

India's Law on Prevention of Sexual Harassment at the Workplace

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1. Introduction

Long bygone are the days when men used to be the sole bread-winners of a family. Globalization has brought a radical change in the status of women worldwide. However, with the larger influx of women in the mainstream workforce of India, sexual harassment at workplace has assumed greater dimensions.

Workplace sexual harassment is a form of gender discrimination which violates a woman's fundamental *right to equality and right to life*, guaranteed under Articles 14, 15 and 21 of the Constitution of India ("**Constitution**"). Workplace sexual harassment not only creates an insecure and hostile working environment for women but also impedes their ability to deliver in today's competing world. Apart from interfering with their performance at work, it also adversely affects their social and economic growth¹ and puts them through physical and emotional suffering.

India's first legislation specifically addressing the issue of workplace sexual harassment; the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") was enacted by the Ministry of Women and Child Development, India in 2013. The Government also subsequently notified the rules under the POSH Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("**POSH Rules**"). The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("**Criminal Law Amendment Act**") which has criminalized offences such as sexual harassment, stalking and voyeurism.

The POSH Act has been enacted with the objective of preventing and protecting women against workplace sexual harassment and to ensure effective redressal of complaints of sexual harassment. While the statute aims at providing every woman (irrespective of her age or employment status) a safe, secure and dignified working environment, free from all forms of harassment, proper implementation of the provisions of the statute remains a challenge.

Although the law preventing sexual harassment at workplace has been in force since 2013, there remains lack of clarity on various aspects pertaining to the statute, including what constitutes sexual harassment, obligations of an employer, remedies/safeguards available to the victim, procedure of investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment. Lewd jokes, inappropriate comments etc. are dismissed as normal, with women being hesitant to initiate actions due to apprehension of being disbelieved or ridiculed; which underpins the need for greater awareness and greater enforcement.

Any tool would be useless if the person operating it is unaware of the way it is to be used. Therefore, the objective of this booklet is to serve as a ready reckoner to all the stakeholders and re-educate them on the law relating to workplace sexual harassment.

This booklet focusses mainly on the POSH Act and other relevant laws in India pertaining to workplace sexual harassment. Further, the objective of this booklet is to create more awareness on the issue and simultaneously equip employers in providing women a safe and secure working environment. The booklet also discusses the importance of 'prevention' as the best tool for elimination of this menace in a multi-cultural society as ours.

1. Statement of Objects and Reasons, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

2. Evolution of The Law on Workplace Sexual Harassment

The elimination of gender-based discrimination has been one of the fundamentals of the Constitutional edifice of India. The principle of gender equality is enshrined in the Constitution, in its Preamble, fundamental rights, fundamental duties and Directive Principles. However, workplace sexual harassment in India, was for the very first time recognized by the Supreme Court of India in its landmark judgment of *Vishaka v. State of Rajasthan*² (“**Vishaka Judgment**”), wherein the Supreme Court framed certain guidelines and issued directions to the Union of India to enact an appropriate law for combating workplace sexual harassment. Nothing less of an irony, the POSH Act and the POSH Rules was enacted 16 years after the Vishaka Judgement.

In the absence of a specific law in India, the Supreme Court, in the Vishaka Judgment, laid down certain guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment (“**Vishaka Guidelines**”) which were being followed by employers until the enactment of the POSH Act.

I. The Vishaka Judgement

In 1992, Bhanwari Devi, a *dalit* woman employed with the rural development programme of the Government of Rajasthan, was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage.³ This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for safeguards to be implemented in this regard. Championing the cause of working

women in the country, women’s rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka.

The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy and acknowledged workplace sexual harassment as a human rights violation. In framing the Vishaka Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. As per the Vishaka Judgment, the Vishaka Guidelines issued under Article 32 of the Constitution, until such time a legislative framework on the subject has been drawn-up and enacted, would have the effect of law and would have to be mandatorily followed by organizations, both in the private and government sector.

As per the Vishaka judgment, ‘*Sexual Harassment*’ includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a. *Physical contact and advances*
- b. *A demand or request for sexual favours;*
- c. *Sexually coloured remarks;*
- d. *Showing pornography;*
- e. *Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.*

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim’s employment or work (whether she is drawing salary or honorarium

2. 1997 6 SCC 241; AIR 1997 SC 3011

3. Indira Jaising, *Law Relating to Sexual Harassment at the Workplace* (2014)

or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it amounts to sexual harassment in the workplace. It is discriminatory, for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting and promotion), or when it creates a hostile working environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto.'

II. Post Vishaka – Some Other Judgments

A. Apparel Export Promotion Council v. A.K Chopra

The Vishaka judgment initiated a nationwide discourse on workplace sexual harassment and threw out wide open an issue that was swept under the carpet for the longest time. The first case before the Supreme Court after Vishaka in this respect was the case of *Apparel Export Promotion Council v. A.K Chopra*.⁴ In this case, the Supreme Court reiterated the law laid down in the Vishaka Judgment and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace. In this judgment, the Supreme Court enlarged the definition of sexual harassment by ruling that physical contact was not essential for it to amount to an act of sexual harassment. The Supreme Court explained that “*sexual harassment is a form of sex discrimination projected through unwelcome sexual advances, request for sexual favours and other verbal or physical*

conduct with sexual overtones, whether directly or by implication, particularly when submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an intimidating or hostile work environment for her.”

B. Medha Kotwal Lele & Ors. v. Union of India & Ors.

A letter written by Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition, the Supreme Court took cognizance and undertook monitoring of implementation of the Vishaka Guidelines across the country by directing State Governments to file affidavits emphasizing on the steps taken by them to implement the Vishaka Guidelines. In its judgment, the Supreme Court observed that “*the implementation of the Vishaka Guidelines has to be not only in form but also in substance and spirit so as to make available safe and secure environment for women at workplace in every aspect and thereby enabling working women to work with dignity, decency and due respect.*” Not being satisfied with the implementation of the Vishaka Guidelines, it directed States to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines. Finally, the Supreme Court asserted that in case of a non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.

4. (1999) 1 SCC 759

Legislative Timeline of POSH Act & POSH Rules

| | |
|---------------------------|---|
| 2007 | Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 ("Bill") approved by the Union Cabinet. |
| 2010 | The Bill was introduced in the Lok Sabha. |
| 2012 | The Bill was amended and re-introduced in the Lok Sabha. |
| September 03, 2012 | The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Lok Sabha |
| February 26, 2013 | The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Rajya Sabha. |
| April 23, 2013 | The POSH Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013. |
| December 09, 2013 | The Indian Ministry of Women and Child Development notified December 09, 2013 as the effective date of the POSH Act and the POSH Rules. |

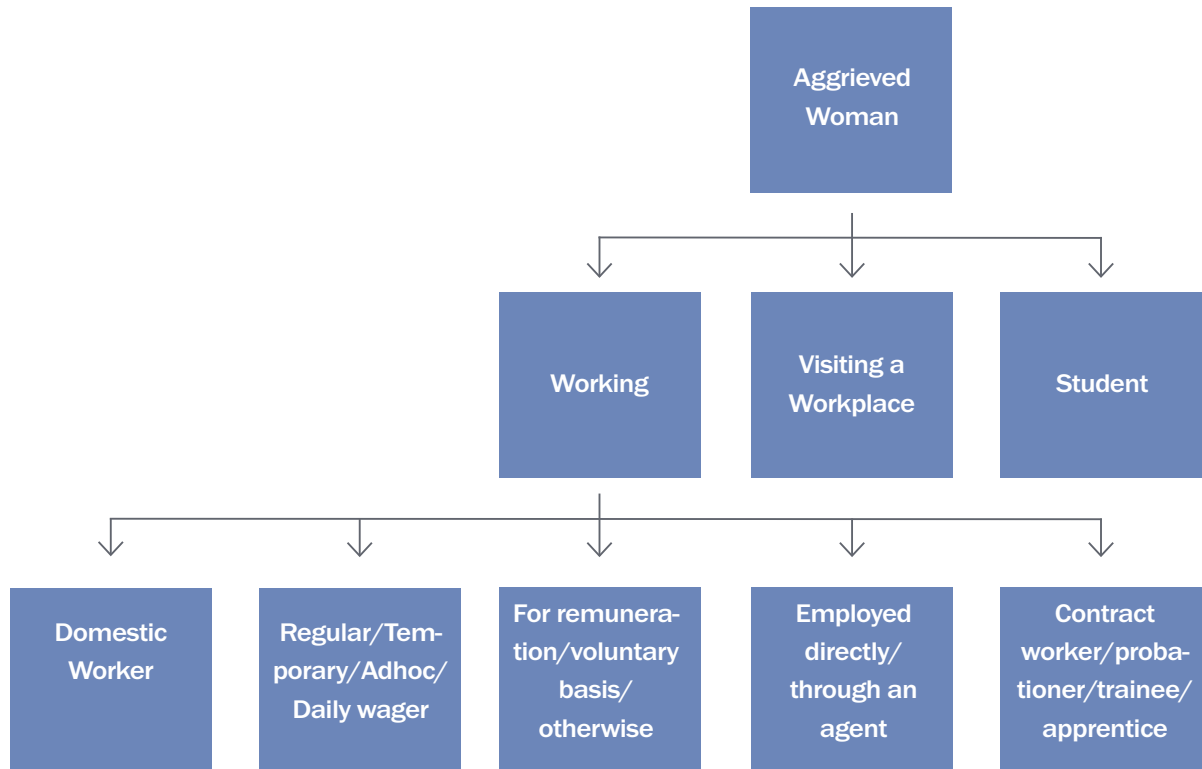
3. Key Provisions of the POSH Act

1. Applicability and scope

- **Applicable Jurisdiction:** The POSH Act extends to the 'whole of India'.⁵
- **Aggrieved Woman:** As per the POSH Act, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.⁶ Given that the definition does not necessitate the woman to be an employee, even a customer/client who may be sexually harassed at a workplace can claim protection under the POSH Act.

The POSH Act further stipulates that a woman shall not be subjected to sexual harassment at her workplace.⁷ Accordingly, it may be noted that in order for a woman to claim protection under the POSH Act, the incident of sexual harassment should have taken place at the 'workplace'.

The POSH Act protects only women and is not a gender-neutral legislation and protects only women. Therefore, the safeguards under the POSH Act are not applicable to 'men victims'.



5. Section 1 of the POSH Act

6. Section 2(a) of the Prevention of Workplace Sexual Harassment Act

7. Section 3 of the Prevention of Workplace Sexual Harassment Act

- **Covered bodies:** The POSH Act applies to both the organized and unorganized sectors⁸ in India. It *inter alia*, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and also applies to a dwelling place or a house.⁹

II. What amounts to Sexual Harassment?

The POSH Act defines ‘sexual harassment’ in line with the Supreme Court’s definition of ‘sexual harassment’ in the Vishaka Judgment. As per the POSH Act, ‘sexual harassment’ includes unwelcome sexually tinted behaviour, whether directly or by implication, such as (i) physical contact and advances, (ii) demand or request for sexual favours, (iii) making sexually coloured remarks, (iv) showing pornography, or (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.¹⁰

The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:

- implied or explicit promise of preferential treatment in employment;
- implied or explicit threat of detrimental treatment in employment;
- implied or explicit threat about present or future employment status;

- interference with work or creating an intimidating or offensive or hostile work environment; or
- humiliating treatment likely to affect the lady employee’s health or safety.¹¹

As you would note from above, the definition of ‘sexual harassment’ under the POSH Act is wide enough to cover both direct or implied sexual conduct which may involve physical, verbal or even written conduct. The key distinguishing feature is that the conduct is unwanted and unwelcome by the recipient. It includes *quid pro quo* sexual harassment, a form of sexual blackmail (which if translated in English, would mean ‘this for that’). In a typical situation of *quid pro quo* harassment, the respondent being a person in power, pressurizes the woman employee (usually a subordinate) for sexual favours in exchange for advancement in the workplace or threat of adverse employment action. The definition also includes reference to creating an ‘intimidate, offensive or hostile working environment’. An example would be a work environment where an individual is subject to unwelcome comments about her body type resulting in the woman employee feeling embarrassed and unable to work properly.

While some forms of sexual harassment such as sexual assault are inherently offensive and egregious, and may need to occur only once for it to be treated as ‘sexual harassment’, some other forms may not be easily distinguishable. Since there is no fine line test in determining what would amount to a ‘hostile working environment’, the burden will lie on the Internal Committee to decide whether the harassment suffered by a victim is sufficiently severe to have created a hostile working environment or not. Further, determining what constitutes ‘sexual harassment’ depends upon the specific facts and the context in which the conduct has occurred.

8. Having less than 10 workers

9. Section 2(o) of the Prevention of Workplace Sexual Harassment Act

10. Section 2(n) of the Prevention of Workplace Sexual Harassment Act

11. Section 3(2) of the Prevention of Workplace Sexual Harassment Act

In 2010, the High Court of Delhi¹² endorsed the view that sexual harassment is a subjective experience and for that reason held “A complete understanding of the complainant’s view requires... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... 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 a woman may perceive.”

Please refer to Chapter 5 for examples of conduct that amounts to ‘sexual harassment’.

III. Employee

The definition of an ‘employee’ under the POSH Act is fairly wide to cover regular, temporary, ad hoc employees, individuals engaged on a daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.¹³

IV. Workplace

While the Vishaka Guidelines were confined to the traditional office set-up, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the POSH Act has introduced the concept of an ‘extended workplace’. As per the POSH Act, ‘workplace’ includes any place visited by the employee arising out of or during the course of

employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.¹⁴

In the case of *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*,¹⁵ the respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct took place not at the workplace but at an official mess where the woman officer was residing. It was also argued that the complainant was even senior to the respondent and therefore no ‘favour’ could be extracted by the respondent from the complainant and thus the alleged act would not constitute ‘sexual harassment’. The Delhi Court while considering this matter held this as ‘clearly misconceived’. The Delhi Court observed that *“the aim and objective of formulating the Vishaka Guidelines was obvious in order to ensure that sexual harassment of working women is prevented and any person guilty of such an act is dealt with sternly. Keeping in view the objective behind the judgment, a narrow and pedantic approach cannot be taken in defining the term ‘workplace’ by confining the meaning to the commonly understood expression “office”. It is imperative to take into consideration the recent trend which has emerged with the advent of computer and internet technology and advancement of information technology. A person can interact or do business conference with another person while sitting in some other country by way of video-conferencing. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at ‘workplace’ but at his ‘residence’ and get away with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the ‘workplace’:*

12. Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009

13. Section 2(f) of the Prevention of Workplace Sexual Harassment Act

14. Section 2(o) of the Prevention of Workplace Sexual Harassment Act

15. Decided on May 9, 2008 [Citation not available]

- Proximity from the place of work;
- Control of the management over such a place/residence where the working woman is residing; and
- Such a residence has to be an extension or contiguous part of the working place.

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under ‘workplace’.

V. Complaints Committee

An important feature of the POSH Act is that it envisages the setting up of a grievance redressal forum.

A. Internal Committee¹⁶

The POSH Act requires an employer to set up an ‘internal committee’ (“IC”) at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.¹⁷

B. Constitution of the IC

| | |
|--------------------------|---|
| Presiding Officer | Woman employed at a senior level at the workplace from amongst the employees. |
| Members | Not less than 2 members from amongst employees. Preferably committed to the cause of women or who have had experience in social work or have legal knowledge. |
| External member | From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment. ¹⁷ |

Not less than half of the IC Members shall be women

The term of the IC Members shall not exceed 3 years

A minimum of 3 Members of the IC including the Presiding Officer are to be present for conducting the inquiry.

16. As per Repealing and Amending Act, 2016, the nomenclature of Internal Complaints Committee was changed to Internal Committee.

17. Section 4 of the Prevention of Workplace Sexual Harassment Act

18. A person who has expertise on issues relating to sexual harassment and includes a social worker with at least 5 years of experience in the field of social work towards empowerment of women and in particular in addressing workplace sexual harassment; or someone who is familiar with labour, service, civil or criminal law (as per Rule 4 of the POSH Rules).

SOME PRACTICAL TIPS IC CONSTITUTION

- As far as possible, the IC should comprise of women members who have been trained on the POSH Act and POSH Rules and their roles and responsibilities;
- It is preferable to have an odd number of members in order for the IC to arrive at a decision based on majority in case of a divided opinion.
- The IC members should be selected based on evaluation of various factors including whether they are accessible, approachable, committed, sensitive and understanding.
- They should be sensitive to issues pertaining to gender-based violence and should have good credibility and technical competency to handle grievance procedures.
- The functioning of the IC should be made autonomous such that there is no scope of allegations of bias or favouritism.
- As far as possible, provide the IC separate space for conducting their meetings and maintaining records of cases of sexual harassment.
- Hold periodic discussions between the IC members and conduct regular trainings.

C. Local Committee¹⁹

At the district level, the Government is required to set up a 'local committee' ("LC") to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the IC has not been constituted on account of the

establishment having less than 10 employees or if the complaint is against the employer.²⁰ The LCC has special relevance in cases of sexual harassment of domestic workers or where the complaint is against the employer himself or a third party who is not an employee.

Constitution of the LCC

| | |
|--------------------|--|
| Chairperson | An eminent woman in the field of social work and committed to the cause of women. |
| Local Woman | One of the members to be nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district. |
| NGO members | Two members, out of which, atleast one shall be a woman to be nominated from a NGO or an association committed to the cause of women or a person familiar with issues pertaining to sexual harassment <ul style="list-style-type: none"> ■ Atleast one of the members should have a background in law. ■ Atleast one of the members should be a woman belonging to the Scheduled Castes or Scheduled Tribes. |

19. As per Repealing and Amending Act, 2016, the nomenclature of Local Complaints Committee was changed to Local Committee.

20. Section 5 of the Prevention of Workplace Sexual Harassment Act

D. Powers of the IC/LCC

The POSH Act stipulates that the IC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents; and
- iii. any other matter which may be prescribed.²¹

VI. Complaint mechanism

An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the

witnesses to the IC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. Prompt reporting of an act of sexual harassment is probably as important as swift action to be taken by the authorities on receiving a complaint. Infact the more prompt the complaint is, the more authentic can it be treated. In instances where sufficient cause is demonstrated by the complainant for the delay in filing the complaint, the IC/LCC may extend the timeline for filing the complaint, for reasons to be recorded in-writing. The law also makes provisions for friends, relatives, co-workers, psychologist & psychiatrists, etc. to file the complaint in situations where the aggrieved woman is unable to make the complaint on account of physical incapacity, mental incapacity or death.²² Given that the POSH Act and the POSH Rules do not prescribe any format in which the complaint needs to be filed, the following tips may be kept in mind:

A WELL DRAFTED COMPLAINT

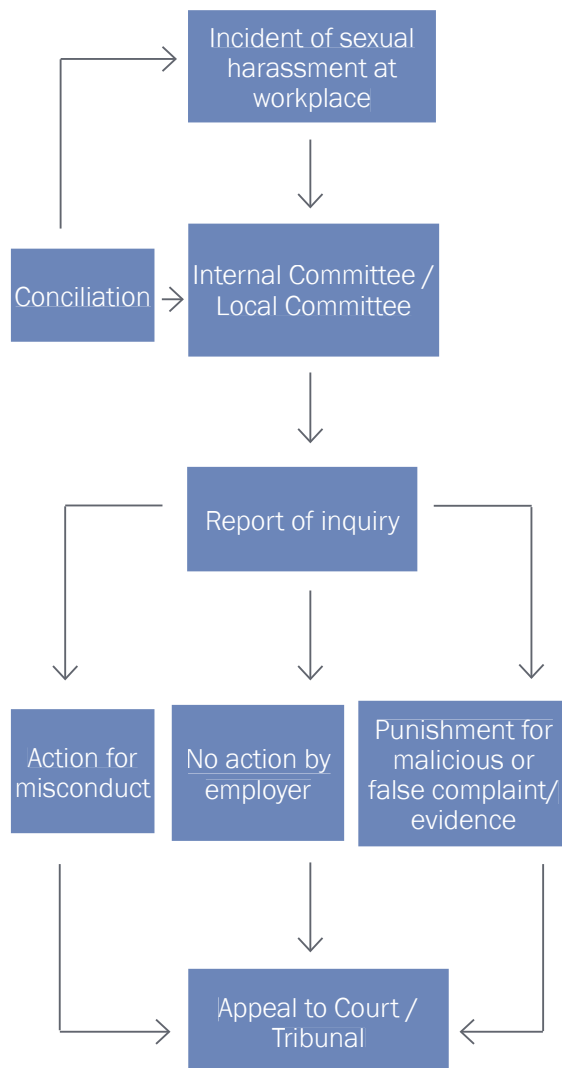
- The complaint should be addressed to the IC members and not the employer/HR representative.
- The complaint should be concise, i.e. it should be written in simple language which can be understood easily. Complaints that are well written and presented properly have greater credibility.
- Details of exact incident, date and time, witness etc. to be included.
- Circumstances preceding and following the incident to be recorded.
- Whether the complainant asked the respondent to desist from the unwelcome act(s).
- Append as many documents as possible in whatever format i.e. relevant e-mails, screenshots of SMS's/whatsapp messages, call details, photographs, recordings etc.
- Details of the respondent including name, designation, reporting structure between complainant and respondent if any (whether subordinate, colleague or superior).
- Do not state any fact that is false or incorrect.
- The relief that is sought from the employer.

21. Section 11(3) of the Prevention of Workplace Sexual Harassment Act

22. Section 6 of the Prevention of Workplace Sexual Harassment Act

VII. Conciliation

Before initiating action on a complaint, the IC on the request of the aggrieved woman, can make efforts to settle the matter between the parties through conciliation by bringing about an amicable settlement. Conciliation is basically an informal method of resolving complaints before the complaint escalates into a fully blown formal inquiry. Thus, after a complaint of sexual harassment has been lodged, the aggrieved woman may request the IC to resolve the matter by conciliating between the parties before commencement of the inquiry proceedings, although monetary settlement should not be made as a basis of conciliation.²³



Once the settlement has been arrived at, the IC or the LCC (as the case maybe) shall record the settlement arrived at and thereafter provide copies of the settlement to the aggrieved woman as well as the respondent. Once a settlement has been arrived at, the IC shall proceed with an inquiry under the POSH Act.

VIII. Redressal process/ Inquiry

Please refer to the flowchart below which provides an overview of the process to be followed by the aggrieved employee to make the complaint and by the IC/LCC to inquire into the complaint.

Timelines

Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident. Timeline extendable by another 3 months.

Upon receipt of the complaint, 1 copy of the complaint is to be sent to the respondent within 7 days.

Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.

The Inquiry has to be completed within a total of 90 days from the receipt of the complaint.

The Inquiry report has to be issued within 10 days from the date of completion of inquiry.

The employer is required to act on the recommendations of the IC/LCC within 60 days of receipt of the Inquiry report.

Appeal against the decision of the committee is allowed within 90 days from the date of recommendations.

23. Section 10 of the Prevention of Workplace Sexual Harassment Act

IX. Interim Reliefs

At the request of the complainant, the IC or the LCC (as the case maybe) may recommend to the employer to provide interim measures such as:

- i. transfer of the aggrieved woman or the respondent to any other workplace;
- ii. granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement;
- iii. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

X. Punishment and compensation

The POSH Act prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;
- ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and
- iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent.²⁴

The POSH Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator; and
- v. feasibility of such payment in lump sum or in installments.²⁵

In the event that the respondent fails to pay the aforesaid sum, IC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

XI. Frivolous complaints

In order to ensure that the protections envisaged under the POSH Act are not misused, provisions for action against “false or malicious” complainants have been included in the statute. As per the POSH Act, if the IC/ LCC concludes that the allegation made by the complainant is false or malicious or the complaint has been made knowing it to be untrue or forged or misleading information has been provided during the inquiry, disciplinary action in accordance with the service rules of the organisation can be taken against such complainant.

Where the organisation does not have service rules, the statute provides that disciplinary action such as written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying

24. Section 13 of the Prevention of Workplace Sexual Harassment Act

25. Section 15 of the Prevention of Workplace Sexual Harassment Act

out community service may be taken. The POSH Act further clarifies that the mere inability to substantiate a complaint or provide adequate proof need not mean that the complaint is false or malicious.²⁶

XII. Confidentiality

Recognising the sensitivity attached to matters pertaining to sexual harassment, the POSH Act attaches significant importance to ensuring that the complaint and connected information are kept confidential. The POSH Act specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005.

The POSH Act further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent, witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the IC/LCC and the action taken to the public, press and media in any manner. That said, the POSH Act allows dissemination of information pertaining to the justice that has been secured to any victim of sexual harassment, without disclosing the name, address, identity or any other particulars which could result in the identification of the complainant or the witnesses.²⁷ Disclosure of the justice secured could not only deter

other individuals from engaging in acts of sexual harassment, but also instil in the minds of employees and public that the employer is serious about providing a safe work environment and harbours zero tolerance for any form of sexual harassment at the workplace.²⁸

Breach of the obligation to maintain confidentiality by a person entrusted with the duty to handle or deal with the complaint or conduct the inquiry, or make recommendations or take actions under the statute, is punishable in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, a fine of INR 5,000.²⁹

XIII. Consequences of non-compliance

If an employer fails to constitute an IC or does not comply with the requirements prescribed under the POSH Act, a monetary penalty of up to INR 50,000 (approx. US\$ 900) may be imposed. A repetition of the same offence could result in the punishment being doubled and/or de-registration of the entity or revocation of any statutory business licenses. *It is however unclear as to which business licenses are being referred to in this case.*³⁰ It is also pertinent to note that all offences under POSH Act are non-cognizable.³¹

26. Section 14 of the Prevention of Workplace Sexual Harassment Act

27. Section 16 of the Prevention of Workplace Sexual Harassment Act

28. Shivangi Prasad and Attreyi Mukherjee, Handbook on the law of Sexual Harassment at Workplace 179 (2015)

29. Section 17 of the Prevention of Workplace Sexual Harassment Act and Rule 12 of the Prevention of Sexual Harassment Rules

30. Section 26 of the Prevention of Workplace Sexual Harassment Act

31. Section 27 of the Prevention of Workplace Sexual Harassment Act

4. Employer's Duties and Obligations

“Prevention is better than Cure”

In addition to requiring an employer to set up an IC and ensure redressal of grievances of workplace harassment in a time bound manner, the POSH Act casts certain other obligations upon an employer which includes:

- a. Promoting a gender sensitive workplace and removing the underlying factors that contribute towards creating a hostile working environment against women;
- b. provide a safe working environment;
- c. formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace;
- d. display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the IC;
- e. declare the names and contact details of all members of the IC;
- f. organize workshops and awareness programmes at regular intervals for sensitizing employees on the issues and implications of workplace sexual harassment and organizing orientation programmes for members of the IC;
- g. provide necessary facilities to the IC for dealing with the complaint and conducting an inquiry;
- h. cause to initiate action, under the Indian Penal Code, 1860 (“**IPC**”) or any other law in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. provide assistance to the aggrieved woman if she so chooses to file a complaint in relation to the offence under the IPC or any other law for the time being in force;
- j. treat sexual harassment as a misconduct under the service rules and initiate action for misconduct;
- k. prepare an annual report with details on the number of cases filed and their disposal and submit the same to the District Officer;
- l. monitor the timely submission of reports by the IC.

■ **The Anti-Sexual Harassment Policy – Some tips to follow**

- Clearly define 'sexual harassment' and outline the scope and applicability (gender neutral or not);
 - Mention how the employer practices zero-tolerance towards sexual harassment at workplace;
 - Extended concept of workplace;
 - Complaint mechanism;
 - Regularly distribute and promote the policy at all levels of the organization;
 - Ensure that the policy is easily accessible;
 - Provide a copy of the policy to new joiners as part of their induction;
 - Review the policy periodically & update information regarding IC members etc. on a timely basis.
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5. Examples of Conduct Amounting to Sexual Harassment

Whether an act or conduct would amount to 'sexual harassment' is dependent on the specifics of the act and the circumstances. The following is an indicative list of conduct that could be considered as sexual harassment:

1. Unwanted sexual advances or propositions;
2. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
3. Offering employment benefits in exchange for sexual favours;
4. Leering;
5. Making sexual gestures;
6. Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;
7. Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;
8. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
9. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
10. Being forcibly kissed or hugged;
11. Having someone expose their private parts to you or repeatedly staring at a woman's body parts that makes her uncomfortable;
12. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;
13. Eve-teasing;
14. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
15. Subtle innuendoes or open taunting regarding perfection, imperfection or characteristics of physical appearance of a person's body or shape;
16. Gender based insults and/or sexist remarks;
17. Displaying pornographic or other sexually offensive or derogatory material;
18. Forcible invitations for dates;
19. Forcible physical touch or physical assault or molestation;
20. Suggesting or implying that failure to accept a request for a date or sexual favours would adversely affect the individual in respect to performance evaluation or promotion;
21. Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work;
22. Any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex, only on the ground of such individual providing or refusing sexual favours;
23. Physical confinement against one's will and any other act likely to violate one's privacy.

6. Other Laws Pertaining to Workplace Sexual Harassment

I. Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (“**Standing Orders Act**”) is a central enactment which, *inter alia*, requires an employer to define and publish uniform conditions of employment in the form of standing orders. As per the statute, the standing orders should contain terms of employment including, hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays and termination or suspension/dismissal of employees.

At the first instance, the Standing Orders Act is applicable to ‘industrial establishments employing a minimum of 100 workmen.’³² The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable.

The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (“**Standing Orders Rules**”) prescribe a list of acts constituting ‘misconduct’ and specifically includes sexual harassment. The Model Standing Orders not only defines ‘sexual harassment’ in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that ‘sexual harassment’ is not limited to women under the Standing Orders Rules.

II. Indian Penal Code, 1860

Conduct that may be construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC. Listed out below are the key offenses under the IPC that could be triggered in a case of sexual harassment.

| Section # | Offence | Punishment | Cognizable/ Non-Cognizable |
|------------|---|--|----------------------------|
| 354 | Outraging the modesty of a woman Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged. | Simple/Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine | Cognizable |

32. Certain State Governments, such as the Governments of Maharashtra and Karnataka, have enhanced the scope of the statute and made it applicable to establishments employing 50 or more employees. Further, in Maharashtra, the Bombay Shops and Establishments Act, 1948 specifically extends the applicability of the Standing Orders Act to all shops and commercial establishments.

| | | | |
|---------------------|---|---|-------------------|
| <p>354-A</p> | <p>Sexual harassment by a man</p> <p>i. Physical contact and advances involving unwelcome and explicit sexual overtures;</p> <p>ii. Demand or request for sexual favours;</p> <p>iii. Showing pornography against the will of a woman; or</p> <p>iv. making sexually coloured remarks.</p> | <p>Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.</p> <p>Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.</p> | <p>Cognizable</p> |
| <p>354-B</p> | <p>Assault or use of criminal force to woman with intent to disrobe</p> <p>Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.</p> | <p>Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and fine.</p> | <p>Cognizable</p> |
| <p>354-C</p> | <p>Voyeurism</p> <p>Watching, or capturing the image of a woman engaging in a private act 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.</p> | <p>First conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine.</p> <p>Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.</p> | <p>Cognizable</p> |
| <p>354-D</p> | <p>Stalking</p> <p>Following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or</p> <p>Monitoring the use by a woman of the internet, email or any other form of electronic communication.</p> | <p>First conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine;</p> <p>Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which may extend to five years and fine.</p> | <p>Cognizable</p> |
| <p>509</p> | <p>Insulting the modesty of a woman</p> <p>Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.</p> | <p>Simple imprisonment for a term which may extend to three years, and fine.</p> | <p>Cognizable</p> |

7. Frequently Asked Questions

1. Can both men and women be victims of workplace sexual harassment?

Yes, both men and women can be victims of sexual harassment. However, the safeguards/protection under the POSH Act is available only to women.

2. Can verbal conduct amount to sexual harassment?

Verbal harassment that is sexually coloured can constitute sexual harassment. Words can be just as offensive as physical acts and contact. Sexually coloured jokes, comments and stories can be sexually harassing and can create a hostile work environment.

3. Is the employer responsible if an employee is sexually harassed at a company-sponsored event (a) during working hours and (b) outside of working hours?

The POSH Act introduces the concept of 'extended workplace' covering under its ambit 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. Hence, any form of sexual harassment at a company-sponsored event whether within or outside of the normal working hours would also fall under the scope of the POSH Act.

4. When is an establishment required to constitute an IC?

Every establishment having 10 or more employees is required to constitute an IC.

5. Is an IC required to be constituted at every branch/office?

Yes, an IC is required to be set up at every branch/office of the company wherein at least 10 employees are employed.

6. Can the complaint be filed with and inquired by the HR manager of the company?

No, the complaint needs to be filed with and inquired into by the IC.

7. Is there a time limit for filing a complaint of sexual harassment?

A complaint of sexual harassment needs to be filed within 3 months of the date of incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. However, the IC or the LCC, as the case may be, may extend the time limit, however, not exceeding 3 months, for reasons to be recorded in writing if it is satisfied that the circumstances were such that the victim was unable to file a complaint within the said period.

8. Can a complaint of sexual harassment be conciliated/mediated between the parties?

Yes (at the request of the aggrieved woman), but no monetary settlement shall be allowed.

Annexure I

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) ACT, 2013 [Act No. 14 of 2013]

Preamble

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

Whereas, sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

And whereas, the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

And whereas, it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India, as follows.

Chapter I

Preliminary

1. Short title, extent and commencement –

- a. This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- b. It extends to the whole of India.
- c. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions- In this Act, unless the context otherwise requires.

- a. **“Aggrieved woman”** means-
 - i. in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
 - ii. in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;
- b. **“Appropriate Government”** means.
 - i. in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly.
 - by the Central Government or the Union Territory administration, the Central Government;

- by the State Government, the State Government;
 - ii. in relation to any workplace not covered under subclause (i) and falling within its territory, the State Government;
 - c. **“Chairperson”** means the Chairperson of the Local Committee nominated under subsection (1) of section 7;
 - d. **“District Officer”** means an officer notified under section 5;
 - e. **“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, but does not include any member of the family of the employer;
 - f. **“Employee”** means 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, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;
 - g. **“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. in any workplace not covered under sub clause (i), any person responsible for the management, supervision and control of the workplace.
- Explanation.**– For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organization;
- iii. in relation to workplace covered under subclauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
 - 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;
 - h. **“Internal Committee”** means an Internal Committee constituted under section 4;
 - i. **“Local Committee”** means the Local Committee constituted under section 6;
 - j. **“Member”** means a Member of the internal Committee or the Local Committee, as the case may be;
 - k. **“Prescribed”** means prescribed by rules made under this Act;
 - l. **“Presiding Officer”** means the Presiding Officer of the Internal Committee nominated under sub-section (2) of section 4;
 - m. **“Respondent”** means a person against whom the aggrieved woman has made a complaint under section 9;
 - n. **“Sexual harassment”** includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely–
 - i. physical contact and advances; or

- ii. a demand or request for sexual favours; or
 - iii. making sexually coloured remarks; or
 - iv. showing pornography; or
 - v. any other unwelcome physical, verbal or nonverbal conduct of sexual nature:
- o. **“Workplace”** includes.–
- i. any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a cooperative society;
 - ii. any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
 - iii. hospitals or nursing homes;
 - iv. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
 - 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 a house;
- p. **“Unorganized sector”** in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.
- 3. Prevention of sexual harassment.–**
- a. No woman shall be subjected to sexual harassment at any workplace.
 - b. The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment.–
 - i. implied or explicit promise of preferential treatment 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.

Chapter II

Constitution of Internal Committee

4. Constitution of Internal Committee.—

- a. Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

- b. The Internal Committee shall consist of the following members to be nominated by the employer, namely:

- i. a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in subsection (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

- ii. not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

- iii. one member from amongst non-Governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.

- c. The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

- d. The Member appointed from amongst the non-Governmental organizations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

- e. Where the Presiding Officer or any Member of the internal Committee.

- i. contravenes the provisions of Section 16; or

- ii. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

- iii. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

- iv. has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

Chapter III

Constitution of Local Committee

5. **Notification of District Officer.**—The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

6. **Constitution and jurisdiction of Local Committee.**—

- a. Every District Officer shall constitute in the district concerned, a committee to be known as the “Local Committee” to receive of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.
- b. The District Officer shall designate one nodal officer in every block, taluk and tehsil in rural or tribal area and ward or municipality in the urban area, to receive and forward the same to the concerned Local Committee within a period of seven days.
- c. The jurisdiction of the Local Committee shall extend to the areas of the district where it is constituted.

7. **Composition, tenure and other terms and conditions of Local Committee.**—

- a. The Local Committee shall consist of the following members to be nominated by the District Officer, namely.

- i. Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- ii. one Member to be nominated from amongst the women working in block, taluk or tehsil or ward or municipality in the district;
- iii. two Members, of whom at least one shall be a woman, to be nominated from amongst such nongovernmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

- iv. the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.
- b. The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.
- c. Where the Chairperson or any Member of the Local Committee.

- i. contravenes the provisions of Section 16; or
 - ii. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - iii. has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - iv. has so abused his position as to render his continuance in office prejudicial to the public interest, such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.
- d. The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of subsection (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

8. Grants and audit.-

- a. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilized for the payment of fees or allowances referred to in subsection (4) of Section 7.
- b. The State Government may set up an agency and transfer the grants made under sub section (1) to that agency.
- c. The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in subsection (4) of Section 7.
- d. The accounts of the agency referred to in subsection (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

Chapter IV

Complaint

9. Complaint of sexual harassment.-

- a. Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in-writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

- b. Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

10. Conciliation.-

- a. The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

- b. Where a settlement has been arrived at under subsection (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
- c. The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under subsection (2) to the aggrieved woman and the respondent.
- d. Where a settlement is arrived at under subsection (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. Inquiry into complaint.-

- a. Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code, 1860 (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of Section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee

shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

- b. Notwithstanding anything contained in Section 509 of the Indian Penal Code, 1860 (45 of 1860), the Court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent having regard to the provisions of Section 15.
- c. For the purpose of making an inquiry under subsection (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely.-
 - i. summoning and enforcing the attendance of any person and examining him on oath;
 - ii. requiring the discovery and production of documents; and
 - iii. any other matter which may be prescribed.
- d. The inquiry under subsection (1) shall be completed within a period of ninety days.

Chapter V

Inquiry into complaint

12. Action during pendency of inquiry.-

- a. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to.
 - i. transfer the aggrieved woman or the respondent to any other workplace; or
 - ii. grant leave to the aggrieved woman up to a period of three months; or
 - iii. grant such other relief to the aggrieved woman as may be prescribed.
- b. The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
- c. On the recommendation of the Internal Committee or the Local Committee, as the case may be, under subsection (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

13. Inquiry report.-

- a. On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

- b. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
- c. Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be.
 - i. to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
 - ii. to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

- d. The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

14. Punishment for false or malicious complaint and false evidence.

- a. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under subsection (1) or subsection (2) of Section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

- b. Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions

- of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.
15. **Determination of compensation.**-For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of subsection (3) of Section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to.
- a. the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
 - b. the loss in the career opportunity due to the incident of sexual harassment;
 - c. medical expenses incurred by the victim for physical or psychiatric treatment;
 - d. the income and financial status of the respondent;
 - e. feasibility of such payment in lump sum or in instalments.
16. **Prohibition of publication or making known contents of complaint and inquiry proceedings.**- Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under Section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:
- Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.
17. **Penalty for publication or making known contents of complaint and inquiry proceedings.**-Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of Section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.
18. **Appeal.**
- a. Any person aggrieved from the recommendations made under subsection (2) of Section 13 or under clause (i) or clause (ii) of subsection (3) of Section 13 or subsection (1) or subsection (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the Court or Tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.
 - b. The appeal under subsection (1) shall be preferred within a period of ninety days of the recommendations.

Chapter VI

Duties of employers

19. Duties of employer.- Every employer shall.-

- a. provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- b. display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (1) of Section 4;
- c. organize workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- d. provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- f. make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under subsection (1) of Section 9;

- g. provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code(45 of 1860) or any other law for the time being in force;
- h. cause to initiate action, under the Indian Penal Code,1860 (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

Chapter VII

Duties and powers of District Officer

20. Duties and powers of District Officer.- The District Officer shall.-

- a. monitor the timely submission of reports furnished by the Local Committee;
- b. take such measures as may be necessary for engaging nonGovernmental organizations for creation of awareness on sexual harassment and the rights of the women.

Chapter VIII

Miscellaneous

- 21. Committee to submit annual report.**
- a. The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.
 - b. The District Officer shall forward a brief report on the annual reports received under sub section (1) to the State Government.
- 22. Employer to include information in annual report.**- The employer shall include in its report the number of cases filed, if any and their disposal under this Act in the annual report of his organization or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.
- 23. Appropriate Government to monitor implementation and maintain data.**- The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.
- 24. Appropriate Government to take measures to publicize the Act.**- The appropriate Government may, subject to the availability of financial and other resources.-
- a. develop relevant information, education, communication and training materials, and organize awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace.
 - b. formulate orientation and training programmes for the members of the Local Committee.
- 25. Power to call for information and inspection of records.**
- a. The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing.-
 - i. call upon any employer or District Officer to furnish in-writing such information relating to sexual harassment as it may require;
 - ii. authorize any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.
 - b. Every employer and District Officer shall produce on demand, before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.
- 26. Penalty for noncompliance with provisions of Act.**
- a. Where the employer fails to.
 - i. constitute an Internal Committee under subsection (1) of Section 4;
 - ii. take action under Sections 13, 14 and 22; and
 - iii. contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.
 - b. If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to

- i. twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

- ii. cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

27. Cognizance of offence by courts.

- a. No Court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorized by the Internal Committee or Local Committee in this behalf.
- b. No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- c. Every offence under this Act shall be noncognizable.

28. Act not in derogation of any other law.-

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

29. Power of appropriate Government to make rules.

- a. The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

- b. In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely.-
 - i. the fees or allowances to be paid to the Members under sub-section (4) of Section 4;
 - ii. nomination of members under clause (c) of sub-section (1) of Section 7;
 - iii. the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of Section 7;
 - iv. the person who may make complaint under sub-section (2) of Section 9;
 - v. the manner of inquiry under sub-section (1) of Section 11;
 - vi. the powers for making an inquiry under clause (c) of sub-section (2) of Section 11;
 - vii. the relief to be recommended under clause (c) of sub-section (1) of Section 12;
 - viii. the manner of action to be taken under clause (i) of sub-section (3) of Section 13;
 - ix. the manner of action to be taken under sub-sections (1) and (2) of Section 14;
 - x. the manner of action to be taken under Section 17;
 - xi. the manner of appeal under sub-section (1) of section 18;
 - xii. the manner of organizing workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of Section 19; and

- xiii. the form and time for preparation of annual report by Internal Committee and the Local Committee under subsection (1) of Section 21.
 - c. Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
 - d. Any rule made under subsection (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.
30. **Power to remove difficulties.**
- a. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.
 - b. Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Annexure II

Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013

Preamble

In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement.**
 - a. These rules may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
 - b. They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions-** In these rules, unless the context otherwise requires.-
 - a. **“Act”** means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);
 - b. **“Complaint”** means the complaint made under Section 9;
 - c. **“Complaints Committee”** means the Internal Committee or the Local Committee, as the case may be;
 - d. **“Incident”** means an incident of sexual harassment as defined in clause (n) of Section 2;
 - e. **“Section”** means a section of the Act;
 - f. **“Special educator”** means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;
 - g. Words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.
3. **Fees or allowances for Member of Internal Committee.**
 - a. The Member appointed from amongst non-Government organizations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.
 - b. The employer shall be responsible for the payment of allowances referred to in sub-rule (1).
4. **Person familiar with issues relating to sexual harassment.**—Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of Section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following.-
 - a. a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;
 - b. a person who is familiar with labour, service, civil or criminal law.

5. **Fees or allowances for Chairperson and Members of Local Committee.**
 - a. The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.
 - b. The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of Section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air-condition or air-conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.
 - c. The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).
6. **Complaint of sexual harassment.-**
For the purpose of sub-section (2) of Section 9.-
 - a. where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by
 - i. her relative or friend; or
 - ii. her co-worker; or
 - iii. an officer of the National Commission for Women or State Women's Commission; or
 - iv. any person who has knowledge of the incident, with the written consent of the aggrieved woman;
 - b. where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by.-
 - i. her relative or friend; or
 - ii. a special educator; or
 - iii. a qualified psychiatrist or psychologist; or
 - iv. the guardian or authority under whose care she is receiving treatment or care; or
 - v. any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
 - c. where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;
 - d. where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.
7. **Manner of inquiry into complaint.-**
 - a. Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.
 - b. On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (a) to the respondent within a period of seven working days.
 - c. The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

- d. The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.
 - e. The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:
 - f. Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.
 - g. The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
 - h. In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.
8. **Other relief to complainant during pendency of inquiry-** The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to-
- a. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;
 - b. restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.
9. **Manner of taking action for sexual harassment.**—Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.
10. **Action for false or malicious complaint or false evidence.**—Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of Rule 9.
11. **Appeal.**— Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).
12. **Penalty for contravention of provisions of Section 16.**—Subject to the provisions of Section 17, if any person contravenes the provisions of Section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.
13. **Manner to organize workshops, etc.**— Subject to the provisions of Section 19, every employer shall.

- a. formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;
 - b. carry out orientation programmes and seminars for the Members of the Internal Committee;
 - c. carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;
 - d. conduct capacity building and skill building programmes for the Members of the Internal Committee;
 - e. declare the names and contact details of all the Members of the Internal Committee;
 - f. use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.
14. **Preparation of annual report.**—
The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details:-
- a. number of complaints of sexual harassment received in the year;
 - b. number of complaints disposed off during the year;
 - c. number of cases pending for more than ninety days;
 - d. number of workshops or awareness programme against sexual harassment carried out;
 - e. nature of action taken by the employer or District Officer.

Annexure III

Hotline: Court decides not to interfere with decision of Internal Complaints Committee set up by employer

- Court does not interfere with the order of punishment by Disciplinary Authority unless it is shockingly disproportionate to the act of misconduct.
- Court does not re-appreciate evidence once the Committee has conducted a domestic enquiry.
- Employer to have proper mechanism for prevention and redressal of sexual harassment complaints and to create greater awareness regarding gender sensitization at workplaces.

The Bombay High Court (“**Court**”) ruled that it would not interfere with an order of punishment passed by the Internal Complaints Committee (“**ICC**”) in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.

The Court passed this judgment in the case of *Vidya Akhawe* (“**Petitioner**”) v. *Union of India and Ors*³³ in relation to the new Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 of India (“**Sexual Harassment Act**”).

The Court observed that the employer must sufficiently comply with the duties cast upon it under the Sexual Harassment Act. The Court also stated that (a) an employer must provide for an effective mechanism for prevention of sexual harassment of women at workplace; (b) male employees must be sensitized towards the concerns of female employees and (c) the ICC must deal with complaints of sexual harassment in an expedited manner.

33. Writ Petition 796 of 2015

I. Facts

The employee (petitioner) was employed with an Indian government owned development bank. She had filed a complaint of sexual harassment against the General Manager, who was her immediate superior officer (“**Supervisor**”). However, no action was taken by the employer. Thereafter, the employee filed another complaint seeking establishment of an ICC as was necessary to be set up, as per the law laid down by the Supreme Court of India in the case of *Vishakha v. State of Rajasthan*.³⁴

As for the incidents that took place before February/March 2012, the limitation period of three months prescribed under the Sexual Harassment Act had expired and thus, were not taken into account by the ICC. However, the Human Resource department could take separate action based on those instances, which would be beyond the scope of the Sexual Harassment Act. Based on the ICC’s report, the Disciplinary Authority passed an order, by which the Supervisor was (a) demoted to a lower rank by two ranks; (b) transferred to another city and (c) received a pay cut as per his lower rank (“**Order**”).

II. Contentions

The employee however challenged the validity of the Order before the Court under Article 226 of the Constitution of India (“**Constitution**”). The employee contended that a higher punishment should be imposed on the Supervisor. Also, the employee challenged the validity of the observations of the ICC as it had not adequately taken on record all evidences. Also, the Supervisor had not been

34. AIR 1996 SC 1

declared guilty under the Sexual Harassment Act and a mere condemnatory statement was made by the Disciplinary Authority against the Supervisor. As for expiration of the period of limitation, the employee argued that because the Supervisor was her immediate superior, she was under reasonable apprehension to file a complaint as it would endanger her career.

The Supervisor argued that the penalty imposed was harsh enough as a result of which the Supervisor had suffered psychologically and financially. It was contended that the Supervisor had to stay apart from his family, as he had to shift to another city. It was further contended that it was not open to the Court to re-appreciate the evidence once the Disciplinary Committee had considered it and ruled over it. Lastly, it was contended that the Court cannot look into the proportionality of the Order passed by a Disciplinary Committee.

III. Judgment

The Court referred to its decision in *Om Kumar v Union of India*³⁵ and reaffirmed the principles of judicial restraint to be exercised by courts under Article 226 of the Constitution. The Court held that unless the Order is shockingly disproportionate to the act of the delinquent employee, it will be circumspect in interfering with the Order. Reiterating the decision of *Om Kumar*, the Court held that interference is warranted only when there is non-compliance of the principles of administrative law, Wednesbury Principles and doctrine of proportionality by the Disciplinary Authority.

As for compliance with the Wednesbury Principles, interference was held to be not permissible unless any of the following conditions were satisfied: (a) the Order was contrary to law, (b) relevant factors were not considered, (c) irrelevant factors were considered and (d) no reasonable person would have taken such a decision.

Under the principle of proportionality,

the Court stated that it would have to be seen whether the legislature and administrative authority maintained a proper balance between the adverse effects which the legislation or order may have on the rights, liberties or interests of persons, keeping in mind the purpose which they were intended to serve. The Court also observed that the inquiry by the Disciplinary Authority was conducted dispassionately and all evidences were appropriately considered and ruled upon in a fair and proper manner. Therefore, the Court was not entitled to give a second opinion merely because it had the discretion to do so.

However, the Court felt that there was a need to have an effective mechanism in place at workplaces for addressing issues of sexual harassment of women. The Court also observed that male employees must be made aware of concerns of female employees by undertaking an exercise of gender sensitization as more and more women were becoming part of the national workforce and contributing to the national economy. The Court also remarked as to how many companies, corporations and government undertakings have not complied with the Sexual Harassment Act and do not have an adequate mechanism to deal with issues of sexual harassment.

IV. Analysis

This judgment reaffirms the importance and powers of the ICC that is required to be formed under the Sexual Harassment Act. Given the sensitivities surrounding sexual harassment allegations, it is important that the ICC is trained to deal with such cases in a fair, proper and dispassionate manner and based on the principles of natural justice. It is also necessary for the ICC to ensure that it completes the investigation and issues its order within the time frame set under the law.

35. (2001) 2 SCC 386

The judgment also clarifies the already enshrined principles of judicial restraint by the courts. The interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of

natural justice. Once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.

Annexure IV

Sexual Harassment Committee - Time for a Change!

This article was first published on SHRM (India) website on February 9, 2017.

India's new sexual harassment law is now more than three years old. And that should serve as a reminder to start the process to change the members of your Internal Complaints Committee (ICC).

India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Sexual Harassment Act) was notified in December 2013. The law has been a catalyst in creating greater awareness of the issue of sexual harassment at the workplace. It has also given huge confidence to female employees to report any adverse incidents. Progressive employers on their part have gone to great lengths to implement the law, not just in form but also in spirit.

The Sexual Harassment Act requires the employer to constitute an ICC at every office location having a minimum of 10 employees. The law prescribes the details on how the members of the ICC need to be nominated by the employer based on their seniority, experience and familiarity with issues relating to sexual harassment.

The law allows the Presiding Officer and other members of the ICC to hold office for up to 3 years. Assuming most employers set up their ICC in or after December 2013, as per the Sexual Harassment Act, its time they initiate the process of replacing the members of their ICC.

Accordingly, in the next couple of months, employers should identify and start training the new members. The training should be in terms of the provisions of law, requirements of the employer's anti-harassment policy and charter,

investigation process and timelines, manner of collecting and documenting evidence, ways of examining the parties (including witnesses), drafting the report and its conclusion, types of penalties that may be levied, etc. Employers should also focus on helping their new members develop soft skills in terms of dealing with the complainant and the respondent. To the extent the existing ICC has undergone a training programme, a similar initiative should also be extended to the new members. Subject to complying with confidentiality obligations, the employer may also request the existing ICC to include the new members as 'observers' in some of the ongoing matters being investigated by the ICC, as part of their training.

But this change is unlikely to be an easy process. While some employers and their ICCs are still getting familiar with the requirements of the Sexual Harassment Act, its already time to change the members. In a way, the process followed by employers in December 2013 will need to be repeated.

Some of the questions that are likely to arise while implementing the change are:

1. Does the employer need to change the entire ICC at one go or gradually, especially to retain continuity?
2. Can the employer extend the term of an existing member of the ICC to another 3 years?
3. What happens if the employer is unable to identify an appropriate Presiding Officer of the ICC, given the importance of such a role?
4. Does the employer also need to change the external member on the ICC who may be appointed from a non-governmental organisation or association committed to the cause of women?

5. What happens to complaints that are being investigated by the existing ICC and likely to continue for some more time?
6. What if another complaint is received in relation to a matter that has been previously investigated and closed by the existing ICC?
7. Can there be two ICCs constituted in parallel - the current ICC to complete investigations relating to existing complaints while the other for any new complaints?
8. How will the new ICC prepare the annual report if they are not familiar with the previous complaints?

All answers may not be easily available at this stage. There may also be a need to consider some of these questions on a case-by-case basis given the sensitivities involved. At the end of the day, while taking any decision, employers must ensure that the intent and principles of the Sexual Harassment Act are adhered to and the interest of women remains secured at all times. Incidentally, the guidelines issued by the Supreme Court of India in 1997 in the case of *Vishaka v. State of Rajasthan* did not prescribe such a three year period and hence these questions did not arise previously.

The Bombay High Court has recently³⁶ ruled that it would not interfere with an order of punishment passed by the ICC in relation to a sexual harassment complaint, unless the order is shockingly disproportionate.³⁷ This judgment reaffirms the importance and powers of the ICC that is required to be formed under the Sexual Harassment Act. Given the sensitivities surrounding sexual harassment allegations, it is important that the ICC is trained to deal with such cases in a fair, proper and dispassionate manner and based on the principles of natural justice. It is also necessary for the ICC to ensure that it completes the investigation and issues its order within the time frame set under the law.

This judgment also clarifies the already enshrined principles of judicial restraint by the courts. The interference of the courts should be limited to ensuring that there are no procedural irregularities or violations of principles of natural justice. Once the ICC has adequately and appropriately addressed a complaint of sexual harassment, it is not open to the courts to look into the merits of the matter.

This time though, employers are not alone - the government, on its part, faces similar issues and questions as mentioned above. Members of the Local Complaints Committee set up by the District Officers in each district, are also subjected to the same timeline of 3 years.

36. *Vidya Akhave v. Union of India and Ors.* (Writ Petition 796 of 2015)

37. For more information, please refer to our legal alert: <http://www.nishithdesai.com/information/news-storage/news-details/article/workplace-sexual-harassment-complaint.html>

Annexure V

Bombay Chartered Accountants' Society

India's Law on Prevention of Sexual Harassment at Workplace



India's Law on Prevention of Sexual Harassment at Workplace

About the book

A stitch in time saves nine. And especially if it is in relation to measures for prevention of sexual harassment at the workplace.

Studies reveal that almost 3 out of every 5 (working) women have faced some form of sexual harassment in their lives! Isn't that alarming? Although the law preventing sexual harassment at workplace has been in force for over 3 years, there still remains a lack of clarity on the objective of the statute, Acts that constitute sexual harassment, obligations of the employer, remedies available to the victims, process for investigation, etc. Many are also not fully aware of the criminal consequences of sexual harassment.

Any tool would be useless if the person operating is unaware of the manner in which it to be used. The objective of this publication is to serve as a ready reckoner to the stakeholders. We have also attempted to provide an insight into the relevant provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and other relevant laws in India dealing with this topic.

The publication provides a general background on what constitutes sexual harassment and when and where to draw the line. It should enable female employees to understand their rights and the remedies available to them if faced with an act of sexual harassment. We have also outlined the employer's obligations and the steps to be adopted by the employer in redressing grievances pertaining to sexual harassment.

We hope you find this publication relevant and informative.

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Annexure VI

Sexual Harassment at Workplace: Indian Government Introduces Platform for Female Employees to File Complaints

- The Ministry of Women and Child Development has launched “**SHe-Box**”, an online platform for reporting complaints of sexual harassment arising at the workplace.
- The SHe-Box facility can be used by both government and private sector employees.
- Complaints received on SHe-Box shall be directed by the government to the employer's ICC or LCC.
- Progress of the investigation can be monitored by both the complainant and the Ministry of Women and Child Development.

WCD will direct such complaint to the employer's Internal Complaints Committee (“**ICC**”) or the Local Complaints Committee set up by the government at each district (“**LCC**”), as the case may be. The WCD also proposes to actively monitor the progress of inquiry conducted by the ICC / LCC and keep the complainant updated.⁴¹ SHe-Box also proposes to work as a repository providing information related to dealing with workplace sexual harassment complaints. The users are free to access the resources available on SHe-Box for creating awareness.⁴² The WCD promises to ensure that the identity of the aggrieved women / complainant is kept confidential.⁴³

I. What's She-Box?

The Indian Ministry of Women and Child Development (“**WCD**”) had launched an online complaint platform named “**SHe-Box**”, which stands for “Sexual Harassment Electronic Box”.³⁸ SHe-Box has been introduced to allow female employees or visitors a platform to raise complaints of sexual harassment at the workplace.³⁹ This facility has also been extended to private sector employees.⁴⁰

‘SHe-box’, which can be accessed at www.shebox.nic.in, seeks to ensure effective implementation of India's Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**Anti-Harassment Law**”). It aims at providing speedy redressal of sexual harassment complaints. In the event that a formal complaint is lodged with SHe-Box, based on an assessment of the complaint, the

II. Grievance Redressal Under The Anti-Harassment Law

Please refer to our research paper titled ‘**India's law on Prevention of Sexual Harassment at Workplace**’ for information on India's Anti-Harassment Law. A brief snapshot is as follows:

- The Anti-Harassment Law was enacted in December 2013, almost 16 years after the guidelines issued by the Supreme Court of India in the case of Vishakha.⁴⁴ Please refer to our legal alert on this topic [here](#).
- As per the Anti-Harassment Law, every employer employing at least 10 employees is required to set up an ICC at each office or branch to investigate and redress sexual harassment grievances.

38. <http://shebox.nic.in/>

39. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=168892>

40. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=173299>

41. <http://www.hindustantimes.com/india-news/she-box-to-the-rescue-of-govt-s-women-employees-facing-sexual-harassment-at-work/story-nb3z7lhc1l9yia5MTLOoI.html>

42. <http://www.shebox.nic.in/user/termsConditions>

43. Ibid

44. Vishaka and others v. State of Rajasthan, 1997 (7) SCC 323

- The government is also required to set up a LCC in every district to deal with complaints of sexual harassment arising from the unorganized sector or from establishments where the ICC has not been constituted (on account of the establishment having less than 10 employees) or if the complaint is against the employer.
- The law imposes a penalty of upto Rs. 50,000 (approx. USD 775) on employers who do not implement the provisions of the Anti-Harassment Law including failure to constitute an ICC.

III. Analysis

The introduction of SHe-Box is a positive step of the Indian government in its continuing efforts to provide a safe and fair working environment for women. With this initiative, female employees now have another channel to raise workplace sexual harassment complaints.

In spite of the enactment of the Anti-Harassment Law in 2013, the WCD has been receiving sexual harassment complaints.⁴⁵ This indicates that either there are employers that may not have a fully functional ICC or necessary awareness has not been created at the workplace. It could even be possible that female employees do not have enough confidence in their employer's internal complaint mechanism or that the investigation has been delayed.

The government will however need to quickly implement the requisite infrastructure and resources to manage this initiative to achieve the desired objectives. While SHe-Box has currently been designed to cater to the interests of female employees, enabling them to raise complaints of sexual harassment on a quick time basis without fear of retaliation, the government should also use this platform by providing necessary tools to help employers comply with the Anti-Harassment Law. By way of examples, SHe-Box could serve as a point of reference for employers or their ICC should they have any questions relating to the process to be followed upon receiving a complaint or how the report should be worded. It could also serve as a repository of experienced personnel who could serve as the external member on the employer's ICC at different locations.

According to the National Crime Records Bureau, between 2014 and 2015 (that is, after implementation of the Anti-Harassment Law by the Indian government), reporting of sexual harassment complaints has increased significantly.⁴⁶ In terms of statistics, 65.2% of women have reported that their employers do not follow the procedure laid out under the Anti-Sexual Harassment Act and 46.7% of the participant companies have admitted that their ICCs are not aware of the legal provisions pertaining to sexual harassment⁴⁷ The recent worldwide social media campaign *#Metoo* which was started in response to the Harvey Weinstein scandal, depicted the magnitude of sexual harassment issues worldwide. The movement gave many Indian women the space and encouragement to come out with their own experiences of sexual harassment⁴⁸

45. <http://www.hindustantimes.com/india-news/she-box-to-the-rescue-of-govt-s-women-employees-facing-sexual-harassment-at-work/story-nb3z7Ihc1l9yag5MTLOoI.html>

46. http://www.business-standard.com/article/current-affairs/70-working-women-do-not-report-workplace-sexual-harassment-in-india-117030400227_1.html

47. Ibid.

48. <https://theprint.in/2017/10/16/me-too-indian-victims-sexual-assault/>

Some women also penned down horrifying instances from their childhood through social media, while some shed light on their daily struggles including incidents of sexual harassment at their workplaces.

In the last couple of years, sexual harassment issues have been widely covered in the Indian media. Given the litigational and reputational risks associated with non-compliance of the Sexual Harassment Law, it is high time

that employers take affirmative steps in implementing zero-tolerance policies towards sexual harassment at their workplaces and ensure that the complaint is investigated swiftly, comprehensively and confidentially.

Annexure VII

Prevention of Sexual Harassment at Workplace: Lessons from Case Laws



Sexual harassment at workplace remains a highly sensitive issue despite the POSH Act of 2013 establishing clear guidelines. A look at the judicial interpretation being adopted by courts in cases related to sexual harassment at the workplace

By **Vikram Shroff** | **Preetha S**

LEGAL

India's law on prevention of sexual harassment of women at workplace was enacted in 2013, much before the #MeToo movement. This law was widely applauded by the employee community as the need of the hour and now that it is nearing its fifth anniversary, the courts in India have started interpreting the provisions of the law keeping in mind the broader objectives that it seeks to achieve.

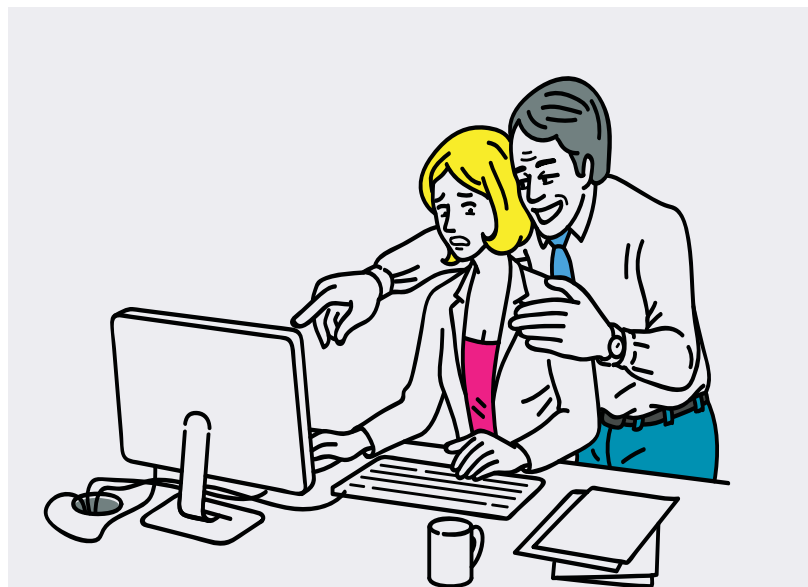
Being the first of its kind, the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) led to an increased awareness on the do's and don'ts in terms of workplace conduct. The media also played a critical role in spreading awareness besides bringing into limelight several

startling incidents of sexual harassment at the workplace. However, despite the awareness and the measures being taken by the government to ensure effective implementation of the law, sexual harassment at workplace remains a highly sensitive issue. From running a reputational risk to huge legal troubles, the road is not easy for employers who are slapped with sexual harassment cases.

This article seeks to provide in-house counsels and HR practitioners due perspective on the judicial interpretation being adopted by the courts in such matters.

What is 'sexual harassment'?

As per the High Court of Delhi, in order that a 'physical contact' constitutes 'sexual harassment',



it should have the color of an 'unwelcome sexually determined behavior'. A mere accidental physical contact, even though unwelcomed, would not amount to sexual harassment¹. In a case before the High Court of Kerala, it was observed that although the language used by an officer in his report regarding an event organized by a junior female colleague was inappropriate, the same did not amount to 'sexual harassment'. This was because there was no allegation of a promise, threat or creation of an offensive or hostile work environment for the female employee.²

What constitutes 'workplace'?

The definition of 'workplace' covers within its scope, places visited by employees during employment, or reasons arising out of employment including transportation provided by the employer for commuting to and from the place of employment.

In a case where a female employee had alleged sexual harassment by a colleague during an outstation visit to Hyderabad, the High Court of Delhi upheld the employer's decision to terminate the employment of the accused based on the recommendations of the Internal Committee (IC).³

The High Court of Bombay pointed out that the definition of 'workplace' under the POSH Act is inclusive and deliberately kept wide in order to ensure that any area where women may be subject to sexual harassment is not left unattended or unprovoked for. This illustrates the intention of the legislature to provide protection and prevention at all possible workplaces where either the aggrieved woman works or may visit in connection with her duty or the place where the respondent is at work.⁴

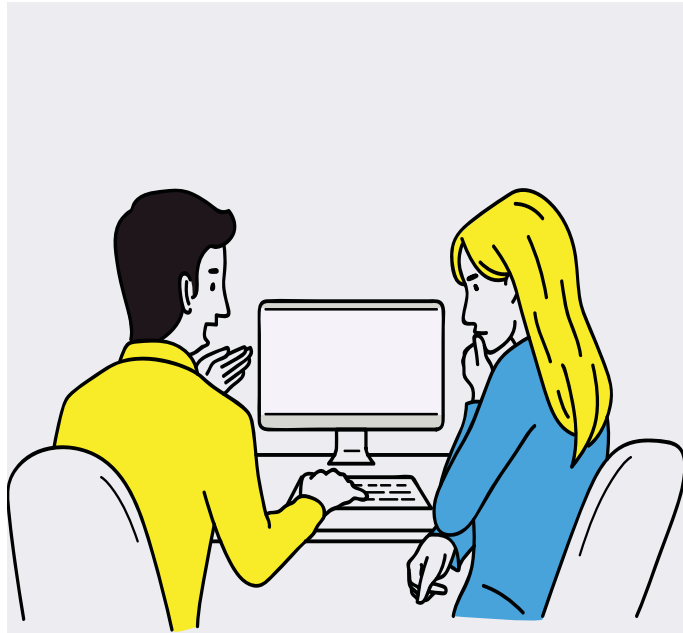
How should the IC be constituted?

While examining various aspects in relation to the composition and constitution of the IC, courts have taken the following views:

Where the employer was unable to demonstrate that the members appointed from amongst the employees fulfilled the requirements under the POSH Act, the High Court of Bombay directed the employer to re-constitute the IC, conduct a fresh inquiry and submit its report afresh.⁵

The Rajasthan High Court, in a case⁶, held that an employer must nominate two members from amongst employees 'preferably' committed to the cause of women or who have the experience in social work, or possess legal knowledge. The court opined that given the use of the term 'preferably', it cannot be construed that any person having no legal knowledge cannot be appointed as an IC member. Also, the mere fact that the Presiding Officer of an IC is lower in rank than the accused does not invalidate the IC constitution, because accepting such a contention would mean that the composition and constitution of the IC will always be dependent on the rank of the person against whom such complaint is to be examined.

The High Court of Delhi opined that the external member to the IC should be a person associated



The definition of 'workplace' under the POSH Act is inclusive and deliberately kept wide in order to ensure that any area where women may be subject to sexual harassment is not left unattended or unprovoked for

with a non-governmental organization (NGO) or an association committed to the cause of women or a person familiar with the issues relating to sexual harassment. In a specific case⁷, the employer had appointed a labor lawyer as the external member on the IC and was unable to demonstrate that the external member was familiar with sexual harassment issues.⁸

What powers does the IC possess?

As per the High Court of Delhi, the IC has the power to extend the time limit for filing a complaint by 3 months, i.e. up to a total of six months from the date when the incident took place by recording reasons in writing if it is satisfied that certain circumstances prevented the complainant from filing the complaint earlier.⁷

The High Court of Delhi also confirmed the IC's power to enforce the attendance of any person as per the provisions of the POSH Act.⁸ The same court clarified that the petitioner has the right to approach the IC for immediate protection and the IC is empowered to grant interim relief, if it deems fit.⁹

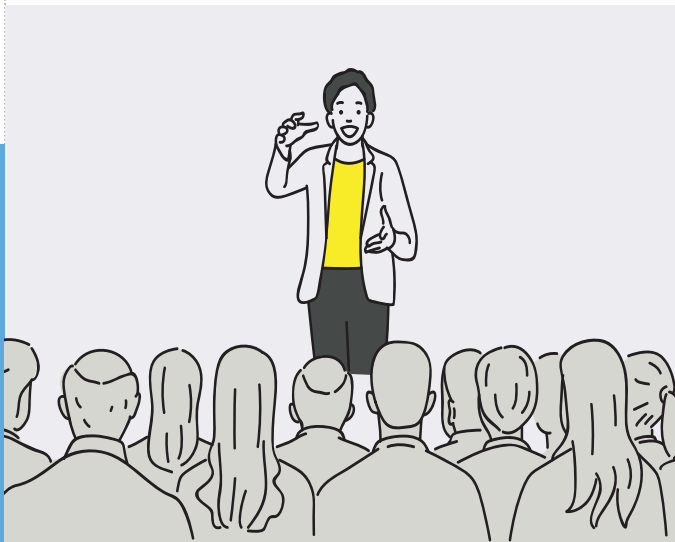
The High Court of Bombay held that where an inquiry has been conducted by an IC after giving adequate opportunity to all the parties and the

IC has come to a conclusion, then merely because two views are possible, the court is not expected to re-appreciate the evidence and come to a different conclusion than the one which has been arrived at by the IC.¹⁰

How should the complaint be filed?

The High Court of Delhi held that a complaint cannot be rejected by the IC merely on the grounds that the complainant had delayed in filing the complaint. In this case, the allegations of the complainant were clearly supported by the statements of several other witnesses who corroborated that the accused had indulged in similar conduct with them as well.¹¹

The Rajasthan High Court held that an aggrieved woman can file a complaint with the IC without having to submit the complaint in person.



From an HR perspective, it is critical for employers to set the right precedent for its employees so that the morale and work ethics at the workplace is not adversely affected

The complaint can be sent to the IC through another person or by any other media, the main point being that it should be received by the IC.¹²

How should the inquiry proceedings be conducted?

The High Court of Delhi ruled that if the employer believes that an allegation of bias is true, then a new IC needs to be formed and the proceedings should start afresh.¹³

With respect to adhering to the principles of natural justice, the High Court of Delhi pointed

out that in the enquiry proceedings, strict rules of evidence are not required to be followed. The IC has the flexibility to adopt its own procedure in conformity with the principles of natural justice.¹⁴

The High Court of Kerala, pointed out that the inquiry as per the POSH Act is supposed to be a full-fledged enquiry, similar to a disciplinary inquiry in cases of misconduct.¹⁵ The Rajasthan High Court observed that the POSH Act and the rules enable a three-member IC to conduct the inquiry so long as the Presiding Officer is present. Therefore, an inquiry report does not stand vitiated if not less than three members had conducted the inquiry.¹⁶ The High Court of Delhi reiterated that the findings of an IC should not be ignored on vague and general grounds.¹⁷

Case laws enable employers and their ICs to deal with sexual harassment complaints keeping in mind the judicial interpretation of the law. From an HR perspective, it is critical for employers to set the right precedent for its employees so that the morale and work ethics at the workplace is not adversely affected. Formulation of a comprehensive and efficacious mechanism preventing sexual harassment should be on the priority list for every CEO. As opined by the High Court of Bombay, employers need to genuinely be concerned with the safety of women at workplace rather than staging a farce of compliance under the POSH Act.¹⁸

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