines with ILO support. Upon the enactment of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*, however, it was decided to update these draft guidelines and prepare this guide according to the Act to facilitate implementation of the Act among governments at central, state and district levels, and employers’, workers’ and women’s organizations.

This guidebook has been designed as a comprehensive tool for preventing and responding to sexual harassment in workplaces. Following the introduction in Chapter 1, Chapter 2 presents international and national legislative frameworks related to sexual harassment. Chapter 3 explains the key definitions related to sexual harassment. Chapter 4 presents key measures for preventing sexual harassment. Chapter 5 provides guidance for responding to sexual harassment complaints. It describes employer liability and statutory mandates and obligations

with respect to setting up Complaints Committees, receiving complaints and the procedures to be addressed in the investigation of complaints. This chapter also discusses issues and norms related to confidentiality, arbitration, adjudication, and reporting obligations. Chapter 6 explains the key roles of the different stakeholders in preventing and responding to sexual harassment at the workplace through proactive zero tolerance policies and awareness activities at all levels. The Annexes include a Quick Q&A sheet on Sexual Harassment, a sample complaints committee investigation report, and several judgments issued in respect of the *Vishaka* Guidelines regarding Sexual Harassment at the Workplace for immediate use and reference.

I would like to thank the main authors of this guide, Martha Farrell, Director, and Nandia Bhatt, Programme Officer, Society for Participatory Research in Asia (PRIA), and Aya Matsuura, Gender Specialist, ILO Decent Work Team (DWT) for South Asia. Valuable comments were provided by Coen Kompier, Senior Specialist on International Labour Standards, ILO DWT for South Asia, Nelien Haspels, Senior Gender Specialist, ILO DWT for East and South-East Asia and the Pacific, Adrienne Cruz, Senior Gender Specialist, ILO Bureau for Gender Equality, and Katerine Landuyt, Specialist on International Labour Standards, ILO International Labour Standards (NORMES) as well as by the participants of the review workshop held in New Delhi in August 2013. Many thanks also go to Panudda Boonpala, Deputy Director, ILO DWT for South Asia and Country Office for India in New Delhi for proving overall support, Suneetha Eluri, National Project Coordinator, ILO Project on Promoting Gender Equality and Women's Empowerment in the World of Work for peer review and coordination as well as to Balasubramanian Devarajan, for administrative support. Warm thanks are also extended to Saadya Hamdani, Gender Specialist, ILO DWT for South Asia in New Delhi, and K.S. Ravichandran, Programme Officer, ILO Country Office in New Delhi for initiating to prepare the draft guidelines based on the *Vishaka* Guidelines in 2012 which became the basis for this guide.

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## CHAPTER I: INTRODUCTION

### 1.1 Global overview

Ensuring that the world of work is free from discrimination and violence is core for realizing decent work. The principles of non-discrimination and equality are recognized internationally as central to any system of human rights protection and embedded in most countries' constitutions and in human rights treaties. In the world of work, non-discrimination and equal opportunity and treatment are considered to be basic human and labour rights, fundamental for social justice and sustainable development.

The ILO Declaration of Philadelphia of 1944 affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity, and that discrimination constitutes a violation of rights enunciated by the Universal Declaration of Human rights. About 15 years after the adoption of the ILO Declaration of Philadelphia, ILO member States adopted the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) in 1958. This Convention aims to protect all persons against discrimination at work, and requires ratifying States to ensure protection against discrimination in employment and occupation on seven grounds, namely race, colour, sex, religion, political opinion, national extraction and social origin, as well as other grounds prohibited in national legislation by governments after consultation with the representative employers' and workers' organizations. Convention No. 111 belongs to the fundamental ILO Conventions, and it is the most comprehensive international instrument dedicated to guide national legislation on the promotion of non-discrimination and equality in the world of work<sup>1</sup>. The principles of non-discrimination and equality in workplaces are widely accepted and the Convention has been ratified by 172 member States including India, thereby expressing their commitments to uphold the human rights of workers and progressively incorporate equality and non-discrimination principles in the world of work and other laws and regulations.

Despite the international consensus and commitment at national level to eliminate discrimination and to promote equality of opportunity and treatment, various forms of discrimination continue

#### Box 1: What is sexual harassment?

Sexual harassment refers to unwelcome sexual advances or verbal or physical conduct of a sexual nature which has effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment (ILO Thesaurus, 2011).

#### Sexual harassment:

- **Is not** friendly, mutual behavior, or about romance & love
- **Is unwelcome and unwanted conduct**, and about unequal power relations.

<sup>1</sup> Haspels, N.; de Mayer, T.; and Paavilainen, M., *Equality and non-discrimination at work in East and South-East Asia: Guide*, ILO DWT for East and South-East Asia and the Pacific and ILO Regional Office for Asia and the Pacific, Bangkok, 2011, page 16.

to prevail in the world of work preventing women and men to enjoy decent work. One form of discrimination on the ground of sex that should be addressed within the requirement of the Convention is sexual harassment.

Sexual harassment can be perpetuated against both women and men. However, the majority of cases of sexual harassment in the workplace are perpetuated by men against women as women often do not have equal status as men, lack power, and are in more vulnerable and insecure positions. While it is difficult to quantify the prevalence of sexual harassment in the workplace due to the varying definitions and perceptions of sexual harassment and reluctance of the harassed to report their experiences, studies have revealed that sexual harassment at workplace is a reality for a large number of women.

In Australia, the results of a national telephone survey in 2012 by the Australian Human Rights Commission showed that sexual harassment in workplaces in the country was widespread. It showed that there were approximately one in five people aged 15 years and older who were sexually harassed in the workplace in the past five years; one in four women (25%) and one in six men (16%) have been sexually harassed in the workplace in the past five years. Targets of sexual harassment were found to be mostly women under 40 years of age, and harassers were mostly male co-workers. The survey also indicated that women are at least five times more likely than men to have been harassed by a boss or employer. Men harassing women accounted for more than half of all sexual harassment, while male harassment of men accounted for nearly a quarter<sup>2</sup>. In European Union countries, between 40 and 50 per cent of women experience unwanted sexual advances, physical contact or other forms of sexual harassment at work<sup>3</sup>. In the United States, 83 per cent of girls aged 12 to 16 experienced some form of sexual harassment in public schools<sup>4</sup>. Across Asia, studies in Japan, Malaysia, the Philippines and South Korea showed that 30 to 40 per cent of women suffer workplace sexual harassment<sup>5</sup>.

In India, Oxfam India and the Social and Rural Research Institute jointly carried out a study titled *Sexual Harassment at Workplaces in India 2011-2012* covering 400 working women in Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmedabad, Lucknow, and Durgapur. Of the 400 respondents, 66 faced a cumulative 121 incidents of sexual harassment. Out of 121 incidents, 102 were reported to be non-physical, whereas the remaining 19 incidents were physical. Ninety-three of the respondents reported awareness of sexual harassment of women at workplace. However, a majority of the victims did not resort to any formal action against the perpetrators<sup>6</sup>.

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<sup>2</sup> Australian Human Rights Commission., *Working without fear: Results of the sexual harassment national telephone survey 2012*, Australian Human Rights Commission, Sydney, 2012, page 1.

<sup>3</sup> UN Women, *Facts and Figures on Violence against Women*, [http://www.unifem.org/gender\\_issues/violence\\_against\\_women/facts\\_figures.html](http://www.unifem.org/gender_issues/violence_against_women/facts_figures.html), (Accessed in October 2013)

<sup>4</sup> Ibid.

<sup>5</sup> UNIFEM, *The Facts: Violence against Women & Millennium Development Goals*, [http://www.unifem.org/attachments/products/EVAWkit\\_02\\_VAWandMDGs\\_en.pdf](http://www.unifem.org/attachments/products/EVAWkit_02_VAWandMDGs_en.pdf), (Accessed in October 2013)

<sup>6</sup> Fernandes, D., *17% women sexually harassed at workplace*, Times of India, Bangalore, 28 November 2012.



## 1.2 Importance of addressing sexual harassment in the workplace

Sexual harassment is a serious form of sex discrimination and it should not be tolerated as it undermines equality at work by calling into question the integrity, dignity and well-being of workers<sup>7</sup>. All workers, both women and men, have the right to a workplace that is protected, secure, free from discrimination and violence, and conducive to fulfilling one's roles and responsibilities as it is an arena where they spend a major percentage of their day.

When sexual harassment occurs, there is a long lasting negative and traumatic impact on individuals including psychological suffering, physical suffering and professional losses. Workers suffering from sexual harassment are most unlikely to be highly productive<sup>8</sup>. The negative impacts do not stop at an injury to the one individual. It has a ripple and multiplier effect on the rest of the workers in the organization, impacting the workplace and bringing negative consequences such as compromised team work, economic loss, impaired productivity, and hindered development. For the society at large, sexual harassment impedes the achievement of equality between men and women as it condones sex discrimination and sexual violence, and has detrimental effects on the development of the country as a whole and the well-being of people<sup>9</sup>. Therefore, preventing and addressing sexual harassment is in the interest of society.

**Table 1: Cost of sexual harassment<sup>10</sup>**

Individuals	Employers/Enterprises	Society
<ul style="list-style-type: none"><li>• Psychological suffering including humiliation, reduced motivation, loss of self-esteem, and loss of trust</li><li>• Behavioural change including isolation, emotional withdrawal from friends, family, and co-workers</li><li>• Stress-related physical and mental illness including sleep disturbances, stomach ailments, and drugs and alcohol abuse</li><li>• Professional losses, foregoing career opportunities, leaving employment.</li></ul>	<ul style="list-style-type: none"><li>• Low productivity due to impaired judgment, compromised teamwork, demotivation, absenteeism, and high turn over</li><li>• Hindered progress and innovation due to lack of trust and team spirit</li><li>• Poor image of company: No applicants will fill vacancies at workplace where they fear sexual harassment.</li></ul>	<ul style="list-style-type: none"><li>• Long term rehabilitation costs for the reintegration of the harassed</li><li>• Unemployment welfare benefits and retraining</li><li>• Legal and criminal justice expenses</li><li>• Women's undermined access to high-status and well-paid jobs which are traditionally male-dominated</li><li>• Unsafe living and working environment condoning violence</li><li>• Hindered productivity and development.</li></ul>

<sup>7</sup> ILO, *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution): General Report and observations concerning particular countries*, Report III (Part 1A), 91<sup>st</sup> Session of the International Labour Conference, Geneva, 2003, page 463.

<sup>8</sup> Haspels, N.; Kasim, Z.M.; Thomas, C. and McCann, D., *Action against Sexual Harassment at Work in Asia and the Pacific*, ILO, Bangkok, 2001, page ix.

<sup>9</sup> Ibid, page xvi.

<sup>10</sup> Ibid, pages 30-35.

Many enterprises and organizations consider that there is no need to set up mechanisms to deal with cases of sexual harassment, as no employees have reported such cases. However lack of reported cases of sexual harassment in no way implies that there have been no such incidents. India has become known internationally as unsafe for women since the fatal and gruesome attack and murder on a young innocent female medical student in New Delhi in December 2012. Many cases of violence against women are reported in the media on a daily basis. Workplaces in India are no exception. If we say that organizations are the microcosms of society and reflect what actually happens in a society, it is reasonable to consider that the incidences of sexual harassment and violence against women in society, may also be taking place in their organization.

In the absence of a mechanism to redress cases of sexual harassment, individuals suffering from sexual harassment are at a loss as to with whom they should speak. Not having a mechanism in place points to the fact that the organization does not recognize, or give priority to these issues, which leads to implicitly condone such discrimination and violence. It is now coming to the fore, that in the absence of formal structures, women often hold back from sharing incidents about sexual harassment due to various reasons including:

- Embarrassment and humiliation about the incident
- Fear that the matter will be trivialized and disregarded
- A sense of insecurity that they will not be believed, as very often there is no proof of the incident
- Hesitation that the institution will not take any action and the perpetrator will be allowed to go free. There is also a fear of being asked to leave or to take a transfer, even if the harasser is found guilty
- Dread of becoming a subject of gossip and further humiliation
- A fear of negative repercussions and retaliation from the harasser, or even the principal employer
- A fear of being blamed for either 'inviting' or even for raising the issue for addressal
- A sense of complying with social norms where women are taught to keep silent and to overlook 'bad behavior' by men<sup>11</sup>.

In short, women fear being made victims twice over if they raise their voices about sexual harassment, first by complaining and secondly when they are victimized for having complained. Employers should recognize that sexual harassment in the workplace takes away from the worker their right to live and work with dignity, and should ensure that a mechanism is in place to give clear directions about whom to approach when sexual harassment occurs, the procedures that will be adopted, and the length of time for investigation.

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<sup>11</sup> Bhagat, R., *Where the male continues to rule*, Business Line, 29 December 2003, <http://www.thehindubusinessline.in/life/2003/12/29/stories/2003122900160400.htm> (Accessed in October 2013).

## CHAPTER II: INTERNATIONAL AND NATIONAL LEGISLATIVE FRAMEWORKS RELATED TO SEXUAL HARASSMENT

### 2.1 International legislative frameworks

India's participation in the various international forums and the ratification of the international treaties on the human rights of women is a testimony of the commitment to ensure dignity and equality of women in all spheres of life as clearly envisaged in the Indian Constitution.

The following standards and frameworks include key contents on promoting equality and addressing sexual harassment:

- **Universal Declaration of Human Rights, 1948:** Articles 1, 2 and 7 speak about equality in dignity, rights and freedoms and equal protection against any discrimination
- **ILO Discrimination (Employment and Occupation) Convention, 1958 (No. 111)** aims to protect against discrimination in employment and occupation on the grounds of sex, race, colour, religion, political opinion, national or social origin. In its general observation of 2003, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has emphasized that sexual harassment is a form of sex discrimination and should be addressed within the requirements of Convention No. 111. In the view of the gravity and serious repercussions of sexual harassment, the CEACR has urged governments to take appropriate measures to prohibit sexual harassment in employment and occupation and has provided elements of a definition of sexual harassment<sup>12</sup>
- **International Covenant on Economic, Social and Cultural Rights, 1966** enjoins all states to guarantee rights enunciated in it without discrimination of any kind. States must ensure equality between women and men for the enjoyment of all economic, social and cultural rights established in the Covenant. The right to fair conditions of work is enshrined in Article 7
- **United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979:** Article 11 prescribes States to eliminate discrimination against women in the field of employment and to ensure equality of men and women. While sexual harassment is not yet covered by a specific international instrument, the CEDAW Committee in its General Recommendation No. 19 in 1992 has qualified it as a form of discrimination on the basis of sex and as a form of violence against women. Recognizing that equality in employment can be seriously affected when women are subjected to gender specific

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<sup>12</sup> ILO, *General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, Report III (Part 1B)*, 101<sup>st</sup> Session of the International Labour Conference, Geneva, 2012, page 330.

violence, such as sexual harassment in the workplace, it called on States to take measures to protect women from sexual harassment

- **ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169):** Governments shall, within the framework of national laws and regulations, and in co-operation with peoples concerned, adopt special measures to ensure that workers enjoy equal opportunities and equal treatment in employment for men and women, and protection from sexual harassment (Article 20.1-3 (d))
- **ILO Decent Work for Domestic Workers Convention, 2011 (No. 189):** Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence (Article 5)
- **ILO Resolution on Equal Opportunities and Equal Treatment for Men and Women in Employment, ILC, 71<sup>st</sup> Session, 1985** recommended that measures be taken to extend social protection to women and men concerning reproductive hazards and sexual harassment
- **UN Declaration on the Elimination of Violence against Women, 1993:** Article 1 of this Declaration defined “Violence against women” as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. It also included sexual harassment and intimidation at work, in educational institutions and elsewhere as part of violence against women. The Declaration stated that such violence encompasses, but is not limited to, the following: “...physical, sexual and psychological violence in the community including rape, sexual harassment and intimidation at work, in education institutions and elsewhere”
- **The Beijing Platform of Action** drawn at the United Nations’ Women’s Conference in Beijing in 1995 called to advance women’s rights and to eliminate violence against women including sexual harassment at work
- **ILO HIV and AIDS Recommendation, 2010 (No. 200):** Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by: ensuring actions to prevent and prohibit violence and harassment in the workplace (Article 14 (c)).

## 2.2 National legislative frameworks

In India, the *Vishaka* Guidelines was the first ever legal action that provided a broad framework for preventing and addressing cases of sexual harassment of women within the workplace. It recognized that sexual harassment of women in the workplace resulted in the violation of their fundamental rights of gender equality, right to life and liberty, and the right to carry out any occupation, trade or profession.

Judgments issued in respect of the *Vishaka* Guidelines regarding sexual harassment at the workplace and status of implementation of *Vishaka* Directives are included in Annex 3 for reference.

#### **Box 2: History – *Vishaka* Guidelines**

In India, the issue of sexual harassment in the workplace gained precedence with the pivotal case of *Vishaka and others vs. The State of Rajasthan, 1992*. This was the much publicized case of the gang-rape of a government social worker, Bhanwari Devi. A Writ Petition filed in the Supreme Court under the collective platform of Vishaka, a women's organization, along with four others, led to the Supreme Court directives which were to serve as guidelines on prevention of sexual harassment of women until the enactment of the Sexual Harassment Act in 2013. These directives, termed the *Vishaka* Guidelines were part of the historic judgment passed on 13 August 1997. It recognized that sexual harassment of working women amounts to violation of the rights of gender equality, violation of the right to practice any profession, occupation, and trade. It included definition of sexual harassment, and stated that "such conduct can be humiliating and may constitute a health and safety problem", emphasizing preventive measures for sexual harassment.

Though the writ petition went on to give a concrete direction to preventing and addressing sexual harassment in the workplace, Bhanwari Devi still continues to fight to get justice in her case in the local courts.

#### **2.2.1 Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act, 2013**

In 2012, India saw increased and strong calls for addressing violence against women, with the increasing number of reported cases of sexual harassment and violence against women. In this context, the *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013* was enacted to provide protection against sexual harassment of women at workplace and for preventing and addressing complaints of sexual harassment. The Act recognizes that sexual harassment results in the violation of a woman's fundamental right to equality under Articles 14, 15 and 21 of the Constitution which provide for equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and protection of life and personal liberty. The Act includes key definitions and measures to be taken by different stakeholders for preventing and addressing sexual harassment at the workplace, which is further explained in Chapters III, IV, V, and VI of this guide. Section 28 of the Act mentions that its provisions shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, this guidebook should be read along with the *Vishaka* Guidelines, as well as rules when they are notified by the Government.

The Act specifies that:

- No court shall take cognizance of any offense punishable under this Act, or any of its rules, save on a complaint made by the aggrieved woman, or any other person authorized by the Internal Complaint Committee (ICC) and the Local Complaint Committee (LCC)

- No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class, shall try any offense punishable under this Act
- Every offense under this Act is non-cognizable.

**Box 3: Offences are essentially of two types: Cognizable and Non-cognizable**

The essential difference between "cognizable" and "non-cognizable" offence is that in the case of a cognizable offence, a police officer of a special rank shall have the power to arrest an offender without warrant. In case of a non-cognizable offence, a police officer has no authority to arrest an offender without warrant issued by a Magistrate.

Cognizable offences are generally offences of a serious nature and which affect the whole society- such as murder, rape, theft, dowry death, cruelty to married women, kidnapping, etc.

Non-cognizable offences are generally offences which relate to the personal harm caused to an individual, such as defamation, bigamy, etc.

In Cognizable offences, the police will record a "First Information Report (FIR)", and in Non-cognizable offences, the police will record a "Non-cognizable FIR (NCR)".

Whether an offence under the Indian Penal Code is cognizable or non-cognizable can be found out by referring to a list in the Criminal Procedure Code, 1973 (Cr. PC) called 'The First Schedule' and "Schedule II".

When something is an offence under some other law, it will be written in that law, whether the offence is cognizable or non-cognizable. In case of the Sexual Harassment Act, unless there is a complaint made by the aggrieved woman herself or any other person authorized by the Internal Complaint Committee or the Local Complaint Committee, courts will not recognize or register any offence under the Act.

### 2.2.2 Constitution of India

The core objective of the Constitution of India is to secure to all its citizens Justice, Liberty, Equality, Fraternity and Dignity as is clearly laid down in the Preamble to the Constitution of India.

#### Fundamental rights vested by the Constitution

- Article 14: Provides for equality before the law and the equal protection of the law. It includes gender equality, which is a universally recognized basic human right
- Article 15: Prohibits discrimination on grounds of religion, race, caste, sex or place of birth
- Article 19 (1) (g): All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business
- Article 21: Enshrines the right to life and personal liberty.

#### Relevant Constitutional provisions

- Article 51: The state shall endeavor to foster respect for international law and treaty obligations

- Article 253: The Parliament has the power to give effect to international agreements or decisions made at International Conferences.

### 2.2.3 Indian Penal Code (IPC)

- *Sections 292*: “anyone found selling, putting on hire, distributing, publicly exhibiting in pamphlets, papers, writings, drawings, paintings, representations, figures, or any other object, which is obscene shall be punished on first conviction with imprisonment for a term which may extend to two years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to five years, and also with fine which may extend to five thousand rupees”
- *Section 293*: “whoever sells, hires, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in section 292, shall be punished on first conviction with imprisonment for a term which may extend to three years, and with fine which may extend to two thousand rupees, and, in the event of a second or subsequent conviction, with imprisonment for a term which may extend to seven years, and also with fine which may extend to five thousand rupees”
- *Section 294*: “whoever, to the annoyance of others, (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment for a term which may extend to three months, with fine, or with both”
- *Section 354*: “whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term, which may extend to two years, or with fine or both”
- *Section 354 A*: This section was added to the Indian Penal Code upon the presidential approval of the *Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013*. The Amended Criminal Law Act, 2013 recognizes and provides a clear definition of sexual harassment and the punishment for it through this newly added section

#### **Box 4: Definition of sexual harassment and punishment under Section 354A of the Indian Penal Code**

A man committing any of the following acts will be guilty of the offence of sexual harassment:

- physical contact and advances involving unwelcome and explicit sexual overtures; or
- a demand or request for sexual favours; or
- showing pornography against the will of a woman; or
- making sexually coloured remarks.

- Punishment for any man who commits the offence specified in clause (i) or clause (ii) or clause (iii): Rigorous Imprisonment (RI) of up to 3 years or fine or both
- Punishment for any man who commits the offence specified in clause (iv): Imprisonment up to 1 year or fine or both.

- *Section 354 C (voyeurism)*: “Any man who watches or captures the image of a woman engaging in a *private act*<sup>13</sup> in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator, or disseminates such image. Punishments are imprisonment from three to seven years and fine on the first conviction, and one to three years and fine on the second subsequent conviction”
- *Section 354 D (stalking)*: “Any man is said to commit the offence of stalking when he i) follows a woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or ii) monitors the use by a woman of the internet, email or any other form of electronic communication, or iii) watches or spies on a woman in any manner that results in a fear of violence or serious alarm or distress in the mind of such woman or interferes with the mental peace of the woman. Punishment is imprisonment of either description from one year to five years and fine”
- *Section 375 (rape)*: A man is found to have committed rape as defined if it is:
  - without her consent
  - against her will
  - when her consent is taken by fear of death or hurt
  - when her consent is taken by pretending to be her husband when he is not
  - when her consent is taken when she is under the influence of drugs or drinks
  - when she is mad or weak of mind and is not able to understand what the man is going to do
  - with or without consent when her age is below 18 years
  - when she is unable to communicate consent.
- *Section 509*: For the offence under this section intention to outrage the modesty of the woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence. Punishment is imprisonment of either description from one year to five years and fine. The ultimate test for ascertaining whether the modesty of a woman has been outraged, assaulted or insulted is that there is:
  - intention to outrage the modesty of the woman
  - knowledge that the act of the offender would result in outraging her modesty
  - action of the offender is such that it may be perceived as one which is capable of shocking the sense of decency of a woman.

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<sup>13</sup> "Private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public. Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.



## 2.2.4 Indecent Representation of Women (Prohibition) Act, 1986

Under this Act, if an individual harasses another with books, photographs, paintings, films, pamphlets, packages, etc. containing "indecent representation of women", they are liable for a minimum sentence of two years. Section 7 (Offences by Companies) holds that companies where there has been "indecent representation of women" (such as the display of pornography) on the premises, are guilty of offenses under this act, with a minimum sentence of two years.

## 2.2.5 Protection of Children from Sexual Offences Act, 2012

This Act defines a child<sup>14</sup> as any person below the age of 18 years. It provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography, all of which have been clearly defined in this law.

*Section 11 of the Act deals with Sexual Harassment.* In this section, a person is said to have committed sexual harassment at the workplace upon a child, when such a person with sexual intent i) utters any word; makes any sound, makes any gestures or exhibits any object or part of body with the intention that such word, sound, gesture or part of body will be seen or heard by the child, ii) makes a child exhibit his body or any part of his body, iii) shows an object or any type of print, visual or other material to the child for pornographic purposes, iv) repeatedly or constantly follows, watches, stalks or contacts a child either directly or through electronic, digital or any other means, v) threatens to use a real or fabricated depiction of any part of the child's body or involvement of the child in a sexual act, through any form of electronic, film, or digital media or any other mode, vi) entices a child for pornographic purposes or gives gratification for the same. Whoever commits sexual harassment upon a child shall be punished with imprisonment for a term which may extend to three years and shall also be liable to be fined.

The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act.

### **Box 5: Child friendly procedures for reporting, recording of evidence, investigation and trial of offences as in the Protection of Children from Sexual Offences Act**

- Recording the statement of the child at the residence of the child or at the place of his/her choice, preferably by a woman police officer not below the rank of sub-inspector
- No child to be detained in the police station in the night for any reason
- Police officer not to be in uniform while recording the statement of the child
- The statement of the child to be recorded verbatim
- Assistance of an interpreter or translator or an expert as per the need of the child
- Assistance of special educator or any person familiar with the manner of communication with the child, when the child is disabled

<sup>14</sup> Child in this Act refers to both male and female.

- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor
- Frequent breaks for the child during trial
- Child not to be called repeatedly to testify
- No aggressive questioning or character assassination of the child
- In-camera trial of cases.

### 2.2.6 Information Technology Act, 2000

The following Sections of the Act can be applied depending upon the facts and circumstances of the case along with other relevant provisions:

- *Section 67: Publishing of information which is obscene in electronic form.* This section states that whoever publishes, transmits or causes to be published in the electronic form, any material which is lascivious or appeals to the prurient interest; if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees
- *Section 72: Penalty for breach of confidentiality and privacy.* This section states that save as otherwise provided in this Act or any other law for the time being in force, any person who, in pursuance of any of the powers conferred under this Act, rules or regulations made thereunder, has secured access to any electronic record, book, register, correspondence, information, document or other material without the consent of the person concerned discloses such electronic record, book, register, correspondence, information, document or other material to any other person shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both.

## CHAPTER III: KEY DEFINITIONS

### 3.1 What is sexual harassment?

Sexual harassment refers to unwelcome sexual advances or verbal or physical conduct of a sexual nature which has the effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment<sup>15</sup>. Sexual harassment can range from misbehaviour of an irritating nature to the most serious forms such as sexual abuse and assault including rape.

The *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013* defines sexual harassment to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- i. physical contact and advances
- ii. a demand or request for sexual favours
- iii. making sexually coloured remarks
- iv. showing pornography
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

#### Box 6: Sexual Harassment or Consensual Relationship?

Sexual harassment is about power and intimidation and not about sexual attraction. Such harassment reinforces gender stereotypes and hierarchical power structures over victims – most often women - in the workplace. Sexual harassment depends on how the person being harassed is affected and not on the harasser's intent. Giving in does not necessarily mean that the conduct was welcome. Laws do not restrict normal socializing between women and men, and people can still give each other compliments or ask someone out on a date. Conduct (flirtation, etc) based on mutual attraction and friendship is not sexual harassment as it is not unwelcome. However, such conduct should cease if a co-worker indicates that such comments or solicitations for date are not welcome.

Sexual harassment can occur in different forms such as verbal, non-verbal, visual, and physical. Examples are shown in Table 2 below:

**Table 2: Different forms of sexual harassment**

Verbal form	Physical form
<ul style="list-style-type: none"><li>• Gender based insults or sexist remarks</li><li>• Sexual or gender-based jokes or teasing</li><li>• Innuendos and taunts</li><li>• Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like</li><li>• Requesting sexual favours</li><li>• Telling lies or spreading rumors about a</li></ul>	<ul style="list-style-type: none"><li>• Unwelcome hugging, sexual touching or kissing</li><li>• Forcible physical touch or molestation</li><li>• Standing too close to or brushing up against another person, leaning over, invading a person's space</li><li>• Patting, stroking, grabbing or pinching</li><li>• Blocking someone's path with the purpose of making a sexual advance</li></ul>

<sup>15</sup> *Thesaurus: Sexual Harassment*, ILO, Geneva, 2011.

<ul style="list-style-type: none"> <li>person's personal or sex life</li> <li>Pressure for dates</li> <li>Comments about clothing, personal behavior, or a person's body</li> <li>Graphic descriptions of pornography.</li> </ul>	<ul style="list-style-type: none"> <li>Rape or attempted rape</li> <li>Actual or attempted sexual assault, or forced fondling.</li> </ul>
<b>Visual form</b>	<b>Non-verbal form</b>
<ul style="list-style-type: none"> <li>Presence of sexual visual material such as posters, cartoons, drawings calendars, pinups, pictures, computer programmes of a sexual nature</li> <li>Written material that is sexual in nature, such as notes, SMS, E-mail containing sexual comments</li> <li>Knick-knacks and other objects of a sexual nature.</li> </ul>	<ul style="list-style-type: none"> <li>Staring</li> <li>Sizing up a person's body (looking up and down)</li> <li>Derogatory gestures of a sexual nature</li> <li>Sexually suggestive looks</li> <li>Facial expressions of a sexual nature; winking, licking lips</li> <li>Stalking.</li> </ul>

**Table 3: Sexual Harassment - Examples**

<b>Sexual harassment is:</b>	<b>Sexual harassment is not:</b>
<ul style="list-style-type: none"> <li>A male supervisor asking a female staff to stay back late in the evening, as his wife is away, so that he can spend some time getting to know her better</li> <li>A male programme manager asking his newly married male colleague about his sex life</li> <li>A new female employee being told by her supervisor, that as project funds are low, she will have to share the hotel room with him</li> <li>A female worker has said 'No' to her supervisor's advances and now he is constantly finding faults with her work.</li> <li>A male boss hugging a female staff and kissing her on the cheek to show his appreciation for her good work</li> <li>Male staff displaying pornographic material on their desk top in full view of the other female staff in the unit</li> <li>A female staff in an organization is offended and upset by the frequent whistles, and loud comments from some of the security guards at the adjoining institute</li> <li>A young woman is stroked on her back by a male colleague as he thought her saree blouse too low and felt that it had provoked him</li> <li>A male supervisor in a gem factory follows a female worker into the toilet saying she might have concealed stolen articles in her clothing</li> <li>While female agricultural labourers work in the field, male employers constantly stare at them and crack obscene jokes</li> <li>Female domestic workers are followed closely by the male members of the family in the absence of female family members.</li> </ul>	<ul style="list-style-type: none"> <li>A female employee being asked to stay back late to complete a project work that is overdue for submission</li> <li>A male supervisor issuing a warning to a female subordinate who is always late to work</li> <li>Loud talk and sharing of cricket match scores in the office space and disturbing the environment</li> <li>Sleeping in the office premises</li> <li>Taking personal calls in the office and not completing tasks</li> <li>Keeping feet upon the table in office</li> <li>Vandalizing office furniture and equipment</li> <li>Consuming alcohol in the office premises.</li> </ul>

Sexual harassment in the workplace is classified under two main types:

- Quid pro Quo
- Hostile Work Environment.

#### Quid Pro Quo or This for That

This type of sexual harassment implies seeking sexual favours or making sexual advances in exchange for benefits at work. It includes instances when:

- There are implicit or explicit requests or demands for unwelcome sexual activity as a term or condition of employment
- Consent to or rejection of unwelcome sexually explicit behaviour or speech is made a condition for employment, or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions.

#### Hostile Work Environment

Hostile working environment involves uninvited and unwelcome conducts or behavior whether they are physical, verbal, non-verbal or visual forms which create work environment that makes it uncomfortable for a worker to be there. Hostile working environment is usually dependent on circumstances, frequency (repetitive misconduct rather than a single episode of misbehaviour), and severity.

The *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013* recognizes these types and forms of sexual harassment and states that if the following circumstances occur or are present in relation to, or connected with any act or behaviour of sexual harassment may amount to sexual harassment at the workplace:

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

### 3.2 What is the workplace?

There has been much debate about the definition of the workplace in the context of sexual harassment. In the past, there have been arguments put forth about the workplace just being the boundary of the premises where employees sit and work, while others have included public places that are frequented by employees in the context of their work.

It is now well accepted that a workplace is any place where working relationships between employer and employee(s) exist, going beyond the physical boundaries of the primary workplace or office building.

**Box 7: What is the workplace?**

Workplace is any place where working relationships exist and, in addition to your office, it also constitutes:

- Workplace of an external client
- Premises of other organizations
- Hotels, restaurants, and other venues during official functions/events
- Work station of other employees
- Lifts in the building
- Restrooms/toilets
- Corridors
- Canteens/cafeteria/entertainment zone
- Official tours/field visits etc.

The ILO uses the concept of “the world of work” to include the broader place of economic activities. The concept of the world of work helps capture paid productive work that does not take place within the traditional “public sphere” such as a factory or office, but which is employment such as selling products in the street or artisanal production or piece work in the home. It also comprises not just the place of work but related contexts where gender-based violence can take place, such as on public transportation going to work, or returning back home after a night shift<sup>16</sup>. It is important to recognize and include the broader place of economic activities in any effort to prevent and address sexual harassment.

The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* has specified its definition to include a much wider area, which refers to all the places that an employee visits during the course of employment, including use of transportation. It includes:

- i. Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit in the public sector; either established/owned, controlled or wholly or partly financed by funds received directly or indirectly by the government or local authority or a government company or corporation or a co-operative society
- ii. Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or services
- iii. Hospitals or nursing homes
- iv. Any sports institute, stadium, sports complex or competition or games venue, even the residence if used for training, sports or other related activities
- v. Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey
- vi. A dwelling place or house
- vii. Workplace of unorganized sector.

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<sup>16</sup> Cruz, A.; Klinger, S., *Gender-based violence in the world of work: Overview and selected annotated bibliography*, ILO Bureau for Gender Equality Working Paper 3/2011, Geneva, 2011, pages 10-11.

**Box 8: What is the workplace in the unorganized sector?**

The *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* states that workplace of unorganized sector refers to:

- An enterprise owned by individuals or self-employed workers:
  - engaged in the production of goods
  - engaged in the sale of goods
  - providing service of any kind whatsoever
- Where the enterprise employs workers and the number of such workers is less than 10.

**Box 9: Case Example - Workplace of Ms. Bhanwari Devi**

Bhanwari Devi, a government social worker, was working on her programme which included activities to be implemented outside of her office premises. When she was working, she was raped in her very own agricultural fields, within her home, within the village. As a community based *saathin*<sup>17</sup>, her home was considered to be her workplace, since her constituency of work was her own village as well as the villages surrounding it.

As the above case shows, the concept of workplace extending beyond the premises of the office building is applicable if a woman is conducting her duties in the premises of another organization. If she were to be sexually harassed in premises of an external party, her organization is obliged to register and deal with her case, as per procedures laid down by the Internal Complaints Committee that deals with sexual harassment in the workplace. Workplace would also cover the home of an individual, if being used as a space to conduct the activities of the organization – e.g. a woman being called to her employer's home to conduct official work.

### 3.3 Definitions of stakeholders covered in the Sexual Harassment Act

#### 3.3.1 Employer

Employer means:

- i. in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf
- ii. any person responsible for the management, supervision and control of the workplace not covered under (i) above. "Management" includes the person or board or committee responsible for formulation and administration of policies for organization
- iii. the person discharging contractual obligations with respect to his or her employees in relation to workplace covered under (i) and (ii) above
- iv. in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

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<sup>17</sup> Saathin: a grassroots worker employed as part of the Women's Development Project (WDP) run by the Government of Rajasthan.

It is employer's responsibility to provide a safe working environment at workplace. For further information on key measures and responsibilities, see Chapters IV, V and VI.

### **3.3.2 Employee**

The Act defines an employee as a person employed at a workplace for any work:

- on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer
- for remuneration or not, or working on a voluntary basis
- whether terms of employment are expressed or implied.

"Employee" includes a co-worker, a contract worker, probationer, trainee, apprentice or others who may be called by any other such name.

### **3.3.3 Domestic worker**

Although any person, whether a man or a woman, engaged in domestic work is a domestic worker according to the definition in the ILO Domestic Workers Convention, 2011 (No. 189), according to the Act, a domestic worker means a woman who is employed:

- to do the household work in any household for remuneration whether in cash or kind
- either directly or through any agency
- on a temporary, permanent, part time or full time basis
- for remuneration whether in cash or kind.

This definition does not include any member of the family of the employer.

### **3.3.4 Aggrieved woman**

As per the definition, an aggrieved woman means:

- A woman of any age irrespective of her employment status who alleges to have been subjected to any act of sexual harassment by respondent in relation to a workplace
- A woman of any age employed in such a dwelling place or house.

### **3.3.5 Respondent**

As per the definition provided in the Act, the respondent means a person against whom the aggrieved woman has made a complaint to the Internal Committee or the Local Committee.



#### **Box 10: Who are particularly vulnerable to sexual harassment?**

Sexual harassment can occur to anybody whether they are women, men, workers in a higher managerial position or workers in the informal economy. However, some groups are particularly at high risk. They include girls and boys in child labour, forced and bonded labourers, migrant workers, domestic workers, and health services workers<sup>18</sup>. Women generally tend to be more vulnerable due to their low status and weak bargaining power both in paid work as well as in the private sphere and society at large.

The European Commission has noted that ‘divorced and separated women, young women and new entrants to the labour market, women with irregular or precarious employment contracts, women in non-traditional jobs, women with disabilities, lesbians and women from racial minorities are disproportionately at risk.’ Widows, women working in informal sectors of the economy and migrant workers are also particularly at risk. Those working in educational and training institutions, and workers in occupations “where large numbers of women are supervised by small numbers of men” are also at risk. In the United States, sexual harassment is particularly predominant in male-dominated professions such as the military<sup>19</sup>. The top three industries found unsafe for women were informal labour (29%), domestic help (23%) and small-scale manufacturing units (16%)<sup>20</sup>. Other factors such as job precariousness, young age and inexperience can increase workers’ vulnerability to sexual harassment<sup>21</sup>.

Employers and managers, especially those having workers from the vulnerable populations should recognize risks and take measures to prevent sexual harassment and to promote a safe working environment for all workers.

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<sup>18</sup> Cruz, A.; Klinger, S., *Gender-based violence in the world of work: Overview and selected annotated bibliography*, ILO Bureau for Gender Equality Working Paper 3/2011, Geneva, 2011, page 17.

<sup>19</sup> *Stop violence against women: Sexual harassment, Prevalence of Sexual Harassment*, the Advocates for Human Rights, [http://www.stopvaw.org/prevalence\\_of\\_sexual\\_harassment](http://www.stopvaw.org/prevalence_of_sexual_harassment), (Accessed in October 2013).

<sup>20</sup> Fernandes, D., *17% women sexually harassed at workplace*, Times of India, Bangalore, 28 November 2012.

<sup>21</sup> Cruz, A.; Klinger, S., *Gender-based violence in the world of work: Overview and selected annotated bibliography*, ILO Bureau for Gender Equality Working Paper 3/2011, Geneva, 2011, page 17.

## CHAPTER IV: PREVENTING SEXUAL HARASSMENT

In India, the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* deems it the duty of the employer, as well as other responsible persons in work places or institutions to “provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and matters connected therewith or incidental thereto”. This implies that these individuals are responsible to:

- prevent or deter the commission of acts of sexual harassment within the workplace
- provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all required steps.

The duties of an employer and/or the appropriate Government towards the prevention of sexual harassment in the workplace have been explicitly laid down in the Act as follows:

- Provide a safe working environment at the workplace which shall include safety from third party (outsiders) coming into the contact at the workplace
- Display penal consequences of sexual harassment
- Display information about the grievance handling mechanisms including about the Internal Committee
- Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act
- Organize orientation programmes for the members of the Internal Committee
- Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

In addition to the above, the Act mentions that Government offices will also be responsible for the following:

- Advance the understanding of the public of the provisions of the Act
- The Central and State Governments are mandated to develop relevant IEC and training materials and organise awareness programmes to advance the understanding of the public on the provisions of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*.
- Formulate orientation and training programmes for the member of the Local Complaints Committee.

In order to implement the Act, it is vital that employers and organizations take necessary steps to prevent and address sexual harassment at workplace with strong commitment from leaders and managers. Some of the measures are introduced below.

## 4.1 Develop a policy

Developing and adopting a comprehensive policy on the prevention of sexual harassment is one of the key actions in preventing sexual harassment and promoting a safe working environment. The aim of such a policy should be to change behaviour and attitude of women and men at the workplace, and to provide a workplace environment conducive for both.

The contents of a workplace policy on sexual harassment may include<sup>22</sup>:

- A clear organization's statement on sexual harassment, e.g.
  - Sexual harassment is strictly prohibited
  - Zero-tolerance policy: Organization will pursue all sexual harassment cases and not make any exception for perpetrator in question irrespective of the person's status
  - Anyone found guilty of sexual harassment after investigation will be subject to immediate and appropriate disciplinary action
- Key definitions and examples related to sexual harassment
- Reference to relevant legislations
- Consequences in case of breach of policy
- Responsibilities of management and staff
- Adequate provisions for regular and repeated training of employees at all levels
- Details of the members of the Internal Complaints Committee (For more details on the Committee, see Chapter V)
- Procedures and options available for getting help and advice, making complaints, and handling cases which can include both formal and informal procedures
- Procedures and rules for harassment of or by third parties such as clients and customers
- Timeframe for redressal procedures
- A clear indication that all cases of sexual harassment will be kept confidential
- Effective safeguards to ensure that the recommendations of the Committee are implemented by the management of the institution
- Frequency of discussion and review of the policy.

Displaying penal consequences of sexual harassment and information about the grievance handling mechanisms including about the Internal Committee are mentioned as duties of employer in Section 19 of the Act.

In case the workplace has many workers such as migrant workers who may not be fluent in the language commonly used in the organization, the policy may be made available in other languages as appropriate to raise awareness on the policy.

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<sup>22</sup> Australian Human Rights Commission, *Effectively preventing and responding to sexual harassment: A Code of Practice for Employers*, Australian Human Rights Commission, Sydney, 2008, page 24.

## 4.2 Raise awareness

Once a policy on sexual harassment is developed, employers must raise awareness among employees about the policy and its contents including what constitutes sexual harassment, what an employee can do when he or she experiences sexual harassment, and consequences in case of breach of policy.

This may be done through induction programme of new employees, regular staff meetings or training, email, display on the website, and other appropriate forums. In addition, employers may use visual materials such as notices, posters or brochures to disseminate information on the anti-sexual harassment policy. Sensitizing employees with the provisions of the Act is stated as one of the duties of an employer and/ or the appropriate government (Section 19 of the Act).

Along with awareness raising on sexual harassment policy and its contents, it is important to promote gender equality. Experience has shown that patriarchal attitudes and values are the biggest challenge in the implementation of any law concerning gender equality and women's rights such as the Act on Sexual Harassment. Combating these attitudes is crucial in the prevention of sexual harassment at the workplace.

## 4.3 Provide training

Effective training programmes are essential for sensitizing all their staff members, both men and women to recognize sexual harassment to prevent it, and to deal with it when it occurs. The training programme is the best way to ensure proper understanding and implementation of the organization's policy on sexual harassment. It is the best forum to communicate to employees what behaviour is acceptable and what is not, in a non-threatening atmosphere of mutual learning. Training for the members of the Complaints Committee and others who are going to be instrumental in implementing the policy is very essential. The Act specifies that it is the duty of an employer to organize orientation programmes for the members of the Internal Committee (Section 19 of the Act).

Training should include a component on gender sensitization, along with the procedures for taking complaints and enquiry. Sexual harassment training for all employees should address perceptions and understanding of sexual harassment, impact of sexual harassment on individuals and workplace, understanding the policy and complaint mechanism. The training for Complaints Committee should address, in addition to these, the procedures of investigation, skills necessary for enquiries, documenting the procedures.

A separate training for supervisors and managers may be organized to encourage appropriate conduct by themselves. As a manager, they play a key role in promoting the organization's sexual harassment policy to ensure that the workplace is free from sexual harassment. They also need to monitor the working environment by closely scrutinizing performance and morale

of all employees and assessing changes in employees' behavior patterns such as high turnover. The training for supervisors becomes especially important when sexual harassment cases are handled through informal mechanisms.

#### 4.4 Other practical measures

In addition to the above mentioned measures, employers can take practical actions that can contribute to preventing sexual harassment at workplace as follows:

- Create appropriate and safe working environment for all workers to focus on work free from sexual harassment
  - Remove offensive, sexually explicit or pornographic calendars, literature, posters and other materials from the workplace
  - Improve safety of working environment by ensuring sufficient lighting, open space offices, good balance of men and women at workplace at different levels, and organizing work during working hours
- Establish a panel consisting of both women and men rather than just one individual who is responsible for making decisions concerning job vacancies or promotions
- Translate policy into relevant languages of workers and for those who cannot read use images to explain
- Display posters about zero-tolerance for sexual harassment
- Distribute brochures on frequently asked questions and answers on sexual harassment
- Conduct surveys to identify factors and situations leading to incidence of sexual harassment. The survey can be done anonymously and ask employees whether they have experienced any form of sexual harassment in the past year.

## CHAPTER V: RESPONDING TO AND ADDRESSING SEXUAL HARASSMENT

For effectively responding to and addressing sexual harassment at workplace, it is important to have a grievance handling mechanism that is accessible for all workers. The Act requires every employer to set up a Committee known as the Internal Complaints Committee to formally handle sexual harassment grievance procedures. The Act also requires every district officer of district to set up a Committee known as the Local Complaints Committee to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than 10 workers or if the complaint is against the employer him/herself.

This chapter provides explanations on the establishment of a Committee, procedures for filing a complaint of sexual harassment, and procedures for handling cases of sexual harassment.

### 5.1 Constitution of complaints committee

#### 5.1.1 Internal Complaints Committee (ICC)

Under this Act, all employers (private/government) are mandated to constitute an Internal Complaints Committee (ICC) at each of the administrative units and offices located at each of its divisional and sub-divisional levels. All employers must provide necessary facilities for the ICC to deal with the complaint and to conduct an inquiry.

Each ICC is required to prepare an annual report to the employer.

#### Composition

The composition of the committee as prescribed by the Act states that a committee must have at least 4 members, out of which at least 2 must be women. The composition is explained in Table 4 below:

**Table 4: Composition of the Internal Complaints Committee**

No	Member	Requirement
1	Presiding Officer (Senior female)	Must be a woman employed at a senior level at workplace from amongst the employees. <i>"If there is no senior level woman employed at a senior level; the presiding officer shall be nominated from other offices or administrative units of the workplace. If other offices do not have a senior level employee, the presiding officer shall be nominated from any other workplace of the same employer or other department or organization"</i>
2	Member (Female)	Employees with commitment to the cause of women, experience in social

3	Member (Male)	work, or legal knowledge
4	Member (Female)	Must be from a third party (e.g. NGO or association) and must have expertise and familiarity with gender issues and sexual harassment. <i>The member appointed from the NGO shall be paid such fees or allowances for holding proceedings of the ICC.</i>

In order to make the ICC accessible for all workers, the ICC may represent the cross section of hierarchies present in the workplace. This will make it easier for all employees across the organization to approach the committee with ease in case of a complaint or advice.

### Tenure

Presiding officer and every other member of the ICC shall hold office for up to 3 years from the date of their nomination. The Presiding officer or any of the other members can be removed by the Committee before the 3 year time period is up, if:

- Publishing, communicating or making known to the public, press and media the information related to sexual harassment cases against the legal provisions
- Convicted for an offense under any law or undergoing an inquiry into an offence under any law
- Found guilty in any disciplinary proceedings against him/her
- Abuse his/her position as a member of the committee.

### **5.1.2 Local Complaints Committee (LCC)**

Central and State Governments are mandated to notify either of the following individuals to be a District Officer for each District to implement the requirements under the Act:

- District Magistrate
- Additional District Magistrate
- Collector
- Deputy Collector.

Every District Officer must constitute a Local Complaints Committee (LCC) to receive complaints of sexual harassment from establishments where the Internal Complaints Committee (ICC) has not been constituted due to having less than 10 employees.

Each LCC is required to prepare an annual report and submit it to the District Officer.

The District Officer must designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward it to the concerned LCC within 7 days.

### Composition

The composition of the LCC as prescribed by the Act states that it must have at least 5 members, out of which at least 3 must be women. The composition is explained in Table 5 below:

**Table 5: Composition of the Local Complaints Committee**

No	Member	Requirement
1	Chairperson (Eminent female)	To be nominated from amongst the eminent women in the field of social work and committed to the cause of women
2	Member (Female)	To be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district
3	Member (Female)	To be nominated from amongst such non-governmental organizations or associations committed to the cause of women or familiar with the issues relating to sexual harassment: <ul style="list-style-type: none"><li>• <i>At least one must be a woman.</i></li><li>• <i>At least one of the members must have a background of law or legal knowledge</i></li><li>• <i>One of the nominees shall be a woman belonging to the scheduled caste, scheduled tribes or the other backward classes or minority community notified by the Central Government"</i></li></ul>
4	Member (Male)	
5	Ex Officio member	The concerned officer dealing with the social welfare or women and child development in the district

#### Tenure

All members of the committee including the chairperson are expected to hold office for a period not exceeding 3 years from the date of appointment by the District Officer.

Committee members are subject to a dismissal if:

- Publishing, communicating or making known to the public, press and media the information related to sexual harassment cases against the legal provisions
- Convicted for an offense under any law or undergoing an inquiry into an offence under any law
- Found guilty in any disciplinary proceedings against him/her
- Abuse his/her position as a member of the committee.

The vacancy that is created through this dismissal is filled by fresh nominations.

#### Fees and financial grants of the LCC

- The Chairperson and the 2 members of the LCC selected from among NGOs or associations are eligible to receive fees or allowances for holding the proceedings of the LCC
- The Act makes provisions for the Central Government to transfer funds in the form of grants to the State Government to be used for making payments of fees or allowances for the LCC Chairperson and the 2 members from NGOs and associations
- The State Government may set up an agency to receive grants from the Central Government
- The agency must pay to the District Officer the required sum of money to be paid as allowances and fees for the Chairperson and the two members from NGOs or associations



- The agency is required to maintain its audit and accounts in consultation with the Accountant General of the State. The agency is also liable to furnish an audited copy of its accounts along with the auditor's report to the State Government.

**Box 11: Making the Complaints Committee accessible for all workers**

In a country like India where the 93 per cent of the labour force are said to be in the unorganized sector, it is a challenge to ensure that the Act is implemented at all levels, and to ensure that all workers have access to the Complaints Committee to file a complaint. The government needs to monitor the implementation of the Act closely to identify where improvements may be needed. At the same time, members of the Committee may explore various ways to make the Committee accessible by all workers. Some of the practical measures that may be considered by the Committee members are listed below:

- Raise awareness about the Complaints Committee at all levels in collaboration with organizations working with informal economy workers
- Raise awareness about the Complaints Committee among the officials of the relevant government institutions so that they can provide support as appropriate
- Develop a network of trained officers at different administrative levels who would provide necessary assistance to workers in filing a complaint
- Collaborate with trade unions or NGOs working at the grassroots level to support assistance to informal economy workers in filing a complaint.

## 5.2 Filing a complaint

Those who suffer from sexual harassment tend to keep silence about their incidence of sexual harassment due to several reasons such as fear of losing their job, retaliation, and victimization. Therefore, it is important that workers know of various options for filing a complaint and addressing sexual harassment without fear.

According to the Act, a complaint can be made to the Internal Complaints Committee, Local Complaints Committee or directly with the court of law.

### 5.2.1 Filing a complaint with the Complaints Committee

**Place:** Aggrieved woman can submit a complaint of sexual harassment to the Internal Complaints Committee or the Local Complaints Committee. In addition, the Act also states that the aggrieved woman can submit complaints to the designated nodal officer in every block, taluka and tehsil in the rural or tribal area and ward or municipality in the urban area who will forward it to the concerned LCC within a period of 7 days.

The jurisdiction of the LCC shall extend to the areas of the district where it is constituted.

**Timeframe:** Any aggrieved woman must be allowed to make a complaint within a period of 3 months from the date of the incident. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same and the reasons must

be recorded. If it's a series of incidents then the complaint must be filed within 3 months from the date of the last incident.

If aggrieved woman is unable to make a complaint due to physical or mental incapacity or death, her legal heir may make the complaint.

**Form of complaint:** Written. Assistance must be provided to the woman if she needs help in writing the complaint.

**Box 12: Points to remember for the Complaints Committee members**

- No anonymous complaints against any individual should be accepted or action taken on the same
- Once a complaint of sexual harassment is brought to the committee, it must be registered immediately and a written complaint filed
- The Chairperson of the Internal Complaints Committee should convene a meeting of the Committee within 48 hours of the receipt of complaint
- A quorum should be maintained for the Complaints Committee meeting, which stipulates 50 per cent attendance of the members. The presence of Chairperson is mandatory
- According to the principles of natural justice:
  - The alleged harasser should be informed of the complaint against him/her. It is suggested that the harasser should be informed of the complaint against him/her via a formal charge sheet
  - On receipt of a formal charge sheet, s/he must submit his/her defense statement within the specified time frame. A time frame of 10 working days is suggested for the defendant to present his defense statement.

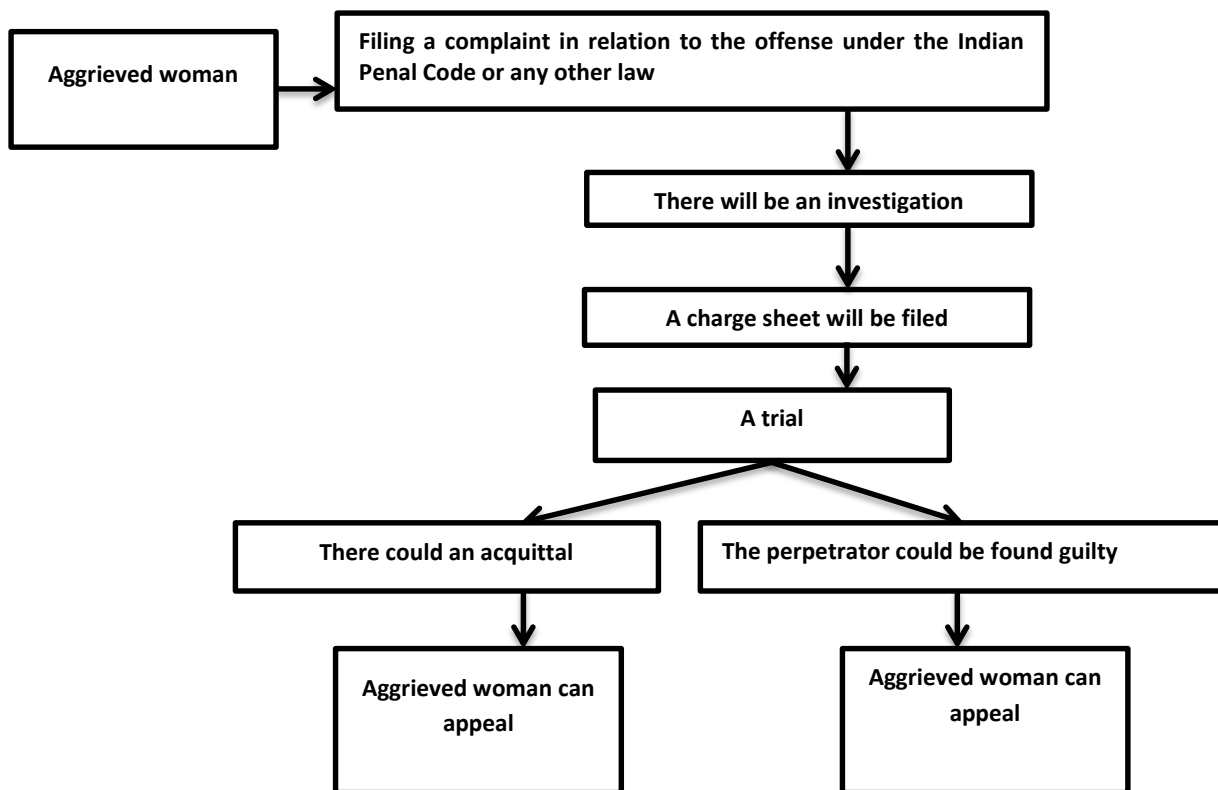
### 5.2.2 Filing a complaint at the local police station under the Indian Penal Code

Assistance must be provided to the aggrieved should she choose to file a complaint in relation to the offense under the Indian Penal Code or any other law. Or, when an instance of sexual harassment amounts to a specific offence under the Indian Penal Code, or under any other law, the employer shall initiate appropriate action in accordance with the law by lodging a complaint with the appropriate authority.

The following provisions of the Criminal Procedure Code (Cr. PC), 1973 also need to be observed:

- **Section 2 (wa) Cr.PC** defines “victim” as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir
- **Section 24** provides that the Court may permit the “victim” to engage an advocate of her choice to assist the prosecution.

The flow of how the case is handled is illustrated below:



#### Box 13: Other legal remedies for the complainant

- A civil suit may be filed for causing mental anguish, physical harassment etc.
- A criminal suit may be filed, citing sections 354 (assault or criminal force to a woman) and 509 (word, gesture, or act insulting a woman's modesty) of IPC
- A complaint based on Indecent Representation of Women (Prohibition) Act, if an individual harasses another with books, films, and other pornographic material.

### 5.2.3 Informal mechanisms

Reporting of cases of sexual harassment takes effort and courage on the part of many women, despite the presence of a committee to deal with the same. In such cases, informal mechanisms work best in creating a conducive environment, which is non-threatening and builds the confidence of an employee in speaking out about an incident of sexual harassment.

In the event that a senior staff, supervisor or manager is approached for advice regarding a case of sexual harassment, she/he may give a patient hearing to the individual concerned. After assuring the necessary support in taking this matter forward, the employee must be encouraged to take the issue to the committee, in order that it can be established whether or not it is a case of sexual harassment (in case there is a lack of clarity) and further that appropriate action may be initiated by the committee.

The role of supervisors and managers is critical in the redressal and prevention of sexual harassment in the workplace:

- It gives the employee an opportunity to assess whether the organization is supportive of such matters and builds the confidence to approach the committee
- It ensures that the committee accepts all complaints of employees and takes action
- The committee may also request the support of the supervisor, manager concerned in counselling and conciliation of the alleged harasser
- The supervisor may ensure that there is no backlash on the employee that has complained and in monitoring further unacceptable behavior
- Such staff in senior positions understand and identify the nuances of sexual harassment
- Senior staff and committee members discuss informal mechanisms for the prevention of sexual harassment in the workplace.

It is to be noted that for the informal mechanisms to function effectively, supervisors, managers and other staff need to be properly trained, in areas such as grievance handling which maintains confidentiality, counselling, and gender sensitivity, that are critical elements in playing out this role.

### 5.3 Handling sexual harassment complaints

The Act presents two ways to respond to a sexual harassment complaint: Conciliation and Inquiry.

#### 5.3.1 Conciliation

The Act has a provision for the Complaints Committee to take steps to settle matters through conciliation before initiating an inquiry. The conciliation can only happen at the request of the aggrieved woman and money cannot be the basis of this settlement.

Once the settlement has been agreed upon, a record of the settlement needs to be sent to the employer or the District Officer to take action as specified in the recommendation. The copy of the settlement should be sent to the aggrieved woman and the respondent.

No further enquiries are conducted after the settlement. However, if any of the conditions of the settlement are not complied with by the respondent, the aggrieved can go back to the Committee who will proceed to make an inquiry.

#### 5.3.2 Inquiry into complaint

According to the Act, the complaint mechanism should ensure a time bound treatment of complaints. The ICC/LCC is bound to complete the inquiry within a time period of 90 days upon receiving the complaint. Although the Act does not provide specific steps for handling cases of

sexual harassment, each employer or organization should develop and provide detailed guidance on steps for conducting inquiry to the Complaints Committee ensuring safety of all concerned, especially the complainant to avoid victimization, and ensuring consistency and fairness for all cases received. The information on steps should be widely shared with workers, especially the aggrieved woman and the respondent to have a clear understanding on the process.

While conducting the inquiry procedures of the case, the Committee has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 with respect to the following:

- Summoning and enforcing the attendance of any person
- Examining the individual on oath
- Requiring the discovery and production of documents essential to the case.

The Act also includes provisions for counsellors or any other support services in case either party should ask for one.

The information below presents general steps involved in the investigation and explanations per step:

- **Investigation of the allegations**

For ensuring safety of the complainant and fairness for alleged harasser, investigation may be carried out according to the steps as follows:

- The complainant is interviewed to document the details of the incidence
- The allegations are conveyed to the alleged harasser in full
- The alleged harasser is given the opportunity to respond and defend themselves against the allegations
- If there is a disagreement over facts, statements from any witnesses and other relevant evidence are gathered
- Relevant allegations made during the investigation are made known to both the complainant and alleged harasser, with an opportunity to respond.

According to the Act, if both parties are employees, both parties will be:

- given a fair chance of being heard
- given a report of the findings that will enable them to make their representations before the committee.

The employer should authorize the presiding officer/chair of the ICC/LCC to procure all documentation and other evidence from appropriate departments during the investigation.

The employer may also initiate action against the perpetrator under the Indian Penal Code or any other law if the aggrieved woman so desires. This is also applicable if the perpetrator is not an employee (third party).

#### **Box 14: Recommended actions for Committee members during investigation**

##### 1. Take all allegations seriously

Listen to the allegations carefully. Get as many specifics as you can, find out what happened, when it happened and ask if there were any witnesses. You must show empathy, yet remain neutral. From your perspective, the incident may seem unimportant or the employee may appear to be over sensitive. You may know the alleged harasser and believe the action or remarks to have been made in fun or not intended to harass. Remember that it is not the intent of the remark or the action, but it is the impact that it has on the harassed that matters.

##### 2. Take Immediate Action

All complaints must be addressed. Document the complaint with dates, times, places, names and quotes. Report the information to the Presiding officer of the committee or to any committee member you are comfortable with. Conduct your inquiry promptly. After hearing the complainant's story, repeat relevant facts so that the aggrieved can correct any mistakes and can be assured that the incident was understood properly. Ask the complainant if there is anything you forgot to ask or they wish to include. Discuss the alternatives with the aggrieved. Tell the aggrieved how and when you intend to follow up with the complaint and thank them for coming forward.

##### 3. Investigate the complaint

Get the alleged harasser's account of what happened. Also speak to any witnesses who have been named. It is important to conduct a thorough inquiry. Do not discuss the matter with anyone who does not need to know. These are often sensitive issues. Do not become part of the office rumour mill.

#### **• Examination of witnesses**

Although cross-examination of witnesses needs to be conducted in the presence of the accused in ordinary cases, such cross-examination should not be done in the presence of the respondent in the case of an inquiry into allegations of sexual harassment. Sometimes the very presence of the respondent may result in putting pressure upon the witnesses, particularly, if they are children, and may discourage them from coming out with the truth. Moreover, cross-examination in the presence of the respondent would invariably result in disclosing the identity of the aggrieved and/or witnesses, even where it is not necessary to disclose their identity. The necessity of withholding the identity of the aggrieved and/or witnesses of sexual harassment was acknowledged by Supreme Court in *Bidyug Chakraborty*, when it directed cross-examination of the witnesses, by way of interrogatories through a Local Commissioner. The Act also states that the Committee must ensure complete confidentiality of the complainant during the investigation is in the process.

All information collected such as statements from interviews and documents and all steps taken in the investigation must be thoroughly and properly recorded.

**Box 15: Some factors to be considered by the Committee for maintaining confidentiality of the case**

- As members of the Complaints Committee, do not discuss the case with other colleagues while investigation is underway unless it is a part of the investigation process
- Do not disclose the names of the complainant or the alleged harasser in any records that are going to be shared with people who are not members of the Committee.

- **Examining findings applying the principles of fairness**

Cases of sexual harassment are controversial and highly contentious matters. Acts of sexual harassment in the workplace are usually between two individuals and often behind closed doors, a “private matter”, mostly without any eye witnesses. In cases where sexual harassment is over a prolonged period of time, aggrieved might not have kept a log of the acts of harassment, dates, times it occurred and a list of witnesses to that specific conduct. It is also possible that when sexual harassment takes place in the open, it might appear as consensual and mutually acceptable behaviour to the others in the workplace. In this context it is necessary to understand the different standards that are adopted in dealing with cases of sexual harassment in the workplace.

The most predominant standards include:

- i. Reasonable Woman Standard
- ii. Intent vs. Impact
- iii. Human Rights
- iv. Prior Awareness
- v. Proof beyond Reasonable Doubt

*The key words to bear in mind in assessing a situation of sexual harassment are ‘unwelcome’ and ‘sexual’.*

#### i. Reasonable Woman Standard

The most common practice to assess sexual harassment in the workplace is to use a Reasonable Woman Standard. It implies that an act(s) of behaviour is considered to be sexually harassing if a ‘reasonable woman’, when put in that situation, would deem it to be so. This standard was adopted in order to avoid decisions being taken that will in all likelihood have a male perspective to it if there are no woman-based standards available. This allowed the decision makers to view the case from the perspective of the aggrieved.

This approach has emerged from the reasonable man standard used earlier where the perspective of a ‘reasonable man’ was used to determine whether sexual harassment had indeed occurred. This stance was found to be flawed and supported existing male dominant positions of power, which discriminate against women. In today’s courts of law across the world, as well as in India, the reasonable woman approach is gaining more acceptance due to its logic and gender sensitive reasoning which supports the view of a woman in ascertaining the occurrence of sexual harassment.

**Box 16: Case of *Punita K. Sodhi v. Union of India & Ors.*, W.P. (C) 367/2009 & CMS 828, 11426/2009**

Justice Muralidhar raised the bar for workplace discrimination and sexual harassment cases by modifying the long held patterns which discriminated against women who complained of workplace sexual harassment. According to him, “If we only examined whether a reasonable person would engage in allegedly harassment conduct, we would run the risk of reinforcing the prevailing level of discrimination. A complete understanding of the view of the aggrieved requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. A male supervisor might believe, for example, that it is legitimate for him to tell a female subordinate that she has a ‘great figure’ or ‘nice legs’. The female subordinate, however, may find such comments offensive. Men tend to view some forms of sexual harassment as ‘harmless social interactions’ to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that woman may perceive”.

ii. Intent vs. Impact

‘Intent vs. impact’ is one of the most crucial standards in assessing

*It does not matter what was the intent behind the behaviour....  
...what matters is the impact of the behaviour on the harassed.*

sexual harassment. In this framework, the “impact” on the aggrieved is given weightage as opposed to the “intent” of the perpetrator. This view has had significant bearing upon cases of sexual harassment and the consequent decisions that have favoured women. There is emphasis on the purpose or effect of the offensive conduct on another’s dignity. Impact not intention is what counts. In a nutshell it is not sufficient reason to excuse an act of sexual harassment merely because someone said “Well, I did not mean it, sorry!” This approach, combined with the Reasonable Woman Standard approach, are important elements in deciding cases from a third party perspective, along with the cultural context and other prevailing social norms to ensure that justice is meted out.



**Box 17: A case illustrating the use of standards**

“A male boss hugging a female staff and kissing her on the cheek, and calling her ‘honey’ and ‘darling’ in the office to show his appreciation for her good work” could be a contentious case of sexual harassment.

She has not told her boss that his behaviour is unwelcome, but has shared with him that other staff are sniggering and passing comments about the “boss’ praise” and that she is uncomfortable regarding the same.

The boss argues that he has spent several years abroad where kissing and hugging of female staff is a common practice and that she should ignore other colleagues. Besides, he has been ‘open’ in his behaviour as it has been in the general working hall and in full view of the other staff members. In his view sexual harassment are acts which are furtive and behind closed doors, therefore, the fact that such behavior is viewed as sexual harassment is not being fair to him. And in his view, it is his way of thanking her for her good work and a small quick hug and kiss on the cheek is a harmless act that does not warrant being labeled as sexual harassment.

But, the female staff is of the view that in a workplace, appreciation for good work could be in the form of verbal praise, a letter of commendation or even an occasional bouquet of flowers. And, a kiss on the cheek twice or thrice a day, or even in a week is unwelcome behaviour. Further she questions why such appreciation is only reserved for her and not showered on male colleagues for their “good work”.

There are two angles to this case:

**Intent vs Impact**

Irrespective of the intention of the boss to show his appreciation, it is how his behaviour has impacted his female colleague that will be considered. If he persists with such behaviour in spite of being aware of her discomfort, then his behaviour is ‘Unwelcome’. The impact on the female is negative.

**Reasonable Women Standard**

In the Indian context, kissing on the cheek is a gesture of intimacy, with sexual connotations. In the workplace, it is definitely not considered appropriate behaviour, irrespective of the individuals concerned. Cultural sensitivities have been ignored in this context. A public display of kissing and hugging of women in the family is also not the normal standard of acceptable behavior. Therefore, kissing of another woman in public has definitely crossed boundaries of tolerance of a ‘reasonable woman’. The fact that this act was not extended to all staff, including male staff, is a matter to be considered and points to her being singled out for unwanted attention. Refusal to change the behaviour, even after being told of its negative impact, falls within the realm of sexual harassment.

### iii. Human Rights Approach

In the Guidelines laid down by the Supreme Court in its *Vishaka* judgment, Point 12 clearly mentions that “These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993”.

This approach uses the definition of ‘human rights<sup>23</sup>’ in Section 2 (d) of the Protection of Human Rights Act, 1993. However, going beyond the law and using a human rights approach shifts the emphasis in assessing a case of sexual harassment. Decisions are no longer taken on the basis on direct evidence or proof that is submitted but on examination of the social context in which such violations occur. The reality that sexual harassment is a ‘power game’ and often occurs in a relationship of unequal power becomes central to assessing a complaint. The human rights issue also goes beyond an individual perpetrator and takes into account lapses in the work environment that can have detrimental results and negative consequences for the individual, as well as the organization.

### iv. Prior Awareness Approach

Another approach to understanding whether a particular case is an act of sexual harassment or not is known as ‘prior awareness’. This standard assumes that there are two attitudes at play as a reaction to an act of sexual harassment. If the complaint’s attitude is of a vulnerable, docile and powerless woman, there is all likelihood of the natural instincts of the decision maker to perceive the woman in question as a victim, which may result in a favourable decision towards her. But, if the complaint’s attitude is that of a hostile and aggressive woman, the decision makers are most likely to express an unfavourable decision for the aggrieved, as they view her as a threat to male dominance. This theory underscores once again the importance of developing explicit and shared standards and criteria for the assessment of behaviours as sexual harassment at workplace.

There are two attitudes at play which have contrasting impacts in the prior awareness approach. These are “hostile sexism” and “benevolent sexism”.

In “hostile sexism”, the preferred and acceptable image of a woman is that of a submissive female who has remained within her socially defined limits. So called aggressive women are viewed negatively as those who must be controlled and prevented from occupying male dominated spaces. The hostile images of a woman that are created by this attitude are likely to trigger an unsympathetic response from the third party, which could end in an unfavourable decision for the aggrieved as she is viewed as a threat to male dominance. This attitude structure of ‘hostile sexism’ suggests that where a

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<sup>23</sup> Human rights refer to the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution.

woman aggrieved is seen to be aggressive, the response to her complaint may be unsympathetic and assessment may be unfavourable to her.

“Benevolent sexism” has the image of a vulnerable and powerless woman who has to be protected by the all-powerful male. This rouses feelings of sympathy and compassion towards a weaker individual being dependent and seeking the support of the powerful. Such an attitude is more likely to perceive the woman in question as a victim, whose space has been invaded by the respondent and therefore may result in a favourable decision for her. The attitude structure of ‘benevolent sexism’ sees the woman as helpless and vulnerable, therefore assessment may favour her.

In essence the theory of prior awareness underscores the importance of developing explicit and shared standards and criteria for the assessment of behaviours as sexual harassment at workplace.

#### v. Proof beyond Reasonable Doubt

The Supreme Court recognized, as in the case of Apparel Export Promotion Council vs A.K. Chopra in 1999, that if evidence and witnesses may not always be forthcoming, reliance has to be placed on the circumstantial evidence and whether it, in overall terms, inspires the confidence of the judges. The terms used for evidence is that of “high probability” or “within reasonable doubt”. Which means that it is not required that the Committee obtains ‘proof beyond reasonable doubt’ to take a decision on whether sexual harassment has occurred. As most incidents of sexual harassment are in private without any solid evidence or eye witnesses, the case should be built upon the strong probability that the accused did sexually harass the complainant is sufficient to take a decision in her favour<sup>24</sup>.

The Supreme Court in its judgment in State of Haryana vs. Rattan Singh reported in 1982 (1) LLJ 46 held that “It is well settled that in a domestic enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility”.

It has been consistently held by the Supreme Court in a domestic enquiry that the misconduct need not be proved beyond all reasonable doubt, but if there are preponderance of probabilities, that is enough for holding a person guilty of misconduct.

- **Arriving at the conclusion as to whether the harassment occurred or not**

A formal complaint should not be dismissed on the ground that nobody saw or heard the incident/s occur. Given the nature of the conduct, there are often no direct witnesses to acts of

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<sup>24</sup> Alkazi, F., Farrell, M. and Jain, P., *Gender on the agenda: A training manual*, Society for Participatory Research in Asia (RPIA), New Delhi, India, 2004.

sexual harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence, and make their finding on the balance of probabilities, that is, that it is more probable than not that the harassment did or did not occur. It is important to note that even if there is not enough evidence for a complaint to be substantiated, it does not mean that the discrimination did not occur or that the complainant is a liar. Findings may be that harassment did or did not occur, or that it was not possible to make a conclusive finding.

- **Submitting a report with a recommended course of action to the appropriate decision-maker (employer, management, etc)**

The onus of preparing the report rests with the Presiding Officer/Chairperson of the Complaints Committee. She may seek the support from other Committee members or other persons in doing so, depending upon the proceedings and the complexities of the case. For example the Presiding officer/Chairperson may deploy the services of a professional to transcribe recorded statements of all witnesses or seek the advice of a lawyer in understanding complex aspects of a case. However, it must be noted that caution must be exercised in maintaining the confidentiality of the case and the identity of the aggrieved at all times.

The report must present all the evidence that has been acquired in the proceedings of the complaint. It shall build up an argument of the conclusion reached in the case and a rationale for the suggested penalty to be imposed if the case of sexual harassment had been proven. The report of the Complaints Committee shall be deemed to be the final inquiry report. In accordance with the Terms of Reference of the Committee, the report shall be submitted by the Chairperson, to the employer/ head of the institution or disciplinary authority for consideration.

The Act mandates that on completion of the inquiry, the ICC and the LCC must **send a report of its findings to the employer within a period of 10 days of completion of the inquiry** (See Annex 2 for a sample template of Investigation report).

The inquiry report may contain 3 types of verdicts:

- 1) If the allegation against the respondent has **not been proved**, the ICC/LCC recommends to the employer or the District Officer that no action is required to be taken.
- 2) If the allegation against the respondent has **been proved**:
  - LCC can recommend to the District Officer or the ICC can recommend to the Employer to take action on sexual harassment as a misconduct in accordance with the provision of service rules; if there are no such service rules then with the rules that have been prescribed
  - The committee can also recommend deduction of an appropriate sum of money from the salary of the respondent or ask respondent to pay the sum as compensation to the aggrieved. The amount may be determined by the ICC/LCC members on the basis of:

- the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
- the loss of career opportunities due to the incident of sexual harassment
- medical expenses incurred by the aggrieved for physical and psychological treatment
- income and financial status of the aggrieved
- feasibility of such payment.

**Box 18: If the respondent fails to make the payment...**

In case the respondent has already left the employment and deductions to the salary are not possible, and in case the respondent fails to pay such a sum when directed to, the District Officer may be asked to recover such sum as an arrear of land revenue.

3) If the allegation against the respondent has been proved to be a **false and malicious complaint**, or if the aggrieved or anyone else has produced a false document, the Act provides for a penalty according to the Service Rules.

However, this clause has a safeguard in the form of an inquiry prior to establishing the malicious intent. This means that the onus of proving that the complaint was of a false and malicious intent lies with the committee. Mere inability to prove the case or a lack of evidence will not attract penalty under this provision.

The decision of the Complaints Committee should be presented in its report and submitted to the head of the institution who will forward the same to the disciplinary authority. This report may also contain suggested penalties for the accused.

**Box 19: What if the parties involved in the case are not satisfied with the investigations?**

It is to be noted that in the event that either of the parties involved in the case (complainant or accused) are not satisfied with the investigations, the decision or the recommendations of the complaints committee, they may approach a court of law to secure justice. The court of law will call upon the complaints committee to submit its report and all other documents for review and verification. Most often the court takes a serious view of proceedings of the complaints committee and ascertains whether principles of natural justice have been followed and that the committee has done its level best to examine all angles of the complaint in reaching its final conclusion.

- **Ensuring that the recommended action be taken**

The Complaints Committee only recommends disciplinary action, and the ultimate decision on this lies with the employer or the disciplinary authority of the organisation that can either choose to accept the suggested actions or change them. Penalties may be imposed based on the recommendations of the Committee and in keeping with the disciplinary norms of the institution.

When an act of sexual harassment amounts to misconduct as defined by the relevant service rules, appropriate disciplinary action (e.g. demotion, transfer, suspension, probation or dismissal) should be initiated by the employer in accordance with those rules. But, when the act of sexual harassment amounts to an offence under the Indian Penal Code, the employer shall initiate action by making a complaint with the appropriate authority. In case the aggrieved is not willing to initiate action under the Indian Penal Code, as a good practice and a measure of caution, the employer can record this in writing from the concerned person.

The employer in the case of the ICC or the District Officer in the case of a LCC is mandated to **act on the recommendation within 60 days of receiving the report** by the Committee.

### **5.3.3 Action by employer during pendency of inquiry**

The Act includes provisions related to action which may be taken by employers during the pendency of an inquiry. Upon a written request made by the aggrieved woman, the Committee may recommend to:

- Transfer the aggrieved or the respondent to any other workplace
- Grant leave to the aggrieved woman up to a period of 3 months, which is in addition to the leave that she is entitled to
- Grant other relief as appropriate.

One of the reasons for this provision is that when an act of sexual harassment is the result of power dynamics at play, the daily proximity of the aggrieved with her “harasser” has a deep and lasting negative impact on the emotional, physical and social functioning of the aggrieved, who is often of a more subordinate position than the accused.

## CHAPTER VI: ROLES OF STAKEHOLDERS

### 6.1 Government

Government has the key responsibility to ensure that appropriate protection is guaranteed in national laws and policies. In addition, government offices should carry out the following actions to prevent and address sexual harassment at workplace:

- Advance the understanding of the public of the provisions of the Act
- The Central Government to make rules for carrying out the provisions of the Act by notification of the same in the Official Gazette
- The Central Government to lay the rules made by them under this Act before each House of Parliament while it is in session
- The Central and State Governments are mandated to develop relevant Information Education and Communication (IEC) and training materials and organise awareness programmes to advance the understanding of the public on the provisions of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*
- Develop and implement a workplace policy for the prevention and redressal of sexual harassment at workplace in their offices
- Formulate orientation and training programmes for the member of the Local Complaints Committee
- Monitor the implementation of the Act and initiate necessary actions to ensure that all workers are protected from sexual harassment
- Maintain data on the number of cases of sexual harassment filed and disposed of.

#### 6.1.1 District Officers

The duties and powers of the District Officers as specified in the Act are to:

- Monitor the timely submission of reports furnished by the Local Committee
- Take necessary measures to engage non-governmental organizations to create awareness on sexual harassment and the rights of the women
- Prepare and forward a brief report based on the Annual Reports to the State Government
- Monitor the number of cases being filed and dealt with by the LCC
- Authorize any officer to make inspection of the records and workplace in relation to sexual harassment, who shall in return submit a report of the inspection within the specified time period. Every employer or the District Officer must produce on demand before the officer making the inspection all information, records and other documents in his custody which might have a bearing on the inspection.

The District Office may be called upon by the appropriate government to furnish in writing material related to sexual harassment at the workplace. In efforts to prevent and address sexual

harassment, it is important to work in close collaboration with workers' and employers' organizations.

### 6.1.2 Labour Commissioners

The Ministry of Labour and Employment is responsible for laying down policies in respect to labour matters including industrial relations, co-operation between labour and management, settlement of labour disputes, regulation of wages and other conditions of work and safety, women's labour, child labour, labour welfare and social security etc. Broadly, Labour Commissioners are entrusted with the responsibility of enforcing labour legislation concerning the welfare of the workforce and at the same time to maintain industrial peace and harmony and congenial working atmosphere.

The three key roles of the labour commissioners are:

- Enforcement

The various Acts under which a Labour Officer can take preventive action, as well as ensure the redressal of sexual harassment at the workplace in accordance with the Act are as follows:

- Industrial Disputes Act, 1947
- The Factories Act, 1948
- The Mines Act 1952
- Shops and Commercial Establishments Act, 1958.

Through the Industrial Employment (Standing Orders) Act, 1946 the Government Departments, Educational Institutions, Commercial Establishments, Private Companies, and Public Sector Undertakings were requested to comply with the implementation of the *Vishaka* Guidelines, and to this effort a Circular vide no.08/W&CDD 2011-2012 dated: 22/XI/2011 was issued to all the above.

- Conciliation

As a nodal agency, the Labour Commissioner also plays the role of a conciliation officer and in cases of sexual harassment, can be effective in explaining to both parties the legal mandate of the Supreme Court in the particular instance. Even after the report of the internal Complaints Committee, if either of the parties is not satisfied with the decision of the committee, the matter should be referred for compulsory resolution to the labour court or industrial tribunal after preparing the failure report of conciliation proceedings.

- Research and Analysis

The Labour Commissioner may also obtain and use information from Socio Economic Surveys of Different Segments of Labour (SESDSL) which are conducted for different



segments of industries to ascertain the working and living conditions of workers employed therein. Of the four components, the two most relevant in the context of creating a more conducive work place are (i) Socio-economic Conditions of Women Workers in Industries, (ii) Working and Living Conditions of Workers engaged in Unorganized Sector industries/employments. This information can be used as a basis for developing plans that ensure the safety and security of women in all kinds of workplaces.

The following are some key roles of the labour commissioner interpreted from the lens of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*:

- To promote harmonious relations between labour and management and to regulate wages and other conditions of work in the central sphere: Sexual harassment creates a hostile work environment and the prevention of the same is integral part to function in promoting harmonious relations in the workplace
- To ensure speedy implementation of labour law awards, agreements, Code of Discipline etc: This role can also cover the establishment of Internal Complaints Committee for prevention and redressal of sexual harassment, as it relates to the implementation of a law relating to the workplace and workers and code of discipline
- To conduct studies to review and evaluate the implementation of labour laws, industrial relations, personnel policies and practices etc. in Public Sector Undertakings and other sectors under the jurisdiction of the labour commissioners: The function can be extended to assess the status of sexual harassment in the workplace and recommendations to its prevention and redressal mechanisms
- To regulate working conditions and safety in mines and factories: To ensure that the workplace is a zero tolerance zone towards sexual harassment
- To collect and publish statistics to conduct enquiries, surveys and research studies on various labour subjects: This may be understood to include publishing such information regarding the prevention and redressal of sexual harassment in the workplace
- To undertake training, education, research and consultancy service in the field of industrial relations and labour in general: Trainings programmes could be organized on gender sensitization and awareness on the issue of sexual harassment at the workplace.

**Box 20: The role of the Labour Commissioners in a nutshell in relation to the Supreme Court directives**

- As per the Public Interest Litigation (PIL) filed in the Supreme Court in the *Medha Kotwal Lele vs Union of India and Others* 26.4.2004, Labour Commissioners will work as a nodal agency with regard to shops, factories and commercial establishments
- Publish information in an analytical form on the number of cases of sexual harassment within their jurisdiction and forward these to the Ministry of Labour and Employment for further action

- Accept complaints of sexual harassment lodged by individual women, irrespective of their designation in their establishment or workplace and process the same for action to the concerned Internal Complaints Committee as prescribed by the Act
- Conciliate the dispute between a complainant and employer on redressal of cases of sexual harassment in the workplace, including a) establishment of an internal complaints committee in case one does not exist b) the release of all duties in case a complainant leaves the establishment due to sexual harassment at the workplace
- Ensure that the recommendations of the Internal Complaints Committee are followed by the employer or the disciplinary committee, as the case may be
- Take action against those employers who have not undertaken obligations that are necessary when female employees work beyond stipulated hours (specific to those employers who are permitted to allow women to work beyond the usual hours, as in the Factories Act, 1948)
- Labour department/commissioners to issue separate notifications with regard to private organizations to ensure necessary modifications in compliance with the Act in accordance with the Industrial Employment (Standing Orders) Act, 1946
- Bring defaulting employers to the notice of the Supreme Court of India, and issue directions against them and impose costs against them in specific cases of sexual harassment at the workplace.

## 6.2 Employers' organizations

Employers' organizations have an important role in preventing and addressing sexual harassment and promoting a safe work environment by providing guidance and good practices to member companies. Specific actions they can take include:

- Demonstrating a strong commitment to prevent and address sexual harassment by developing and adopting a policy on sexual harassment
- Raising awareness on the subject among member companies by organizing workshops and seminars
- Providing legal advice to member companies on law compliance
- Developing and sharing an employer's guide or a sample company policy with member companies to prevent and address sexual harassment at workplace
- Promoting a safe work environment by introducing practical measures and good practices from member companies at knowledge sharing forums or through newsletters.

## 6.3 Workers' organizations

Workers' organizations can play a vital role in preventing and addressing sexual harassment at workplace by promoting awareness on the issue among workers and by providing assistance to member workers in responding to sexual harassment cases. Their role becomes especially important for workers in the unorganized sector where grievance mechanisms may not be readily available or easily accessible. A number of measures that workers organizations can take include:

- Educating the members about the issue through workshops or regular meetings
- Providing training on handling sexual harassment grievances to members who are likely to get involved in complaint resolution

- Offering necessary support in filing complaints and following up with filed cases
- Advocating for the establishment of systems or mechanisms where all workers including those in the unorganized sector can take actions to address sexual harassment once it occurs
- Working with employers/management on developing and implementing a sexual harassment zero tolerance policy at enterprise level.

## 6.4 Employers or managers of enterprises or institutions

Employers are responsible for providing a safe working environment for workers by implementing a number of measures to prevent sexual harassment as explained in Chapters IV and V. It is important that employers and managers demonstrate strong leadership and commitment for zero tolerance for sexual harassment so that employees clearly understand that there is no place for sexual harassment in their workplace.

An employer is liable to a fine of Rps 50,000, in case an employer fails to comply with the Act, specifically in the areas of:

- Constitution of an Internal Committee (Sub-section (I) of Section 4)
- Inquiry report (Section 13)
- Punishment for false or malicious complaint and false evidence (Section 14)
- Required contents for annual report (Section 22).

In case of subsequent violations, the employer will be made to pay a fine which may exceed Rps 50,000 with chances of being doubled together with a penalty in the form of cancelation of the license, withdrawal or non-withdrawal of the registration required for carrying out their activity.

## 6.5 Employees and workers

As an employee or a worker, it is important for each individual to be aware of what sexual harassment is and to take action to stop sexual harassment at workplace. In case sexual harassment occurs, workers should:

- Do not keep silent but say “no” in a firm manner
- Continue to say no and collect evidence if sexual harassment persists
- Talk with family, friends or colleagues whom they can trust
- Seek help from trusted colleagues or trade union members and file a complaint.

For a quick information sheet on sexual harassment for workers, see Annex 1: a Quick Q&A Sheet.

## ANNEXES

### ANNEX 1: A Quick Q&A Sheet

#### **1. What is Sexual Harassment?**

Sexual harassment is any unwelcome sexually defined behaviour which can range from misbehaviour of an irritating nature to the most serious forms such as sexual abuse and assault, including rape.

The *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013* defines sexual harassment to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:

- vi. physical contact and advances
- vii. a demand or request for sexual favours
- viii. making sexually coloured remarks
- ix. showing pornography
- x. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

#### **2. What is sexual harassment at workplace?**

Sexual harassment at the workplace is any unwelcome sexually defined behaviour which has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment.

The *Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013* states that if the following circumstances occur or are present in relation to, or connected with any act or behaviour of sexual harassment, it may amount to sexual harassment at the workplace:

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

#### **3. Quick checklist: Is your work environment free from sexual harassment?**

Most women themselves fail to recognize sexual harassment and treat it as trivial and routine. Take a look at the checklist below and fill a check mark (v) to an appropriate box.

Check items	Yes	No
1. You have supervisors or colleagues that you want to avoid working together		
2. You feel that somebody is constantly staring at you		
3. The number of female and male workers is not well-balanced		
4. There are times when supervisors or colleagues touch your body		
5. There are uncomfortable incidences at my workplace but I tolerate it with my patience		
6. My supervisor sometimes asks me out for dinner		
7. I stay obedient to whatever my supervisor says as I do not want to lose my job		
8. I receive some jokes and comments related to my appearance		
9. My supervisor frequently asks me about my personal life		
10. I often receive emails irrelevant to my work from a colleague/supervisor		

If you have many check marks under “Yes”, your work environment may not be free from sexual harassment. If you are in doubt, discuss with trusted colleagues, and do not stay silent.

#### 4. What should you do if you experience sexual harassment?

If you experience sexual harassment, take action to stop it.

Speak up at the time: Be sure to say "NO" clearly, firmly and without smiling when you experience sexual harassment as that is the best way to let the harasser know that his or her behaviour is offensive. If you are asked to go places, do things, respond to questions, or engage in situations that make you uncomfortable, say "NO" emphatically and clearly and do not worry about offending the other person or hurting his or her feelings. Objecting to the behaviour when it occurs helps if you decide to file charges later.

Keep records: Keep track of what happens in a journal or diary and keep any letters or notes or other documents you receive. Keep copies of any offensive material at the workplace. Write down the dates, times (including frequency of offensive encounters), places, and an account of what happened. Write down the names of any witnesses.

Every document that you use during trial must be authenticated by a witness. Keep this in mind during your depositions when the defense asks you where you obtained a document. If you are not clear about where you got the document, and who can authenticate it, you will not be able to use it during your trial.

Take all letters of commendation, awards, thanks you's and anything at all that will corroborate your positive job performance. Pay special attention to documents that your superiors have provided lauding you and your work. If possible, ask your clients, staff, and peers for letters of commendation.

*Talk to someone you can trust:* Being quiet or stoic about sexual harassment lets it continue. Talk to other co-workers, union members, family members or friends whom you can trust. You may not be the only one harassed by this person.

*Create a witness:* Inform a trusted colleague and try to insure that s/he is an eye or ear witness to a situation where you are being sexually harassed. This will be useful later if you chose to file a formal complaint.

*Report sexual harassment to the appropriate person in the organization:* Explore the different avenues available to you and file a formal complaint if necessary. If your organization does not have a policy, ensure that your employer formulates an anti-sexual harassment policy and carries out all the connected tasks.

*Get a medical check-up:* If you have been raped or physically assaulted, go for a medical check-up. Obtain a medical report. This is important, should you decide to pursue a legal case.

## **5. Can an aggrieved file a civil suit in a case of sexual harassment in the workplace?**

Yes, a civil suit can be filed for damages under tort laws. The basis for filing the case would be mental anguish, physical harassment, loss of income and employment caused by the sexual harassment.

## **6. Under what circumstances can complaints be filed?**

Complaints may be filed under the following circumstances:

- Cases involving individuals from the same organization
- Cases that concern third party harassment, which implies harassment from an outsider.

## **7. Where can I file a complaint?**

- **Internal Complaints Committee** – if you are an aggrieved woman who has a relationship of work with that specific organization
- **Local Complaints Committee** – if you are an employee from an establishment where the Internal Complaints Committee has not been constituted due to having less than 10 workers. In the case that the complaint is against the employer himself/herself and the individual feels that the case may be compromised, she can also lodge the complaint in the LCC
- For instances where the LCC may not be immediately accessible, the Act instructs the District officer to designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, who will receive the complaint and forward it to the concerned LCC within 7 days.
- **Local police station**, in case provisions under the Indian Penal Code are applicable.

## ANNEX 2: A Sample Format of Complaint Committee Investigation Report

PARTICULARS OF THE DOCUMENT	PAGE NO.
<b>PART –A: REPORT (PAGES X-X)</b>	
<p><b>Constitution of the Committee</b> – Details of the aggrieved, the accused, the chair of the Committee, the members, the third party.</p> <p><b>Procedure</b></p> <ul style="list-style-type: none"> <li>➤ Receipt of complaint by the Committee</li> <li>➤ NOTICE to the aggrieved for appearance before the Committee</li> <li>➤ Recording of statement of the aggrieved</li> <li>➤ NOTICE for appearance to AND recording of statement of the WITNESSES,</li> <li>➤ Issue of Notice to the accused, appearance of the respondent and recording of the statement of the accused</li> <li>➤ Recording of statement of the accused’s WITNESSES</li> <li>➤ Cross examination of parties and their witnesses</li> <li>➤ Material and documents examined by the Committee</li> </ul> <p><b>List of Material and Documents Examined by the Committee</b></p> <ul style="list-style-type: none"> <li>➤ Copy of the complaint</li> <li>➤ Copy of the response of the accused, if any</li> <li>➤ Official records and files relating to employment of the aggrieved and the accused</li> <li>➤ E-mails from the organization providing clarifications and information sought by the Committee from time to time.</li> <li>➤ Any correspondence or other forms of communication related to the case, including SMS, photographs, E-mails, letters, telephone bills</li> <li>➤ Minutes of meeting of complaints committee</li> <li>➤ All documents, transcripts of aggrieved, respondent and witnesses (duly signed by all committee members present in the meeting.</li> <li>➤ The Sexual Harassment of Women at Workplace Act and other relevant laws</li> </ul>	

<p><b>Case of the Aggrieved</b></p> <ul style="list-style-type: none"> <li>➤ Aggrieved case as told to the Committee</li> </ul> <p><b>Defense of the Respondent</b></p> <ul style="list-style-type: none"> <li>➤ Respondent's defense to the Committee</li> </ul> <p><b>Appraisal of Oral Evidence and Documents</b></p> <ul style="list-style-type: none"> <li>➤ Appraisal and analysis of evidence of witnesses</li> <li>➤ Information &amp; documents placed before the Committee – such as attendance and leave records</li> </ul> <p><b>Conclusion</b></p> <ul style="list-style-type: none"> <li>➤ Definition of sexual harassment as in the Sexual Harassment of Women at workplace Act</li> <li>➤ Type and forms of sexual harassment that the aggrieved was subjected to</li> </ul>	
<b>PART – B: RECOMMENDATIONS (PAGES X-X)</b>	
<p>Recommendations for the Respondent</p> <p>Recommendations for the Aggrieved</p> <p>Recommendations vis-à-vis the Institution</p>	
<b>PART – C: APPENDICES</b>	
Include all documents that have been submitted and scrutinized by the committee	



### ANNEX 3: Judgments issued in respect of the *Vishaka* Guidelines regarding Sexual Harassment at the Workplace

As the Sexual Harassment Act has been enacted, it is expected that further rules will be notified by the Government. Here, directions regarding sexual harassment at workplace given in *Medha Kotwal Lele and Others Vs. Union of India and Others* by the Supreme Court on 19 October 2012, as well as the status of the implementation are introduced below for reference:

(i) The States and Union Territories which have not yet carried out adequate and appropriate amendment in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the respondent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the respondent.

(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at *taluka* level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

(iv) The State functionaries and private and public sector undertakings/organizations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the *Vishaka Guidelines* and further provide that if the alleged harasser is found guilty, the aggrieved is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the aggrieved shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the *Vishaka Guidelines*. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organizations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by *Vishaka*.

To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of Sexual Harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the *Vishaka* Guidelines and the guidelines in the present order.

If there is any non-compliance or non-adherence to the *Vishaka Guidelines*, orders of this Court following *Vishaka* and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.

The *Vishaka Guidelines* have led to amendments in existing laws for government and industrial establishments having more than 50 employees to include prohibition of sexual harassment in the workplace. Given below prominent cases and their impact upon the law:

**1. Case:** Apparel Export Promotion Council (AIR 1999 SC 625)

**Impact:** Upholds the Constitution of India and states that sexual harassment at the workplace is a violation of the fundamental right to Gender Equality and the Right to Life and Liberty

**2. Case:** DS Grewal and Vimmi Joshi

**Impact:** Rules for imposition of exemplary costs upon management for violation of and faulty compliance with the Supreme Court's Directives

**3. Case:** Medha Kotwal WRIT PETITION (CRIMINAL) NOS. 173-177 OF 1999

**Impact:** Upholds and reiterates the proper implementation of *Vishaka* and establishment of internal Complaints Committee

**4. Case:** High Court of Kerala Puthuppan P K vs KS Girija

**Impact:** Rules that the Vishakha Guidelines covers all government establishments, public sector organisations, industrial establishments as well as the private sector and states that the "quality of womanhood does not change by the place where she works, be it public or private".

**5. Case:** Punita K. Sodhi v. Union of India & Ors. , W.P.

**Impact:** Promotes and uses a Reasonable Woman Standard as a basis for deciding whether sexual harassment has taken place.

Source:<http://www.citehr.com/215118-lodge-complaint-labour-commissioner-office.html#ixzz20Su0eijv>

### Status of implementation of *Vishaka* Directives in States and Union Territories

The emerging situations from the following States as per Supreme Court in its order of 19th October 2012 in Medha Kotwal Lele case are as under:

**Goa:** The Amendments in the Civil Services Conduct Rules and the Standing Orders have not been made so far.

**Gujarat:** No Amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far. It is not stated that all Complaints Committees are headed by women. There is no information given however, NGO members have been associated with these Committees.

**NCT of Delhi:** The Amendments in the Civil Services Conduct Rules have been made. The position about Amendments in the Standing Orders has not been clarified however and further, it has not been specified that all Complaints Committees are headed by women.

**Himachal Pradesh:** There is nothing to indicate that the State of Himachal Pradesh has made Amendments in the Civil Services Conduct Rules and the Standing Orders. No details of the formation of Complaints Committees have also been given.

**Haryana:** The Amendments in the Government Employees (Conduct) Rules, 1966 have been made. However, it is not specified that the Amendments in Standing Orders have been made.

**Maharashtra:** Necessary Amendments in Maharashtra Civil Services (Conduct) Rules, 1974 have been made. The Labour Commissioner has taken steps for amending the Mumbai Industrial Employment (Permanent Orders) Rules, 1959.

**Mizoram:** The State of Mizoram has amended its Civil Services Conduct Rules and also constituted Central Complaints Committee to look into complaints pertaining to cases of Sexual Harassment of working women at all workplaces for preservation and enforcement. A notification has also been issued giving necessary directions to all private bodies to do the same.

**Sikkim:** The Amendments in the Civil Services Conduct Rules have been carried out and a Notification has been issued for the constitution of Complaints Committees by departments and institutions with 50 or above staff to look into Sexual Harassment of women at workplaces.

**Uttaranchal:** The State of Uttaranchal has carried out Amendments in Civil Services Conduct Rules as well as the Standing Orders. The District Level and State Level Complaints Committees have been constituted in the State.

**West Bengal:** The Amendments in the Rules relating to Duties, Rights and Obligations of Government employees have been made. The Amendments in the Standing Orders have also been carried out. Out of 56 departments of the Government of West Bengal, Complaints Committees have been formed in 48 departments and out of 156 Directorates under the Government. The Complaints Committees have been formed in 34 Directorates. Out of the 24 institutions under the Government, Complaints Committees have been formed in 6 institutions.

**Madhya Pradesh:** Although the State of Madhya Pradesh has made Amendments in the Civil Services Conduct Rules, no Amendments have been made in the Standing Orders. The

Complaints Committees have been constituted in every office of every Department from the Head of the Department level to the District and *Taluka* level. The District Level Committees have been constituted under the chairpersonship of the District Collector. The steps taken by the District Committees are monitored by the nodal departments.

**Punjab:** The State of Punjab has carried out Amendments in the Civil Services Conduct Rules as well as the Standing Orders. Seventy Complaints Committees have been constituted at the headquarters of different Directorates and 58 Complaints Committees have been constituted in various Field Offices.

**Orissa:** No Amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far.

**Andhra Pradesh:** Amendments in the Civil Services Conduct Rules and in the Standing Orders have been made.

**Karnataka:** The Amendments in the Civil Services Conduct Rules have been made by the State of Karnataka but no Amendments have been made in the Standing Orders. It is stated that in most of the Committees, the number of women members is above 50%. The Chairpersons are women, and in most of the Committees, an outside member, i.e., an NGO has been associated with it.

**Rajasthan:** The State of Rajasthan has carried out Amendments in the Civil Services Conduct Rules but no Amendments have been carried out in the Standing Orders.

**Bihar:** The State of Bihar has made Amendments in the Civil Services Conduct Rules but there is nothing to show that Amendments in Standing Orders have been made. Only one Complaints Committee has been constituted for the entire State.

**Meghalaya:** The State of Meghalaya has neither carried out Amendments in the Civil Services Conduct Rules nor in the Standing Orders.

**Tripura:** The State of Tripura has carried out the Amendments in the Civil Services Conduct Rules. There are no Standing Orders applicable in the State. Ninety-seven Complaints Committees have been constituted in most of the State Government departments and organizations.

**Assam:** Amendments in the Civil Services Conduct Rules have been made but no Amendments have been carried out in the Standing Orders.

**Manipur:** The State of Manipur has carried out Amendments in the Civil Services Conduct Rules, but no definite information has been given regarding Amendments in the Standing Orders. Only one Complaints Committee has been formed for the entire State.

**Uttar Pradesh:** Amendments both in the Civil Services Conduct Rules and the Standing Orders have been carried out.

**Jammu and Kashmir:** The State of Jammu and Kashmir has carried out Amendments in the Civil Services Conduct Rules. It is stated that steps are being taken for Amendments in the Standing Orders.

**Nagaland:** The Amendments have been carried out in the Civil Services Conduct Rules by the State of Nagaland but no Amendments have been carried out in the Standing Orders.

**Arunachal Pradesh:** The State of Arunachal Pradesh has neither carried out Amendments in the Civil Services Conduct Rules nor in the Standing Orders. There is only one State Level Committee for the entire State of Arunachal Pradesh.

**Kerala:** Amendments in the Civil Services Conduct Rules and in the Standing Orders have been carried out. There are 52 Complaints Committees in the State. All such Committees are headed by women and 50% members of these Committees are women and there is representation of NGO members in these Committees.

**Tamil Nadu:** The State of Tamil Nadu has carried out Amendments in the Civil Services Conduct Rules. However, no Amendments in the Standing Orders have been made so far.

**Jharkhand:** The State of Jharkhand has carried out Amendments in the Civil Services Conduct Rules. However, no Amendments in the Standing Orders have been made so far.

From the Affidavits filed by the State Governments, it transpires that the States of Orissa, Meghalaya, Himachal Pradesh, Goa, Arunachal Pradesh and West Bengal have amended the Rules relating to Duties, Public Rights and Obligations of the Government employees but have not made Amendments in Civil Services Conduct Rules.

Similarly, the States of Sikkim, Madhya Pradesh, Gujarat, Mizoram, Orissa, Bihar, Jammu & Kashmir, Manipur, Karnataka, Rajasthan, Meghalaya, Haryana, Himachal Pradesh, Assam, NCT of Delhi, Goa, Nagaland, Arunachal Pradesh, Jharkhand and Tamil Nadu have not carried out Amendments in the Standing Orders.

The Union Territories of Andaman and Nicobar Islands, Daman and Diu, Lakshadweep, Dadra and Nagar Haveli and Puducherry have not made Amendments in the Standing Orders. The Union Territory of Chandigarh does not seem to have carried out Amendments in the Civil Services Conduct Rules. Some of the Union Territories like Dadra and Nagar Haveli and Chandigarh are reported to have not yet formed Complaints Committees. Daman and Diu have formed one Complaints Committee for the Union Territory.



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