

Guidelines for Internal Complaint Committee



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असाधारण

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मानव संसाधन विकास मंत्रालय

(विश्वविद्यालय अनुदान आयोग)

अधिसूचना

नई दिल्ली, 2 मई, 2016

विश्वविद्यालय अनुदान आयोग (उच्चतर शैक्षिक संस्थानों में महिला कर्मचारियों एवं छात्रों के लैंगिक उत्पीड़न के निराकरण, निषेध एवं इसमें सुधार) विनियम 2015

मि. सं. 91-1/2013 (टी. एफ. जी. एस.—विश्वविद्यालय अनुदान आयोग अधिनियम 1956 (1956 का 3) जिसे उक्त अधिनियम के अनुच्छेद 20 के उप-अनुच्छेद (1) से संयुक्त रूप से पढ़ा जाए उस अधिनियम 26 के अनुच्छेद (1) की धारा (जी) द्वारा प्रदत्त अधिकारों के क्रियान्वयन अनुसार विश्वविद्यालय अनुदान आयोग एतद्वारा निम्न विनियम निर्मित कर रहा है, नामतः :-

1. लघु शीर्ष, अनुप्रयोग एवं समारम्भ:- (1) ये विनियम विश्वविद्यालय अनुदान आयोग (उच्चतर शैक्षिक संस्थानों में महिला कर्मचारियों एवं छात्रों के लैंगिक उत्पीड़न के निराकरण, निषेध एवं इसमें सुधार) विनियम, 2015 कहलाएंगे।

(2) ये विनियम भारत वर्ष में सभी उच्चतर शैक्षिक संस्थानों पर लागू होंगे।

(3) सरकारी राजपत्र में उनके प्रकाशन की तिथि से वे लागू माने जाएँगे।

2. परिभाषाएँ:- इन विनियमों में—बशर्ते विषयवस्तु के अन्तर्गत कुछ अन्यथा जरूरी है:-

(अ) "पीड़ित महिला" से अर्थ है किसी भी आयु वर्ग की एक ऐसी महिला—चाहे वह रोजगार में है या नहीं, किसी कार्य स्थल में कथित तौर से प्रतिवादी द्वारा कोई लैंगिक प्रताड़ना के कार्य का शिकार बनी है;

(ब) "अधिनियम" से अर्थ है कार्य स्थल में महिलाओं का लैंगिक उत्पीड़न (निराकरण, निषेध एवं समाधान) अधिनियम, 2013 (2013 का 14);

(स) "परिसर" का अर्थ उस स्थान अथवा भूमि से है जहाँ पर उच्चतर शैक्षिक संस्थान तथा इसकी संबद्ध संस्थागत सुविधाएँ जैसे पुस्तकालय, प्रयोगशालाएँ, लेक्चर हॉल, आवास, हॉल, शौचालय, छात्र केन्द्र, छात्रावास, भोजन कक्षों, स्टेडियम, वाहन पड़ाव स्थल, उपवनों जैसे स्थल तथा अन्य कुछ सुविधाएँ जैसे स्वास्थ्य केन्द्र, कैन्टीन, बैंक पटल इत्यादि स्थित हैं तथा जिसमें छात्रों द्वारा उच्चशिक्षा के छात्र के रूप में दौरा किया जाता हो—जिस में वह परिवहन शामिल है जो उन्हें उस संस्थान से आने जाने के लिए, उस संस्थान के अलावा क्षेत्रीय भ्रमण हेतु

- (जी) यदि वह एक मानित विश्वविद्यालय संस्थान है तो केन्द्र सरकार को उस मानित विश्वविद्यालय के आहरण की अनुशंसा करना;
- (एच) यदि वह किसी राज्य अधिनियम के अन्तर्गत स्थापित अथवा नियमित विश्वविद्यालय है तो उसके इस स्तर को आहरित करने के लिए उपयुक्त राज्य सरकार को सिफारिश करना;
- (आई) जैसे कि विश्वविद्यालय अनुदान आयोग अधिनियम 1956 के अन्तर्गत प्रावधान किया जाना हो तदनुसार अपने अधिकारों के अनुसार यथोचित रूप से ऐसी समयावधि के लिए दण्ड प्रदान कर सकता है जिस समय तक वह संस्थान इन विनियमों में निर्धारित प्रावधानों का अनुपालन नहीं करता है;
- (जे) इन विनियमों के अन्तर्गत आयोग द्वारा उस समय तक कार्रवाई नहीं की जाएगी जब तक कि संस्थान को अपना पक्ष प्रस्तुत करने के लिए प्रदत्त सुअवसर के आधार पर उनकी सुनवाई कर ली गई हो;

[विज्ञापन—III/4/असा./53]

जसपाल एस. संधु, सचिव, यूजीसी

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(University Grants Commission)

NOTIFICATION

New Delhi, the 2nd May, 2016

University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015

No. F. 91-1/2013(TFGS).—In exercise of the powers conferred by clause (g) of sub-section (1) of section 26 of the University Grants Commission Act, 1956 (3 of 1956), read with sub-section (1) of Section 20 of the said Act, the University Grants Commission hereby makes the following regulations, namely:-

1. **Short title, application and commencement.**—(1) These regulations may be called the University Grants Commission (Prevention, prohibition and redressal of sexual harassment of women employees and students in higher educational institutions) Regulations, 2015.
 - (2) They shall apply to all higher educational institutions in India.
 - (3) They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions.**—In these regulations, unless the context otherwise requires,-
 - (a) "aggrieved woman" means in relation to work place, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
 - (b) 'Act' means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);
 - (c) "campus" means the location or the land on which a Higher Educational Institution and its related institutional facilities like libraries, laboratories, lecture halls, residences, halls, toilets, student centres, hostels, dining halls, stadiums, parking areas, parks-like settings and other amenities like health centres, canteens, Bank counters, etc., are situated and also includes extended campus and covers within its scope places visited as a student of the HEI including transportation provided for the purpose of commuting to and from the institution, the locations outside the institution on field trips, internships, study tours, excursions, short-term placements, places used for camps, cultural festivals, sports meets and such other activities where a person is participating in the capacity of an employee or a student of the HEI;

- (d) Commission” means the University Grants Commission established under section 4 of the University Grants Commission Act, 1956 (3 of 1956);
- (e) “covered individuals” are persons who have engaged in protected activity such as filing a sexual harassment charge, or who are closely associated with an individual who has engaged in protected activity and such person can be an employee or a fellow student or guardian of the offended person;
- (f) “employee” means a person as defined in the Act and also includes, for the purposes of these Regulations trainee, apprentice (or called by any other name), interns, volunteers, teacher assistants, research assistants, whether employed or not, including those involved in field studies, projects, short-visits and camps;
- (g) “Executive Authority” means the chief executive authority of the HEI, by whatever name called, in which the general administration of the HEI is vested. For public funded institutions the Executive Authority means the Disciplinary Authority as indicated in Central Civil Services (Classification, Control and Appeal) Rules, 1965 or its equivalent rules;
- (h) “Higher Educational Institution” (HEI) means a university within the meaning of clause (j) of section 2, a college within the meaning of clause(b) of sub-section (1) of section 12A and an institution deemed to be a University under section 3 of the University Grants Commission Act, 1956 (3 of 1956);
- (i) “Internal Complaints Committee” (ICC) means Internal Complaints Committee to be constituted by an HEI under sub regulation (1) of regulation 4 of these regulations. Any existing body already functioning with the same objective (like the Gender Sensitization Committee Against Sexual Harassment (GSCASH)) should be reconstituted as the ICC;
- Provided that in the latter case the HEI shall ensure that the constitution of such a Body is as required for ICC under these regulations. Provided further that such a Body shall be bound by the provisions of these regulations;
- (j) “protected activity” includes reasonable opposition to a practice believed to violate sexual harassment laws on behalf of oneself or others such as participation in sexual harassment proceedings, cooperating with an internal investigation or alleged sexual harassment practices or acting as a witness in an investigation by an outside agency or in litigation;
- (k) “sexual harassment” means-
- (i) “An unwanted conduct with sexual undertones if it occurs or which is persistent and which demeans, humiliates or creates a hostile and intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and includes any one or more or all of the following unwelcome acts or behaviour (whether directly or by implication), namely;-
- (a) any unwelcome physical, verbal or non verbal conduct of sexual nature;
- (b) demand or request for sexual favours;
- (c) making sexually coloured remarks
- (d) physical contact and advances; or
- (e) showing pornography”
- (ii) any one (or more than one or all) of the following circumstances, if it occurs or is present in relation or connected with any behaviour that has explicit or implicit sexual undertones-
- (a) implied or explicit promise of preferential treatment as quid pro quo for sexual favours;
- (b) implied or explicit threat of detrimental treatment in the conduct of work;
- (c) implied or explicit threat about the present or future status of the person concerned;
- (d) creating an intimidating offensive or hostile learning environment;
- (e) humiliating treatment likely to affect the health, safety dignity or physical integrity of the person concerned;

- (l) “student” means a person duly admitted and pursuing a programme of study either through regular mode or distance mode, including short-term training programmes in a HEI;
Provided that a student who is in the process of taking admission in HEIs campus, although not yet admitted, shall be treated, for the purposes of these regulations, as a student of that HEI, where any incident of sexual harassment takes place against such student;
Provided that a student who is a participant in any of the activities in a HEI other than the HEI where such student is enrolled shall be treated, for the purposes of these regulations, as a student of that HEI where any incident of sexual harassment takes place against such student;
- (m) “third Party Harassment” refers to a situation where sexual harassment occurs as a result of an act or omission by any third party or outsider, who is not an employee or a student of the HEI, but a visitor to the HEI in some other capacity or for some other purpose or reason;
- (n) “victimisation” means any unfavourable treatment meted out to a person with an implicit or explicit intention to obtain sexual favour;
- (o) “workplace” means the campus of a HEI including-
- (a) Any department, organisation, 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 HEIs;
 - (b) Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereof in HEIs;
 - (c) Any place visited by the employee or student arising out of or during the course of employment or study including transportation provided by the Executive Authority for undertaking such journey for study in HEIs.’

3. Responsibilities of the Higher Educational Institution- (1) Every HEI shall,-

- (a) Wherever required, appropriately subsume the spirit of the above definitions in its policy and regulations on prevention and prohibition of sexual harassment against the employees and the students, and modify its ordinances and rules in consonance with the requirements of the Regulations;
- (b) publicly notify the provisions against sexual harassment and ensure their wide dissemination;
- (c) organise training programmes or as the case may be, workshops for the officers, functionaries, faculty and students, as indicated in the SAKSHAM Report (Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization on Campuses) of the Commission, to sensitize them and ensure knowledge and awareness of the rights, entitlements and responsibilities enshrined in the Act and under these regulations;
- (d) act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students and some male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation;
- (e) publicly commit itself to a zero tolerance policy towards sexual harassment;
- (f) reinforce its commitment to creating its campus free from discrimination, harassment, retaliation or sexual assault at all levels;
- (g) create awareness about what constitutes sexual harassment including hostile environment harassment and quid pro quo harassment;
- (h) include in its prospectus and display prominently at conspicuous places or Notice Boards the penalty and consequences of sexual harassment and make all sections of the institutional community aware of the information on the mechanism put in place for redressal of complaints pertaining to sexual

harassment, contact details of members of Internal Complaints Committee , complaints procedure and so on. Any existing body already functioning with the same objective (like the Gender Sensitization Committee Against Sexual Harassment (GSCASH)) should be reconstituted as the ICC; Provided that in the latter case the HEI shall ensure that the constitution of such a Body is as required for ICC under these regulations. Provided further that such a Body shall be bound by the provisions of these regulations;

- (i) inform employees and students of the recourse available to them if they are victims of sexual harassment;
- (j) organise regular orientation or training programmes for the members of the ICC to deal with complaints, steer the process of settlement or conciliation, etc., with sensitivity;
- (k) proactively move to curb all forms of harassment of employees and students whether it is from those in a dominant power or hierarchical relationship within HEIs or owing to intimate partner violence or from peers or from elements outside of the geographical limits of the HEI;
- (l) be responsible to bring those guilty of sexual harassment against its employees and students to book and initiate all proceedings as required by law and also put in place mechanisms and redressal systems like the ICC to curb and prevent sexual harassment on its campus;
- (m) treat sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee;
- (n) treat sexual harassment as a violation of the disciplinary rules (leading up to rustication and expulsion) if the perpetrator is a student;
- (o) ensure compliance with the provisions of these regulations, including appointment of ICC, within a period of sixty days from the date of publication of these regulations;
- (p) monitor the timely submission of reports by the ICC;
- (q) prepare an annual status report with details on the number of cases filed and their disposal and submit the same to the Commission.

3.2 **Supportive measures.**—(1) The rules, regulations or any such other instrument by which ICC shall function have to be updated and revised from time-to-time, as court judgments and other laws and rules will continue to revise the legal framework within which the Act is to be implemented.

(2) The Executive Authority of the HEIs must mandatorily extend full support to see that the recommendations of the ICC are implemented in a timely manner. All possible institutional resources must be given to the functioning of the ICC, including office and building infrastructure (computers, photocopiers, audio-video, equipment, etc.), staff (typists, counselling and legal services) as, well as a sufficient allocation of financial resources.

(3) Vulnerable groups are particularly prone to harassment and also find it more difficult to complain. Vulnerability can be socially compounded by region, class, caste, sexual orientation, minority identity and by being differently abled. Enabling committees must be sensitive to such vulnerabilities and special needs.

(4) Since research students and doctoral candidates are particularly vulnerable the HEIs must ensure that the guidelines for ethics for Research Supervision are put in place.

(5) All HEIs must conduct a regular and half yearly review of the efficacy and implementation of their anti-sexual harassment policy.

(6) All Academic Staff Colleges (now known as Human Resource Development Centres (HRDCs) and Regional Centres for Capacity Building (RCCBs) must incorporate sessions on gender in their orientation and refresher courses. This should be across disciplines, and preferably mainstreamed using the UGC SAKSHAM Report which provides indicative modules in this regard.

(7) Orientation courses for administrators conducted in HEIs must have a module on gender sensitization and sexual harassment issues. Regular workshops are to be conducted for all sections of the HEI community.

(8) Counselling services must be institutionalised in all HEIs and must have well trained full-time counsellors.

(9) Many HEIs having large campuses have a deficit in lighting and are experienced as unsafe places by the institutional community. Adequate lighting is a necessary aspect of infrastructure and maintenance.

(10) Adequate and well trained security including a good proportion or balance of women security staff is necessary. Security staff must receive gender sensitization training as a part of conditions of appointment.

(11) HEIs must ensure reliable public transport, especially within large campuses between different sections of the HEI, hostels, libraries, laboratories and main buildings, and especially those that do not have good access for day scholars. Lack of safety as well as harassment is exacerbated when employees and students cannot depend on safe public transport. Reliable transport may be considered by HEIs to enable employees and students to work late in libraries, laboratories and to attend programmes in the evenings.

(12) Residential HEIs should accord priority to construction of women's hostels. For the growing population of young women wishing to access higher education, hostel accommodation is desirable in both urban and rural areas and at all levels of higher education which provides a modicum of protection from harassment of all kinds.

(13) Concern for the safety of women students must not be cited to impose discriminatory rules for women in the hostels as compared to male students. Campus safety policies should not result in securitization, such as over monitoring or policing or curtailing the freedom of movement, especially for women employees and students.

(14) Adequate health facilities are equally mandatory for all HEIs. In the case of women this must include gender sensitive doctors and nurses, as well as the services of a gynaecologist.

(15) The Women's Development Cells in colleges shall be revived and funded to be able to carry out the range of activities required for gender sensitization and remain autonomous of the functioning of anti sexual harassment committees and ICCs. At the same time they shall extend their activities to include gender sensitization programmes in consultation with ICCs and help to disseminate anti-sexual harassment policies on campuses on a regular basis. The 'cultural' space and the 'formal academic space' need to collaborate to render these workshops innovative, engaging and non-mechanical.

(16) Hostel Wardens, Provosts, Principals, Vice Chancellors, Legal Officers and other functionaries must be brought within the domain of accountability through amendments in the rules or Ordinances where necessary.

4. Grievance redressal mechanism.—(1) Every Executive Authority shall constitute an Internal Complaints Committee (ICC) with an inbuilt mechanism for gender sensitization against sexual harassment. The ICC shall have the following composition:-

- (a) A Presiding Officer who shall be a woman faculty member employed at a senior level (not below a Professor in case of a university, and not below an Associate Professor or Reader in case of a college) at the educational institution, nominated by the Executive Authority;

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 sub-section 2(o);

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;”

- (b) two faculty members and two non-teaching employees, preferably committed to the cause of women or who have had experience in social work or have legal knowledge, nominated by the Executive Authority;
- (c) Three students, if the matter involves students, who shall be enrolled at the undergraduate, master's, and research scholar levels respectively, elected through transparent democratic procedure;
- (d) one member from amongst non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, nominated by the Executive Authority.
- (2) At least one-half of the total members of the ICC shall be women.
- (3) Persons in senior administrative positions in the HEI, such as Vice- Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of Departments, etc., shall not be members of ICCs in order to ensure autonomy of their functioning.
- (4) The term of office of the members of the ICC shall be for a period of three years. HEIs may also employ a system whereby one –third of the members of the ICC may change every year.
- (5) 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 Executive Authority as may be prescribed.
- (6) Where the Presiding Officer or any member of the Internal Committee:
- contravenes the provisions of section 16 of the Act; or
 - 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
 - he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - 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.”

- 5. Responsibilities of Internal Complaints Committee (ICC) -** The Internal Complaints Committee shall:
- provide assistance if an employee or a student chooses to file a complaint with the police;

- (b) provide mechanisms of dispute redressal and dialogue to anticipate and address issues through just and fair conciliation without undermining complainant's rights, and minimize the need for purely punitive approaches that lead to further resentment, alienation or violence;
- (c) protect the safety of the complainant by not divulging the person's identity, and provide the mandatory relief by way of sanctioned leave or relaxation of attendance requirement or transfer to another department or supervisor as required during the pendency of the complaint, or also provide for the transfer of the offender;
- (d) ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment; and
- (e) ensure prohibition of retaliation or adverse action against a covered individual because the employee or the student is engaged in protected activity.

6. The process for making complaint and conducting Inquiry – The ICC shall comply with the procedure prescribed in these Regulations and the Act, for making a complaint and inquiring into the complaint in a time bound manner. The HEI shall provide all necessary facilities to the ICC to conduct the inquiry expeditiously and with required privacy

7. Process of making complaint of sexual harassment - An aggrieved person is required to submit a written complaint to the ICC within three months from the date of the incident and in case of a series of incidents within a period of three months from the date of the last incident.

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee shall render all reasonable assistance to the person for making the complaint in writing;

Provided further that the ICC may, for the reasons to be accorded in the writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the person from filing a complaint within the said period.”

Friends, relatives, Colleagues, Co-students, Psychologist, or any other associate of the victim may file the complaint in situations where the aggrieved person is unable to make a complaint on account of physical or mental in capacity or death.

8. Process of conducting Inquiry- (1) The ICC shall, upon receipt of the complaint, send one copy of the complaint to the respondent within a period of seven days of such receipt.

(2) Upon receipt of the copy of the complaint, the respondent shall file his or her reply to the complaint along with the list of documents, and names and addresses of witnesses within a period of ten days.

(3) The inquiry has to be completed within a period of ninety days from the receipt of the complaint. The inquiry report, with recommendations, if any, has to be submitted within ten days from the completion of the inquiry to the Executive Authority of the HEI. Copy of the findings or recommendations shall also be served on both parties to the complaint.

(4) **The Executive Authority of the HEI shall act on the recommendations of the committee within a period of thirty days from the receipt of the inquiry report, unless an appeal against the findings is filed within that time by either party.**

(5) An appeal against the findings or /recommendations of the ICC may be filed by either party before the Executive Authority of the HEI within a period of thirty days from the date of the recommendations.

(6) If the Executive Authority of the HEI decides not to act as per the recommendations of the ICC, then it shall record written reasons for the same to be conveyed to ICC and both the parties to the proceedings. If on the other hand it is decided to act as per the recommendations of the ICC, then a show cause notice, answerable within ten days, shall be served on the party against whom action is decided to be taken. The Executive Authority of the HEI shall proceed only after considering the reply or hearing the aggrieved person.

(7) The aggrieved party may seek conciliation in order to settle the matter. No monetary settlement should be made as a basis of conciliation. The HEI shall facilitate a conciliation process through ICC, as the

case may be, once it is sought. The resolution of the conflict to the full satisfaction of the aggrieved party wherever possible, is preferred to purely punitive intervention.

(8) The identities of the aggrieved party or victim or the witness or the offender shall not be made public or kept in the public domain especially during the process of the inquiry.

9. Interim redressal-The HEI may,

- (a) transfer the complainant or the respondent to another section or department to minimise the risks involved in contact or interaction, if such a recommendation is made by the ICC;
- (b) grant leave to the aggrieved with full protection of status and benefits for a period up to three months;
- (c) restrain the respondent from reporting on or evaluating the work or performance or tests or examinations of the complainant;
- (d) ensure that offenders are warned to keep a distance from the aggrieved, and wherever necessary, if there is a definite threat, restrain their entry into the campus;
- (e) take strict measures to provide a conducive environment of safety and protection to the complainant against retaliation and victimisation as a consequence of making a complaint of sexual harassment.

10. Punishment and compensation- (1) Anyone found guilty of sexual harassment shall be punished in accordance with the service rules of the HEI, if the offender is an employee.

(2) Where the respondent is a student, depending upon the severity of the offence, the HEI may,-

- (a) withhold privileges of the student such as access to the library, auditoria, halls of residence, transportation, scholarships, allowances, and identity card;
 - (b) suspend or restrict entry into the campus for a specific period;
 - (c) expel and strike off name from the rolls of the institution, including denial of readmission, if the offence so warrants;
 - (d) award reformatory punishments like mandatory counselling and, or, performance of community services.
- (3) The aggrieved person is entitled to the payment of compensation. The HEI shall issue direction for payment of the compensation recommended by the ICC and accepted by the Executive Authority, which shall be recovered from the offender. The compensation payable shall be determined on the basis of-
- (a) mental trauma, pain, suffering and distress caused to the aggrieved person;
 - (b) the loss of career opportunity due to the incident of sexual harassment;
 - (c) the medical expenses incurred by the victim for physical, psychiatric treatment;
 - (d) the income and status of the alleged perpetrator and victim; and
 - (e) the feasibility of such payment in lump sum or in instalments.

11. Action against frivolous complaint.—To ensure that the provisions for the protection of employees and students from sexual harassment do not get misused, provisions against false or malicious complaints have to be made and publicised within all HEIs. If the ICC concludes that the allegations made were false, malicious or the complaint was made knowing it to be untrue, or forged or misleading information has been provided during the inquiry, the complainant shall be liable to be punished as per the provisions of sub-regulations (1) of regulations 10, if the complainant happens to be an employee and as per sub-regulation (2)

of that regulation, if the complainant happens to be a student. However, the mere inability to substantiate a complaint or provide adequate proof will not attract attention against the complainant. Malicious intent on the part of the complainant shall not be established without an inquiry, in accordance with the procedure prescribed, conducted before any action is recommended.

12. Consequences of non-compliance.—(1) The Commission shall, in respect of any institution that will fully contravenes or repeatedly fails to comply with the obligations and duties laid out for the prevention, prohibition and redressal of sexual harassment of employees and students, take one or more of the following actions after providing due notice: -

- (a) withdrawal of declaration of fitness to receive grants under section 12B of the University Grants Commission Act, 1956.
 - (b) removing the name of the university or college from the list maintained by the Commission under clause (f) of section 2 of said Act, 1956;
 - (c) withholding any grant allocated to the institution;
 - (d) declaring the institution ineligible for consideration for any assistance under any of the general or special assistance programmes of the Commission;
 - (e) informing the general public, including potential candidates for employment or admission, through a notice displayed prominently in the newspapers or other suitable media and posted on the website of the Commission, declaring that the institution does not provide for a zero tolerance policy against sexual harassment;
 - (f) recommending the affiliating university for withdrawal of affiliation, in case of a college;
 - (g) recommending the Central Government for withdrawal of declaration as an institution deemed to be university, in case of an institution deemed to be university;
 - (h) recommending the appropriate State Government for withdrawal of status as university in case of a university established or incorporated under a State Act.
 - (i) taking such other action within its powers as it may deem fit and impose such other penalties as may be provided in the University Grants Commission Act, 1956 for such duration of time till the institution complies with the provisions of these regulations.
- (2) No action shall be taken by the Commission under these regulations unless the Institution has been given an opportunity to explain its position and an opportunity of being heard has been provided to it.

[Advt.-III/4/Exty./53]

JASPAL S. SANDHU, Secy. UGC



HANDBOOK

On

Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013

for Employers / Institutions / Organisations/
Internal Complaints Committee / Local Complaints Committee



Towards a new dawn

Government of India
Ministry of Women and Child Development

NOVEMBER 2015



HANDBOOK

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

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Towards a new dawn

Government of India
Ministry of Women and Child Development

November 2015

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सत्यमेव जयते

मेनका संजय गांधी
Maneka Sanjay Gandhi



मंत्री
महिला एवं बाल विकास मंत्रालय
भारत सरकार
नई दिल्ली-110001

MINISTER
MINISTRY OF WOMEN & CHILD DEVELOPMENT
GOVERNMENT OF INDIA
NEW DELHI-110001

MESSAGE

With improved access to education and employment, millions of Indian women are entering the country's workforce today. Many working women face sexual harassment at the workplace on a daily basis. It is crucial therefore that as a country, we strive to eliminate work-place sexual harassment since women have the right to work in safe and secure environment. It is the responsibility of every employer to ensure safety of women in a work environment and improve their participation. This will contribute to realization of their right to gender equality and result in economic empowerment and inclusive growth and benefit the nation as a whole.

I am pleased to present this Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It provides key information about the provisions of the Act in an easy-to-use and practical manner. The Handbook has been developed with the aim to ensure that the citizens of India are aware of their rights and obligations in terms of creating safe workplace environment for women.

Government of India is committed to promote gender equality and women's empowerment across every sector. This Handbook reflects our commitment to empower women as economic agents and improve their ability to access markets on competitive and equitable terms. I am confident that this Handbook which advocates and enforces the rules as laid out in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, will be beneficial to everyone. The practical and user-friendly procedures outlined in the Handbook will be useful for actual implementation of the Act.


(Smt. Maneka Sanjay Gandhi)

V. Somasundaran



सचिव
भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली - 110001

Secretary
Government of India
Ministry of Women & Child Development
Shastri Bhawan, New Delhi-110001
Website : <http://www.wcd.nic.in>

18th November 2015

FOREWORD

I am pleased to share with you this Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This Handbook is of immense importance because combating sexual harassment involves developing deeper understanding of what is sexual harassment and change of attitudes in all - be it employer, employees, colleagues, friends, or the policy makers.

Sexual Harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative, as it affects women's right to life and livelihood. In India, for the first time in 1997, a petition was filed in the Supreme Court to enforce the fundamental rights of working women, after the brutal gang rape of Bhanwari Devi a social worker from Rajasthan. As an outcome of the landmark judgment of the Vishaka and Others v State of Rajasthan the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was enacted wherein it was made mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women. The Act is also unique for its wide ambit as it is applicable to the organized sector as well as the unorganized sector.

The legislation, however, requires the support and commitment of all stakeholders for its effective and successful implementation in preventing workplace sexual harassment. It casts an obligation upon the employer to address the grievances in respect of sexual harassment at workplace in a time bound manner. It is in this context that this Handbook would be very useful as it provides clear definition of what constitutes sexual harassment and explains how the complaint process works.

I am sure that the Handbook will be extremely useful to all agencies concerned and help them in taking pro-active measures to eradicate the problem/menace of workplace sexual harassment in the country.


(V. Somasundaran)

प्रीति सूदन
PREETI SUDAN
अपर सचिव
Additional Secretary
Tel : 011-23383823
Fax : 011-23070480



भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली – 110001
Government of India
Ministry of Women & Child Development
Shastri Bhawan, New Delhi-110001
Website : <http://www.wcd.nic.in>
Email id : sudanp@nic.in

Dated: 17th November, 2015

PREFACE

The Government of India is committed to ending all forms of violence against women that negatively impact society, hamper gender equality and constricts the social and economic development of the country.

Since, sexual harassment results in violation of the fundamental rights of a woman to equality as per Articles 14 and 15 and her right to live with dignity as mentioned under Article 21 of the Constitution, the Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act is an extension of the Vishaka Guidelines issued by the Supreme Court in 1997. The Supreme Court of India, for the first time in the Vishaka Guidelines, acknowledged Sexual Harassment at the workplace as a human rights violation. Further, the Act also reflects the commitment of the Government to the ratification of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on July 09, 1993. This new legislation makes every effort to be a user friendly tool in the hands of the employers and employees, to create safe and secure workplaces for all women.

With the enactment of the Act, India is now a part of a select group of countries to have prohibited sexual harassment at workplace through national legislation. The Act is unique in its broad coverage which includes all working women from organised and unorganised sectors alike, as also public and private sectors, regardless of hierarchy. Effective implementation of the Act is a challenge. The Handbook is designed to be a Ready Reckoner for organisations vested with responsibility to enforce the law.

The Handbook is structured into six sections. The first section is an introduction and detail regarding the genesis of the Act, the second sets the context by defining the workplace and sexual harassment and impact of such behaviour, the third focuses on the key individuals and institutions involved in prohibition and prevention processes and their responsibilities, section four discusses the redressal mechanism followed by monitoring requirement in section five and important international frameworks and best practices on sexual harassment at the workplace in the concluding section.

It is the hope of the Ministry that this Handbook will be of considerable value for employers, employees and complaint committees alike, as it provides guidance with regard to the steps to be taken and the processes to be followed, in line with the requirements of the law. It will prove useful to all women workers particularly and be a step forward in promoting their independence as well as the right to work with dignity as equal partners in an environment that is free from violence.


(Preeti Sudan)



लोपामुद्रा मोहंती
Lopamudra Mohanty

Tel. : 23367573
Fax : 23362946
Telegrams : WOMEN CHILD

भारत सरकार
महिला एवं बाल विकास मंत्रालय
GOVERNMENT OF INDIA
MINISTRY OF WOMEN & CHILD DEVELOPMENT
जीवन विहार, नई दिल्ली-110 001, दिनांक
Jeevan Vihar, New Delhi-110 001, Dated

ACKNOWLEDGEMENTS

In our journey towards preparing this Handbook, which required a lot of guidance and assistance from many people, whose names may not be enumerated, I am thankful to all of them for their contributions towards the completion of the task.

I would like to express my sincere thanks to the UN Women (United Nations Entity for Gender Equality and Empowerment of Women) for their valuable contributions with their experience in women's movement and expertise in gender rights in supporting the Ministry to prepare the Handbook with key information on the Act in an easy-to-use practical manner and designing with appropriate illustrations.

I would like acknowledge the important contributions made by Ms. Risha Syed, Legal Consultant for the hardwork put by her coupled with her experience and expertise as a legal professional and commitment to gender issues in bringing out the Handbook.

I am also thankful to Dr. Paramita Majumdar, Senior Consultant, Gender Budgeting for reviewing the manuscript with meticulous scrutiny and scholarly advice. I would like to mention with appreciation for Shri Samuel Paul, Assistant Secretary for showing not only his keen interest on the subject, but assisting us in the review work.

We hope that this Handbook will be a guide and inspiration to all of us in creating an enabling environment of women in the workplaces.

(Lopamudra Mohanty)

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...”

Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan

Introduction

“Whereas sexual harassment results in violation of the fundamental rights of a Woman to equality....”

[Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act]

As enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution.

A safe workplace is therefore a woman’s legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women’s dignity violate the principle of equality of rights.

Sexual harassment constitutes a gross violation of women’s right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as ‘natural’ male behaviour or ‘harmless flirtation’ which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India “to practice any profession or to carry out any occupation, trade or business”; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large.



Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

Across the globe today, workplace sexual harassment is increasingly understood as a violation of women's rights and a form of violence against women. Indeed, the social construct of male privileges in society continues to be used to justify violence against women in the private and public sphere. In essence, sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations. In a society where violence against women, both subtle and direct, is borne out of the patriarchal values, women are forced to conform to traditional gender roles. These patriarchal values and attitudes of both women and men pose the greatest challenge in resolution and prevention of sexual harassment. Workplace sexual harassment, like other forms of violence, is not harmless. It involves serious health, human, economic and social costs, which manifests themselves in the overall development indices of a nation.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The full scale of the problem is not known given the difficulties in documenting the experience of those who have experienced workplace sexual harassment. However, available studies on sexual harassment show that it is certainly prevalent in India today. This is why the legislation is an important step forward within the larger architecture of women's rights, as it tackles this issue to secure the rights of women workers across the country.

While the official figures for women's work participation are low, much of the work that women do is not captured in official data accounts. It is argued¹ that where this is to be captured, women's overall work participation would be 86.2 per cent. While the official data² shows that women's work participation rate is around 25.3 per cent in rural areas and 14.7 per cent in the urban areas, estimates indicate that there is a huge workforce of women, therefore there is a need to secure their workplace and entitlements. Given, that 93 per cent of women workers are employed in the informal sector, they remain unprotected by laws. With no laws or mechanisms to protect them, proactive measures are required to make their workplaces safe.

¹ Professor Jayati Ghosh, Paper on 'What Exactly is Work?' http://www.macrosan.org/cur/oct14/pdf/Exactly_Work.pdf

² NSSO 2011-12

It is well established that ensuring safe working conditions for women leads to a positive impact on their participation in the workforce and increases their productivity, which in turn benefits the nation as a whole. Economically, empowered women are key to the nation's overall development and this can only be achieved if it is ensured that women's workspaces across all sectors and all over the country have a safe and secure environment for work.

It is important as well to ensure that the emphasis is on prevention rather than punitive action. This calls for widespread awareness on the Act among employers, managers and the workers themselves. Frequently, women workers may face sexual harassment but may not be aware that it is a breach of their rights and that there is something they can do about it. They need to know that they can do something about it. Then there are others, who may believe that it is a personal matter that needs to be resolved by the people involved. In order to change this order of things, it is urgent that measures are taken to change mind-sets and attitudes by creating awareness about what constitutes sexual harassment and the steps that can be taken to address it.

This handbook will serve as an important tool to make workplaces safe and benefit both workers and employers alike, leading to mutual gains.

1.1 THE MANDATE

Today, all workplaces in India are mandated by law to provide a safe and secure working environment free from sexual harassment for all women.

1.2 THE GENESIS

In 1992, a rural level change agent, Bhanwari Devi, was engaged by the state of Rajasthan as a *Sathin*³ to work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a one-year old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. That omission came at great cost – Bhanwari was subsequently gang raped by those very men.

The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace.

Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as a violation of women's fundamental right to equality and that all workplaces/establishments/institutions be made accountable and responsible to uphold these rights.

³ *Sathin*³ means a friend

In a landmark judgment, *Vishaka vs. State of Rajasthan (1997)*⁴, the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- ◆ A definition of sexual harassment
- ◆ Shifting accountability from individuals to institutions
- ◆ Prioritizing prevention
- ◆ Provision of an innovative redress mechanism

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.

It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a third party person/NGO expert on the issue, to prevent any undue pressure on the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors.

Vishaka established that international standards/law could serve to expand the scope of India's Constitutional guarantees and fill in the gaps wherever they exist. India's innovative history in tackling workplace sexual harassment beginning with the *Vishaka* Guidelines and subsequent legislation has given critical visibility to the issue. Workplaces must now own their responsibility within this context and ensure that women can work in safe and secure spaces.

1.3 THE ACT

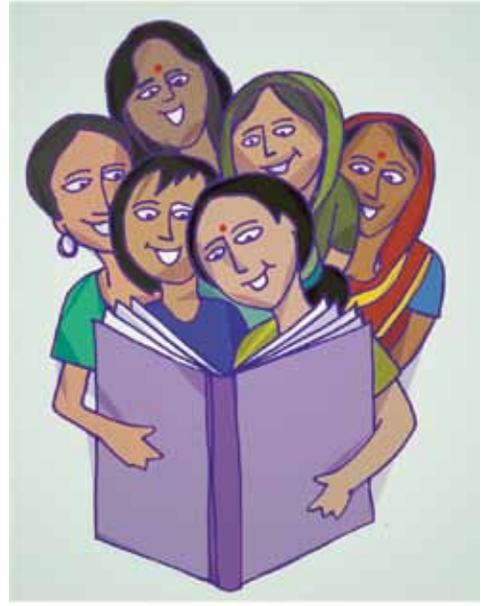
Having raised the bar of responsibility and accountability in the *Vishaka* Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

⁴(AIR 1997 Supreme Court 3011)

- ◆ Prohibition
- ◆ Prevention
- ◆ Redress

In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (referred to as Act hereinafter). Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements.

It is important to note that the Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse of both civil and criminal proceedings.



1.4 PURPOSE OF THIS HANDBOOK

This handbook is meant for all workplaces/institutions/organizations to provide a basic understanding of sexual harassment at places of work. Additionally, it is designed to offer Internal Complaints Committee/s and Local Complaints Committee/s (Complaints Committee/s) established under the Act, with simple, user friendly information on sexual harassment; what is expected of Complaints Committee/s to redress a complaint; and what the inquiry process and outcome should include.

1.5 WHO IS THIS HANDBOOK FOR

This handbook informs the end user (an employee/worker) about workplace sexual harassment and their right to an informed complaint process in seeking redress as provided under the Act and Rules framed thereunder.

1.6 STRUCTURE OF THE HANDBOOK

This Handbook has 6 sections, with each containing information for women, male co-workers as well as their employers, on how to deal with sexual harassment at the workplace in the context of the Act.

Section 1 serves as an introduction, as it details the genesis of the Act and the history behind it, as well as provides a brief description of the Act itself. This section also describes the purpose of this handbook and who it is designed for.



Section 2 sets the context by defining a workplace and sexual harassment. It provides the reader with key elements, such as examples of sexual harassment as well as scenarios and the impact of such behaviour.

Section 3 focuses on the key individuals and institutions involved in the prohibition and prevention processes and their responsibilities.

Section 4 is about redress. This section identifies and defines the key players involved in the complaint mechanism (including the complainant and the respondent). It details the stages of the complaint process. Particular attention is paid to the complaints committee which plays a very important role in this process.

Section 5 describes the monitoring requirements as per the Act.

Section 6 lists the important international frameworks and select best practices on sexual harassment at the workplace.

Workplace Sexual Harassment- What Is It?

“No woman shall be subjected to sexual harassment at any workplace.”

Section 3(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

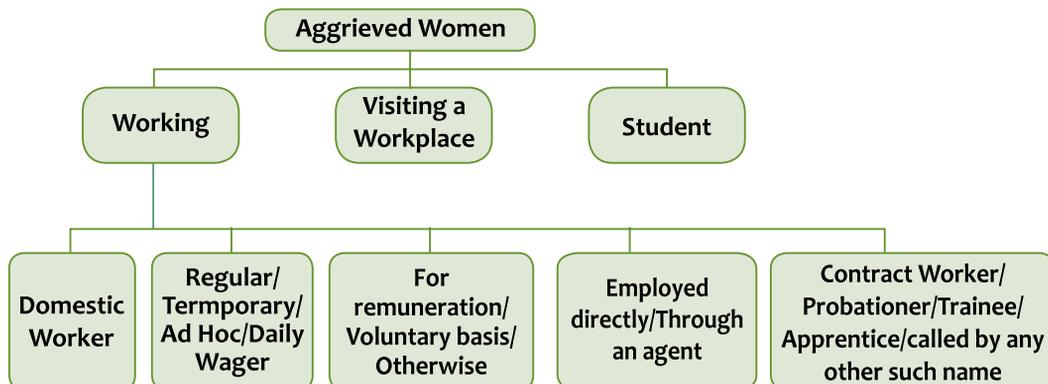
This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviours through which a woman can experience possible professional and personal harm. It presents the user with scenarios from across-section of work contexts to build clarity on different forms of sexual harassment as identified under the Act.

2.1 WHO IS AN AGGRIEVED WOMAN?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied.

Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.



2.2 WHAT IS A WORKPLACE?

A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organised and un-organised sectors.

It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes:

- Government organizations, including Government company, corporations and cooperative societies;
- Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;
- Hospitals/Nursing Homes;
- Sports Institutes/Facilities;
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

The Act defines the Unorganised Sector as:

- Any enterprise owned by an individual or self-employed workers engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.

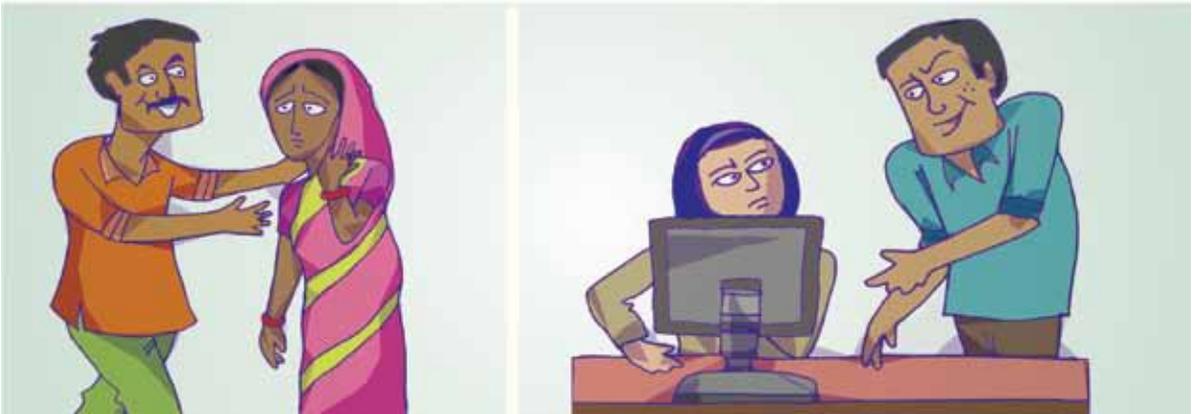
All women working or visiting workplaces, for example:



2.3 WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

“Sexual Harassment” includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature



2.4 KEY ELEMENTS OF WORKPLACE SEXUAL HARASSMENT

Very often situations that start off innocently end up in inappropriate and unprofessional behaviours. It is important to remember that **workplace sexual harassment is sexual, unwelcome** and the experience is **subjective**. It is the **impact** and not the intent that matters and it almost always occurs in a matrix of **power**. It is possible that a woman may experience a single instance of sexual harassment or a series of incidents over a period of time. It is important also to remember that each case is unique and should be examined in its own context and according to the surrounding circumstances as a whole.

The following table highlights the subjective nature of the experience and the impact it may have on the person involved, irrespective of the intent of such behaviour.

To enable prevention of sexual harassment at the workplace, it is critical to recognize and differentiate between welcome and unwelcome sexual behaviour. Listed are some examples of how “unwelcome” and “welcome” behaviour is experienced.

THE FIRST STEP TO PREVENTION IS RECOGNITION

Workplace Sexual Harassment is behaviour that is

UNWELCOME

SEXUAL in nature

A **SUBJECTIVE** experience

IMPACT not intent is what matters

Often occurs in a matrix of **POWER**

UNWELCOME	WELCOME
Feels bad	Feels good
One-sided	Reciprocal
Feels powerless	In-control
Power-based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Causes anger/sadness	Happy
Causes negative self-esteem	Positive self-esteem

Impact of inappropriate behaviour

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts.



Professional	Personal
<ul style="list-style-type: none"> • Decreased work performance • Increased absenteeism, loss of pay • Loss of promotional opportunities • Retaliation from the respondent, or colleagues/ friends of the respondent • Subjected to gossip and scrutiny at work • Being objectified • Becoming publicly sexualized • Defamation • Being ostracized • Having to relocate • Job and career consequences • Weakened support network 	<ul style="list-style-type: none"> • Depression • Anxiety, panic attacks • Traumatic stress • Sleeplessness • Shame, guilt, self-blame • Difficulty in concentrating • Headaches • Fatigue, loss of motivation • Personal Difficulties with time • Eating disorders (weight loss or gain) • Feeling betrayed and/or violated • Feeling angry or violent towards the respondent • Feeling powerless • Loss of confidence and self esteem • Over all loss of trust in people • Problems with intimacy • Withdrawal and isolation

SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held “We therefore prefer to analyze harassment from the [complainant’s] perspective. 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.”

Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009
On 9 September, 2010, in the High Court of Delhi

2.5 EXAMPLES OF BEHAVIOURS AND SCENARIOS THAT CONSTITUTE SEXUAL HARASSMENT

Below are examples of behaviour that may or may not constitute workplace sexual harassment in isolation. At the same time, it is important to remember that more often than not, such behaviour occurs in cluster. Distinguishing between these different possibilities is not an easy task and requires essential training and skill building.



Some examples of behaviour that constitute sexual harassment at the workplace:

1. Making sexually suggestive remarks or innuendos.
2. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
3. Offensive comments or jokes.
4. Inappropriate questions, suggestions or remarks about a person's sex life.
5. Displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or e-mails.
6. Intimidation, threats, blackmail around sexual favours.
7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.



10. Physical contact such as touching or pinching.
11. Caressing, kissing or fondling someone against her will (could be considered assault).
12. Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
13. Persistently asking someone out, despite being turned down.
14. Stalking an individual.
15. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours.
16. Falsely accusing and undermining a person behind closed doors for sexual favours.
17. Controlling a person's reputation by rumour-mongering about her private life.

Some examples of behaviour that may indicate underlying workplace sexual harassment and merit inquiry:

1. Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
2. Exclusion from group activities or assignments without a valid reason.
3. Statements damaging a person's reputation or career.
4. Removing areas of responsibility, unjustifiably.
5. Inappropriately giving too little or too much work.
6. Constantly overruling authority without just cause.
7. Unjustifiably monitoring everything that is done.
8. Blaming an individual constantly for errors without just cause.
9. Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties.
10. Insults or humiliations, repeated attempts to exclude or isolate a person.
11. Systematically interfering with normal work conditions, sabotaging places or instruments of work.
12. Humiliating a person in front of colleagues, engaging in smear campaigns.
13. Arbitrarily taking disciplinary action against an employee.
14. Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed.

Some examples of workplace behaviours that may not constitute sexual harassment:

1. Following-up on work absences.
2. Requiring performance to job standards.

3. The normal exercise of management rights.
4. Work-related stress e.g. meeting deadlines or quality standards.
5. Conditions of works.
6. Constructive feedback about the work mistake and not the person.

2.6 FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally workplace sexual harassment refers to two common forms of ***inappropriate behaviour***:

- Quid Pro Quo (literally ‘this for that’)
 - Implied or explicit promise of preferential/detrimental treatment in employment
 - Implied or express threat about her present or future employment status
- Hostile Work Environment
 - Creating a hostile, intimidating or an offensive work environment
 - Humiliating treatment likely to affect her health or safety

2.7 SCENARIOS

The following scenarios have been constructed as examples based on real life experiences of women at workplaces. The scenarios attempt to build an understanding of the two types of workplace sexual harassment as prescribed by the Act i.e. quid pro quo and hostile environment.

The names in the following examples are fictional and in no way refer to any individual alive or dead.

A. Examples of scenarios that constitute quid pro quo or ‘this for that’ type of sexual harassment at the workplace:

SCENARIO EXAMPLE 1

Kamini is a bright young team leader working in a call centre. Known to be forthright, she is dedicated, hardworking and is a perfectionist.

Kamini stays back at work late one evening with her colleague Ravi to complete work for an important presentation. Ravi offers to buy Kamini dinner and later drop her home since it’s been a long day. After dinner, Ravi proposes to Kamini that he would like her to spend the night with him. Kamini refuses politely but firmly and goes home. Next evening, Ravi repeats his request and on Kamini’s refusal, threatens her that ***if she doesn’t give-in, he will tell everyone*** that she made a pass at him.

What is Workplace ‘this for that’ Sexual Harassment?

In the above example, Ravi’s threat to Kamini that if she does not agree to his ‘request’ for a sexual favour, he will in return smear her character at the workplace as a person who wants to use sexual

favours to her advantage constitutes quid pro quo form of sexual harassment. Ravi's behaviour is unwelcome, sexual, and has a negative impact on Kamini.

SCENARIO EXAMPLE 2

Renuka is employed as a domestic worker where she is expected to take care of all the household activities, other than cooking. Most of the days, the lady of the house leaves early. Renuka is therefore left alone in the house with a male member of the household.

Renuka finds the male member constantly leering at her when he is at home and often walks around the house wrapped in nothing but a towel which makes her very uncomfortable. On one occasion, while she was sweeping, he pinched her bottom. When she protested that she will complain to the lady of the house, he **threatened to accuse** her of stealing, and that he will ensure that she **loses** her job.



What is Workplace Sexual Harassment?

In the above example, the male member by threatening Renuka to keep quiet about the unwelcome physical contact if she wants to continue with her employment commits quid pro quo form of sexual harassment. His behaviour occurring in a matrix of power, is unwelcome, sexual and has a negative impact on Renuka.

SCENARIO EXAMPLE 3

Shamima is a lawyer who works as a researcher at an NGO in Delhi since 2013. Dr. Bhavan is the director of the organisation and has always advocated for the cause of human rights.

During an official field visit to Shimla for 2 days, Dr. Bhavan finds an opportunity to be alone with Shamima and makes a physical advance. Despite her protests, he forces himself on her while giving lurid and sexually explicit details of his relationships, both past and present, with women. When she chastises him and threatens to make his behaviour public, he **threatens to destroy her career**.

What is Workplace Sexual Harassment?

In the above example, by threatening Shamima with the destruction of her career, Dr. Bhavan commits quid pro quo sexual harassment. His physical advances and sexual conversation are unwelcome for Shamima and occur in a matrix of power.

B. Examples of scenarios that constitute a 'hostile work environment' type of sexual harassment at the workplace:

SCENARIO EXAMPLE 1

Jayanthi works in a garment factory in Bangalore.

Varghese, Jayanthi's supervisor, often tries to touch her on one or the other pretext. For example, he adjusts her *dupatta* while she is sewing at her workstation on the pretext of covering her back. Jayanthi is very uncomfortable with his behaviour. Her colleagues at the workplace ridicule Jayanthi and mock her for the 'special treatment' by her supervisor. They often gossip about her and Varghese.

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, the physical touching by Varghese is unwelcome and sexual in nature. The gossip, which is based on Varghese's behaviour towards Jayanthi at the workplace, is creating a hostile work environment for Jayanthi.



SCENARIO EXAMPLE 2

Sukhi is a daily wage labourer working at a construction site. Every day at lunch time, Sukhi sits under the shade of the tree to feed her 16-month old baby. She finds Jaswinder, a worker, staring at her from the distance. Sukhi feels uncomfortable and asks Jaswinder to stay away from her while she's feeding the baby. However, Jaswinder persists and always finds a place near her. The group of fellow construction workers now **constantly catcall and whistle** at Sukhi every time she walks their way to refill the cement or mortar. When she questions them, they tell her they are only joking amongst themselves.

What is a Hostile Workplace Environment Sexual Harassment?

Ogling, stalking and gossiping against Sukhi in the above example constitute a hostile work environment, a form of workplace sexual harassment.

SCENARIO EXAMPLE 3

Sumedha is a Captain with the Indian Army. She has refused an offer made by a Senior Officer for a relationship. Sumedha has kept quiet about this experience, but thanks to the rumour-mongering by the Senior Officer, she has acquired a reputation of being a woman of 'easy virtue'. Now she is being *subjected to repeated advances* by three of her senior officer colleagues. When she turns around and protests, *she is singled out for additional physical training*.

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, Sumedha's refusal to the sexual advances of her Senior Officer, leads to her being subjected to rumours, gossip, character assassination, unwelcome sexual advances by other officers, and arbitrary disciplinary action. This constitutes Hostile Work Environment form of workplace Sexual Harassment.

SCENARIO EXAMPLE 4

Asha is a researcher at a media agency led by Dr. Purshottam, a well-known journalist.

In the first few months of Asha's employment, Dr. Purshottam is very pleased with her work and publicly appreciates her. Soon after, Dr. Purshottam frequently summons Asha to his office on the pretext of work and makes verbal sexual advances and sexually coloured remarks to her. He brushes aside her protests by saying that they would not be able to work as a team unless she interacted closely with him and they both got to know each other well. However, once she categorically rebuffed his sexual advances, he has stopped. Now he **ridicules her work** and **humiliates** her in the presence of colleagues and the staff. He **discriminates** against her by allotting projects to her and then arbitrarily withdrawing the work.

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, the workplace actions are a result of Asha rebuffing the unwelcome, sexual advances of Dr. Purshottam and this constitutes hostile work environment form of workplace sexual harassment.

This section has listed and illustrated some of the behaviours that constitute the five parameters of workplace sexual harassment, viz., sexual, subjective, unwelcome, impact and power. This becomes the basis of the key elements of the Act, Prevention, Prohibition and Redress.

Prevention and Prohibition

“The meaning and content of fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...”

Late Justice J.S. Verma

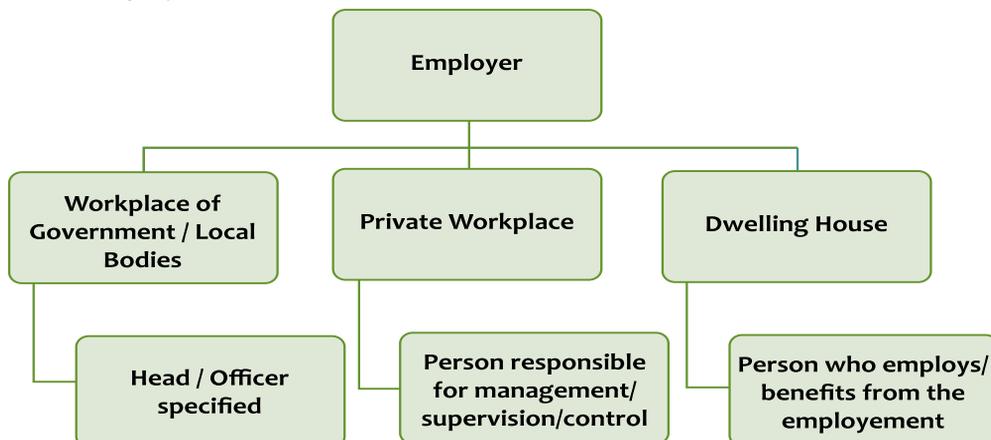
This section describes those who are both responsible and accountable to prevent workplace sexual harassment in compliance with the Act. It also highlights the role of workplaces in prohibiting workplace sexual harassment through an effectively communicated policy.

3.1 PREVENTIVE AUTHORITIES

3.1.1 WHO IS AN EMPLOYER?

An employer refers to:

1. The head of the department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the Appropriate Government or local authority or such officer specified in this behalf.
2. Any person (whether contractual or not) responsible for the management, supervision and control of a designated workplace not covered under clause (i).
3. A person or a household who employs or benefits from the employment of domestic worker or women employees.



3.1.2 WHO IS AN APPROPRIATE GOVERNMENT?

As per the Act, 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—
 - a. By the Central Government or the Union Territory administration, the Central Government;
 - b. By the State Government, the State Government;
- ii. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

3.2 WHO IS A DISTRICT OFFICER (DO)?

State Governments will notify a District Magistrate/Additional District Magistrate/ Collector/ Deputy Collector as a District Officer at the local level. The District Officer will be responsible for carrying out the powers and functions under the Act at the district levels (including every block, taluka, tehsil, ward, and municipality).

3.3 RESPONSIBILITIES OF THE AFOREMENTIONED AUTHORITIES

Under the law the employer/DO is obliged to create a workplace free of sexual harassment. It is the responsibility of the Employer/District Officer in general to:

1. Create and communicate a detailed policy;
2. Ensure awareness and orientation on the issue;
3. Constitute Complaints Committee/s in every workplace and district so that every working woman is provided with a mechanism for redress of her complaint(s);
4. Ensure Complaints Committees are trained in both skill and capacity;
5. Prepare an annual report and report to the respective state government;
6. District Officer will also appoint a nodal officer to receive complaints at the local level.

3.2.1 Complaints Committee/s

The Act provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All Complaints Committees must have 50 per cent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.

1) Internal Complaints Committee (ICC)

Every employer is obliged to constitute an ICC through a written order. The ICC will be composed of the following members:

No	Member	Eligibility
1.	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2.	2 Members (minimum)	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
3.	Member	From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

Where the office or administrative units of a workplace are located in different places, division or sub-division, an ICC has to be set up at every administrative unit and office.

ICC/LCC ARE MANDATORY

The employee who had a fundamental right to a workplace free of sexual harassment, had complained about sexual harassment. According to the Court, had the organisation complied with the Vishaka Guidelines and set up such a Complaints Committee, the preventative benefit would have been three-fold:

1. Ensured a place where women employees could seek redress;
2. Sent a clear message to the workplace that such complaints would be enquired into by a specially designated committee with external expertise;
3. Prevented a series of litigation that followed.

Hence, the Madras High Court awarded Rs. 1.68 crores in damages to an employee for the non-constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).

Ms. G v. ISG Novasoft Technologies Ltd. Madras High Court (CrI.R.C.No.370 of 2014 order dated 02.09. 2014. Original Petition No.463 of 2012

2) Local Complaints Committee (LCC)

The District Officer will constitute an LCC in every district so as to enable women in the unorganised sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

1. From women working in an organisation having less than 10 workers;
2. When the complaint is against the employer himself;
3. From domestic workers.

No	Member	Eligibility
1.	Chairperson	Nominated from amongst the eminent women in the field of social work and committed to the cause of women
2.	Member	Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district
3.	2 Members	Nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that: <ul style="list-style-type: none"> • At least one must be a woman • At least one must have a background of law or legal knowledge
4.	Ex Officio member	The concerned officer dealing with social welfare or women and child development in the district

*One of the nominees shall be a woman belonging to the SC/ST/OBC/Minority community notified by the Central Government.

3) External Members on the Complaints Committee/s

The Act refers to external members, which generally means persons who have expertise with the issue of sexual harassment. Given the largely intangible nature of workplace sexual harassment, there are a range of complexities involved in responding effectively to workplace sexual harassment complaints. For this reason, external third party/ members on the Complaints Committee/s (from civil society or legal background) should possess the following attributes:

1. Demonstrated knowledge, skill and capacity in dealing with workplace sexual harassment issues/complaints;
2. Sound grasp and practice of the legal aspects/implications.

Such expertise will greatly benefit Complaints Committees in terms of fair and informed handling of complaints to lead to sound outcomes. These external third party members shall be paid for their services on the Complaints Committees as prescribed.

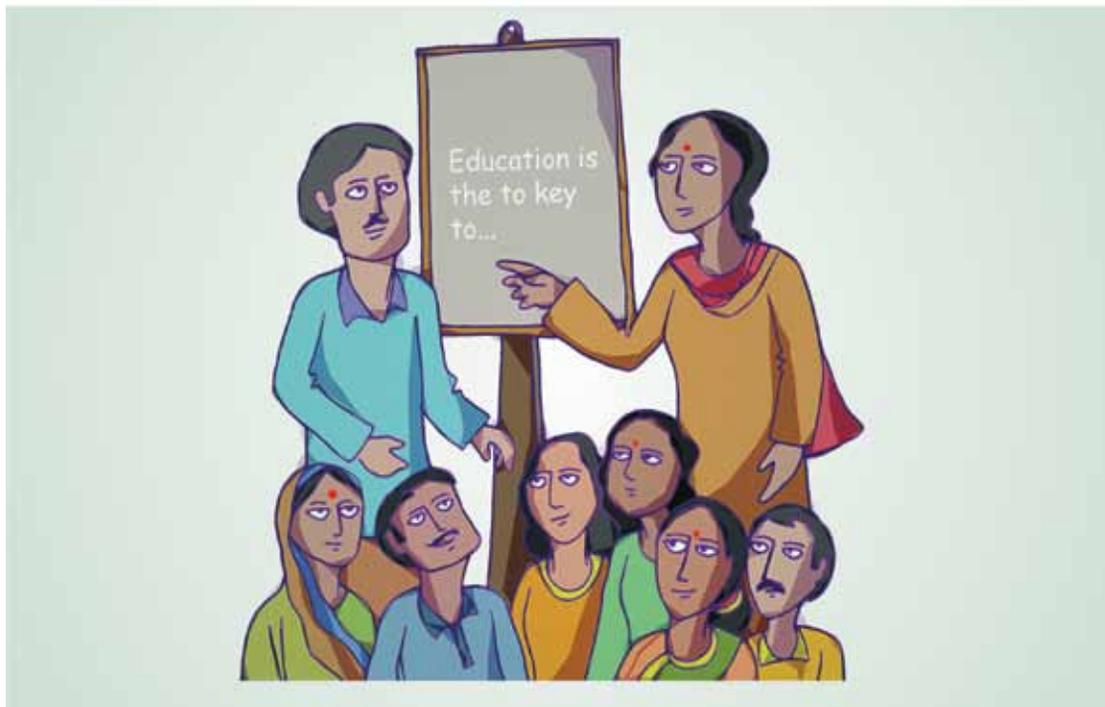
Criteria for the External Member

A 'person familiar with issues relating to women' would mean such persons who have expertise in issues related to sexual harassment and may include any of the following:

- At least 5 years of experience as a social worker, working towards women's empowerment and in particular, addressing workplace sexual harassment;
- Familiarity with labour, service, civil or criminal law.

3.2.2 Sexual Harassment at Workplace Policy

Employers/District Officers are responsible for complying with prohibition, prevention and redress of workplace sexual harassment. In practice, this means having a policy that: (1) prohibits unwelcome behaviour that constitutes workplace sexual harassment; (2) champions prevention of workplace sexual harassment through orientation, awareness and sensitization sessions; and (3) provides a detailed framework for redress.



3.2.3 Dissemination of Information and Awareness Generation

Employers/ District Officers have a legal responsibility to:

1. Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes.
2. Carry out awareness and orientation for all employees.
3. Create forums for dialogue i.e. Panchayati Raj Institutions, Gram Sabhas, Women's Groups, Urban Local Bodies or like bodies, as appropriate.
4. Ensure capacity and skill building of Complaints Committees.
5. Widely publicize names and contact details of Complaints Committee members.

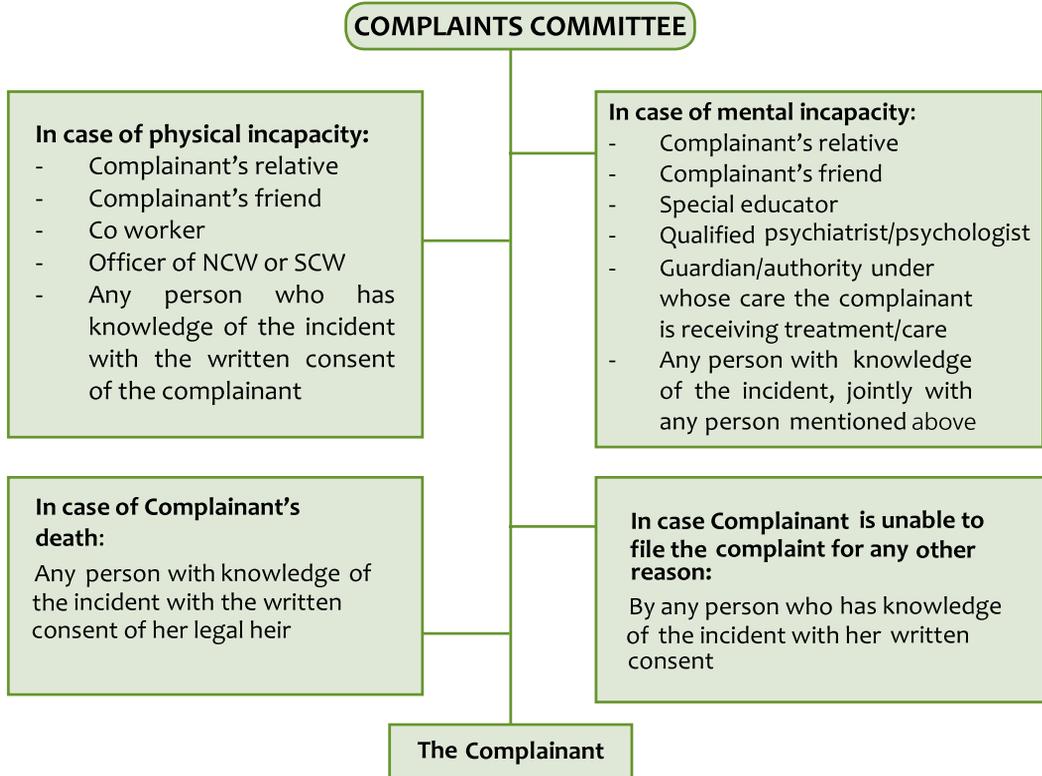
Redress

“...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree”

Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013

This section is about Redress. It provides helpful information on who can complain, to whom, and what a complaint should contain. It also gives information and lays out the steps involved when a complaint has reached the Complaints Committee, in terms of the process, findings and recommendations.

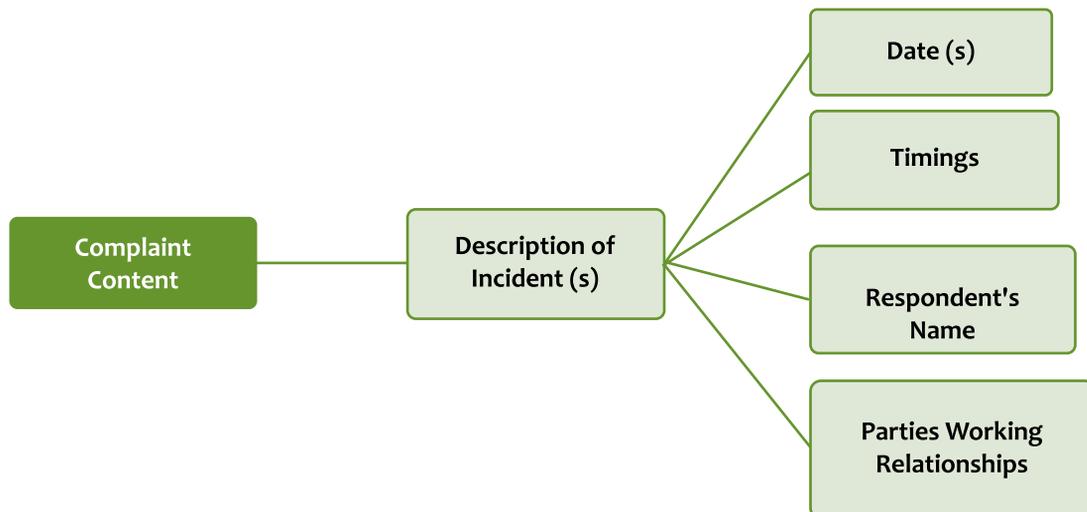
4.1 WHO CAN COMPLAIN AND WHERE?



Generally, where there are less than ten workers, any woman employee can complain to the Local Complaints Committee with the support of the Nodal Officer, when required. It is the responsibility of the District Officer to designate a person as the Nodal Officer in every block, taluka and tehsil in rural or tribal areas and wards or municipalities in the urban areas, to receive the complaints of workplace sexual harassment from women. The Nodal Officer will forward all such complaints within seven days of its receipt to the concerned Complaints Committee for appropriate action. In most other workplaces, a woman employee can make a complaint to the Internal Complaints Committee.

4.2 WHAT SHOULD THE COMPLAINT CONTAIN?

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.



4.3 WHAT CAN AN EMPLOYEE/WORKER EXPECT?

When it comes to redress for workplace sexual harassment, employee/worker has a right to expect -a **trained, skilled** and **competent** Complaints Committee, a time bound process, information confidentiality, assurance of non-retaliation, counselling or other enabling support where needed and assistance if the complainant opts for criminal proceedings.

4.3 A. RIGHTS OF THE COMPLAINANT

- An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment
- A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent

- Keeping her identity confidential throughout the process
- Support, in lodging FIR in case she chooses to lodge criminal proceedings
- In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent
- Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee

4.3 B. RIGHTS OF THE RESPONDENT

- A patient hearing to present his case in a non-biased manner
- A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- Keeping his identity confidential throughout the process
- Right to appeal in case not satisfied with the recommendations/findings of the Complaints Committee

4.4 KEY RESPONSIBILITIES

To effectively address workplace sexual harassment complaints, a Complaints Committees must first be aware of their key responsibilities, some of which are highlighted below:

1. Be thoroughly prepared
2. Know the Act, Policy and/or relevant Service Rules
3. Gather and record all relevant information
4. Determine the main issues in the complaint
5. Prepare relevant interview questions
6. Conduct necessary interviews
7. Ensure parties are made aware of the process and their rights/responsibilities within it
8. Analyse information gathered
9. Prepare the report with findings/recommendations

4.5 KNOWLEDGE, SKILLS, TRAINING

Dealing with workplace sexual harassment complaints is often complex. Hence Complaints Committee/s must possess critical skills/capacity to effectively carry out their role. That includes a sound grasp of the Act, Vishaka Guidelines, applicable Service Rules, relevant laws and an understanding of workplace sexual harassment and related issues. Complaints Committee skills must include an ability to synthesise information i.e. relevant documents, the law and interviews. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews. They should be competent at showing empathy, being impartial and being thorough. They should be able to identify sexual harassment and its impact.

A Complaints Committee/s is required to be trained in both **skill** and **capacity** to carry out a fair and informed inquiry into a complaint of workplace sexual harassment. An absence of such training will lead to unequal and unfair results, which can cost employers, employees, complainants as well as respondents.

FAIR AND INFORMED INQUIRY

Within 6 months of joining The Statesman newspaper, Rina Mukerhjee lost her job. While the company alleged that her work was “tardy” and “lacking in quality” it suppressed Rina’s complaint of sexual harassment against the news coordinator, Ishan Joshi. Within her first month of work, Rina had taken her complaint directly to the Managing Director, Ravinder Kumar. Time passed, nothing happened and Rina was fired. In a rare display of social context insight and clarity, the Industrial Tribunal (West Bengal) rejected the Statesman’s claim that Rina only referred to “professional” harassment in her complaint to Mr. Kumar. In the Tribunal’s view, Mr. Kumar’s failure to dig deeper was clearly suspect- “... it becomes clear that there was no Committee on Sexual Harassment, as per the Hon’ble Supreme Court’s direction in Vishaka vs State of Rajasthan, existing in The Statesman, at that relevant time. ...to expect-the lady workman to file a written complaint and not to believe the same, when it has been filed ‘at a later date’ is sheer bias.” The Statesman was ordered to reinstate Rina and grant her full back wages.

M/s The Statesmen Ltd. and Smt. Rina Mukherjee. Order of K.K. Kumai, Judge, dated 06.02.2013, Fourth Industrial Labour Tribunal (West Bengal)

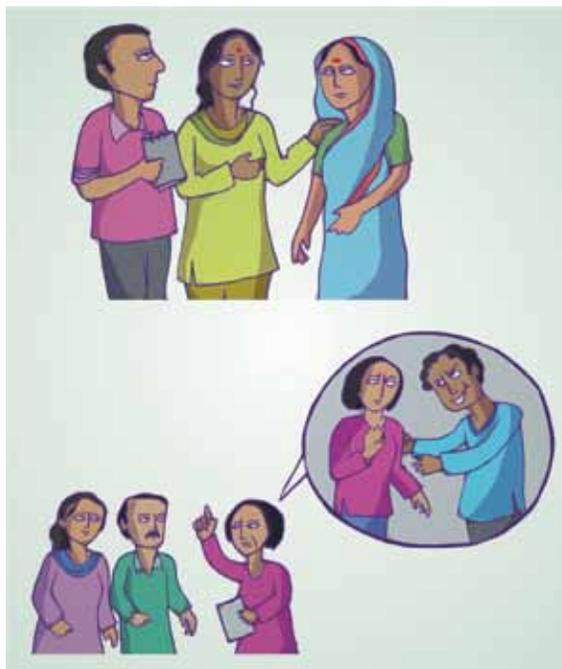
4.6 DO’S AND DON’TS FOR COMPLAINTS COMMITTEE

DO’S

1. Create an enabling meeting environment.
2. Use body language that communicates complete attention to the parties.
3. Treat the complainant with respect.
4. Discard pre-determined ideas.
5. Determine the harm.

DON’TS

1. Get aggressive.
2. Insist on a graphic description of the sexual harassment.
3. Interrupt.
4. Discuss the complaint in the presence of the complainant or the respondent.

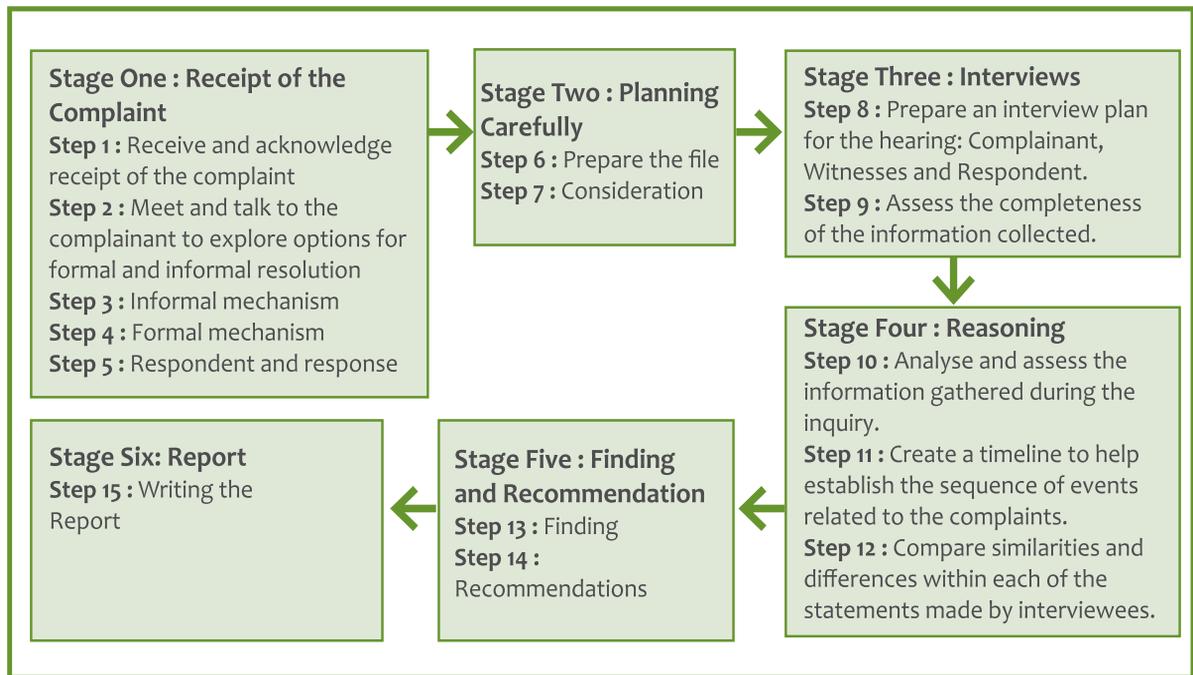


4.7 NON-NEGOTIABLES DURING THE INQUIRY PROCESS

During a redress process the Complaints Committee/s are required to assure confidentiality, non-retaliation and recommend interim measures as needed to conduct a fair inquiry.

4.8 THE SEXUAL HARASSMENT COMPLAINT PROCESS

The Complaints Committee/s needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.



STAGE ONE: RECEIPT OF THE COMPLAINT

A fair, prompt, and impartial inquiry process starts with a Complaints Committee capable of creating an environment of trust and confidence throughout the inquiry.

Step 1 : Receive and Acknowledge Receipt of the Complaint

The complainant submits a sexual harassment complaint in writing within three months of the last alleged incident to the Complaints Committee or any other person designated by the organization/ District Officer (i.e. Nodal Officer) to receive and manage complaints of sexual harassment.

Training and Skill Building : An Institutional Responsibility

It is important that both the Committee and any other person designated by the organization/ District Officer to receive or otherwise handle a sexual harassment complaint has there quired competency and skill building training formanaging a complaint and/or any concern related to workplace sexual harassment.

Upon receipt, the complaint should be reviewed for:

1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
2. Clarity in the complaint.
3. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

Elements of the Behaviour

The complaint needs to satisfy the following elements:

- 1** The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment;
- 2** The behaviour was directed at the complainant;
- 3** The complainant experienced harm.
- 4** The behavior occurred in the workplace or at any location/any event related to work

Step 2: Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

However, before recommending conciliation, the Committee must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the Complaints Committee will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICC/LCC who in turn will forward the same to the employer/District Officer for further action based on the resolution. Employers/District Officers are responsible for taking steps to ensure that the complainant is not subject to any backlash.

The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

Step 4: Formal Mechanism

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.

2. Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
3. Ensure that the independent third party member has sound knowledge, skill, and experience in dealing with workplace sexual harassment complaints.

Step 5: Respondent and Response

1. As per the procedure provided in the Service Rule; or in absence of the same
2. Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.
3. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

STAGE TWO: PLANNING CAREFULLY

Step 6: Prepare the File

A sound inquiry relies on sound preparation. This includes taking into account the following steps:

1. Documentation

Create an independent confidential file of the complaint and all subsequent related documentation.

2. Review Law & Policy

Have a clear knowledge and understanding of the Act/Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.

3. Make a List

Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable.

Relevant Witnesses

The complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. In addition, the Complaints Committee also has the discretion to call any person as a witness, who it believes, has something to contribute to the inquiry process.

4. Supporting Documents

Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.

5. Act Quickly

Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes:

- a. The names of the parties and witnesses to be interviewed
- b. Any documentary support that needs to be examined
- c. Timeline

Preparing the Plan - Key Elements to Consider

1. Defining the Issues

What is the complaint

Questions or points that require clarification

2. Determining a violation of the Policy/Act

What information is needed to determine that there has been a violation

3. Logistics

Venue for conducting the interviews. Are special logistics required

Creating timelines for each

4. Critical Information

What documents need to be looked at

Witnesses to be questioned and in what order

5. Areas of Questioning

Questions for each specific incident and party/witness

Questions for each particular issue

Issues likely to require follow-up

Step 7: Consideration

1. Interim Measures

While a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (upto 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment*.

2. Support

Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.

STAGE THREE: INTERVIEWS

Step 8: Prepare an Interview Plan for the Hearing: Complainant, Witnesses, Respondent

1. Based on the results of the previous steps and before conducting interviews, the Complaints Committee should decide which issues need to be pursued for questioning.
2. Interviews are meant to obtain information that is relevant to the complaint from individuals.
3. Interviews should be conducted with each person *separately and in confidence*. *The complainant and the respondent should not be brought face to face with each other.*

Interviewing Tips

1. Introduction

Questioning the parties and witnesses in a situation of workplace sexual harassment is a sensitive task. The Complaints Committee must therefore proceed with empathy, while appreciating at times, a different version of the facts.

2. Questioning

Determine beforehand the following:

- Date, time, place and order of interviews
- Questions and their order
- Time for each interview

Generally rely on questions related to **who, what, where, when and how**. Remember:

- Questions ought to be clear and focused.
- Obtain as much information as possible through the interview.
- Do not share information gathered from other sources.

3. Choose an Appropriate Location

To create trust, comfort and openness

4. Explain the Interview Process

Explain how the interview will be conducted and what is expected

5. Records of the Interview

Take notes and explain the need for a proper record

6. Manage the Interview

The Chairperson of the Complaints Committee is responsible for ensuring the interviews are correctly carried out and due process followed

7. Sign Statements

At the conclusion of the interview, have those interviewed, sign and date statements made and recorded before the Complaints Committee

Step 9: Assess the Completeness of the Information Collected

At this stage, the Complaints Committee should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

STAGE FOUR: REASONING

Step 10: Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:-

- Identify the substance of each aspect of the complaint.
- Determine, whether or not, on a **balance of probability**, the unwelcome sexual harassment took place.
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.
- Comment on any underlying factor(s) that may have contributed to the incident.

Step 11: Create a timeline to help establish the sequence of events related to the complaint.

Step 12: Compare similarities and differences within each of the statements made by the interviewees.

STAGE FIVE: FINDING AND RECOMMENDATION

Step 13: Finding

Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.

Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

Step 14: Recommendations

Based on its findings, the Complaints Committee shall then make appropriate recommendations which may include:

1. Where the Complaints Committee is unable to uphold the complaint, it shall recommend no action.
2. Where the Complaints Committee upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules, which may include a warning to terminate.

In case service rules do not exist, recommended action may include:

- Disciplinary action, including a written apology, reprimand, warning, censure;
- Withholding promotion/ pay raise/ increment;
- Termination;
- Counselling;
- Community service.

3. The Complaints Committee may also recommend financial damages to the complainant, while deciding the amount they shall take into consideration:

- Mental trauma, pain, suffering and emotional distress caused;
- Medical expenses incurred;
- Loss of career opportunity;
- Income and financial status of the respondent.

If the amount is not paid it can be recovered as an arrear of land revenue.

4. The Complaints Committee can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

STAGE SIX: REPORT**Step 15: Writing the Report**

The Complaints Committee will prepare a final report that contains the following elements:

- A description of the different aspects of the complaint;
- A description of the process followed;
- A description of the background information and documents that support or refute each aspect of the complaint;
- An analysis of the information obtained;
- Findings as stated above;
- Recommendations.

An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties. The Employer or District Officer is obliged to act on the recommendations within 60 days. Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.

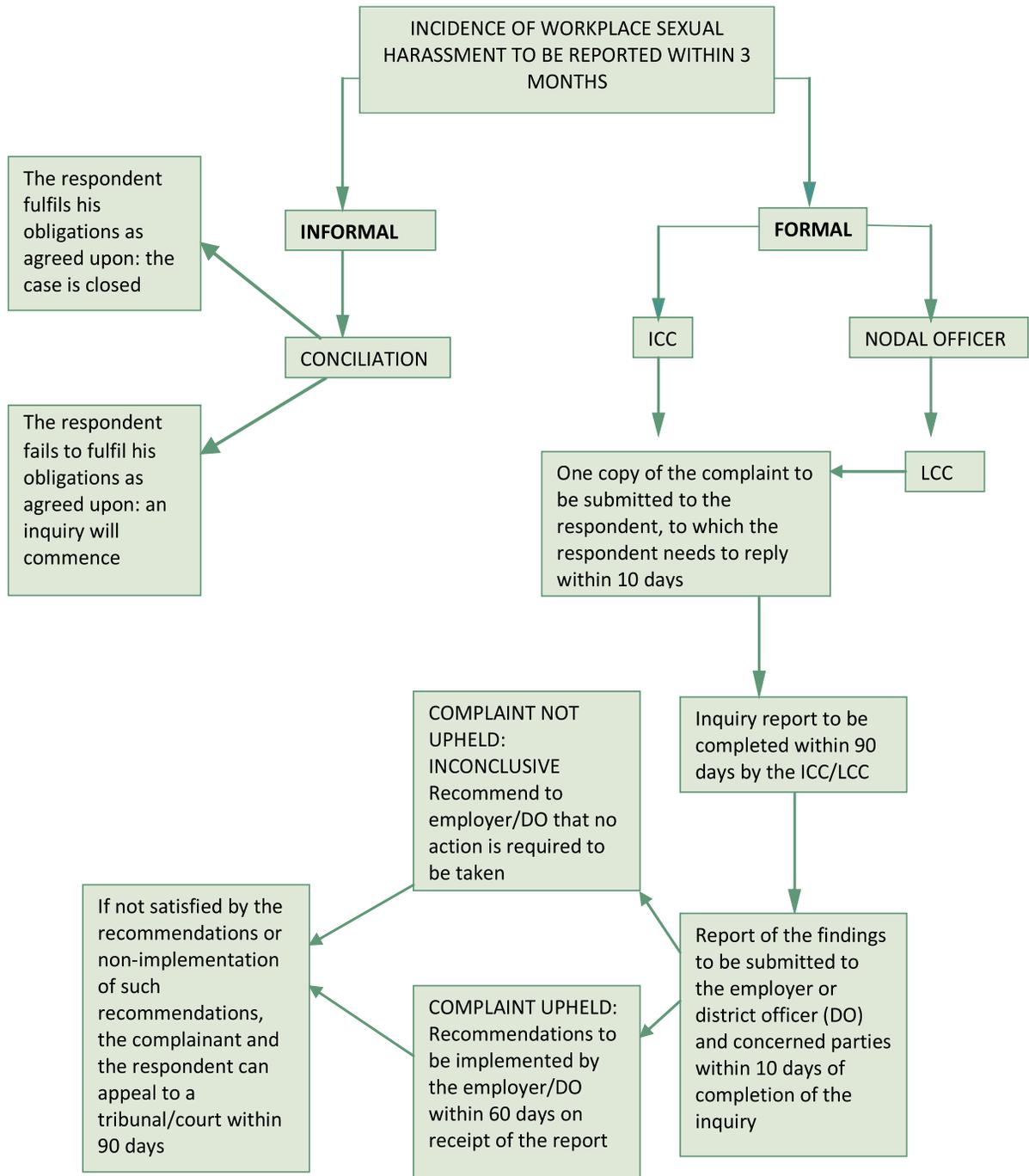
Given that most workspaces today are gender unequal and male-dominated, it is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

4.9 AT A GLANCE

1) Complaints Committee's Checklist

- Review the written complaints and response to complaints
- Review the applicable policy, the Act/Rules, Vishaka Guidelines and other relevant laws
- Develop a plan
- Meet with the complainant
- Meet with the respondent
- Meet with the witnesses
- Record statements and have them dated and signed
- Review and adapt the plan, as needed
- Proceed with further interviews, as needed
- Analyze all the facts to develop reasoning
- Arrive at the findings
- Give recommendations
- Prepare the report
- Submit the file to the organization or District Officer for implementation of the recommendations and for safe keeping.

INQUIRY PROCESS AT A GLANCE





2) Timelines as per the Act

Submission of Complaint	Within 3 months of the last incident
Notice to the Respondent	Within 7 days of receiving copy of the complaint
Completion of Inquiry	Within 90 days
Submission of Report by ICC/LCC to employer/DO	Within 10 days of completion of the inquiry
Implementation of Recommendations	Within 60 days
Appeal	Within 90 days of the recommendations

3) Confidentiality

The Act prohibits the publication or making known the contents of a complaint and the inquiry proceedings. Any breach of confidentiality will result in specific consequences.

The Act prohibits the disclosure of:

- Contents of the complaint;
- Identity and address of complainant, respondent and witnesses; Information pertaining to conciliatory/inquiry proceedings or recommendations of the ICC/LCC;
- Action taken by the employer/DO.

Accountability: Any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action taken under the provisions of this Act.

Consequences: As per the Service Rules or Rs.5,000/ to be collected by the employer.

Exception: Dissemination of information regarding the justice secured without disclosure of name, address, identity and particulars of complainant or witnesses.

Section 4 completes the details of the Complaints Committee process in addressing formal complaints. It serves as a guideline to action in providing appropriate redress. The manner in which a complaint is addressed will make all the difference to the equal rights of working women as well as the kind of workplace culture being promoted.

Monitoring

“Vishaka was a victory for all women”
Bhanwari Devi

This section refers to ways in which application of the Act at all workplaces is monitored. Monitoring is a way to ensure compliance of the Act on the ground. As an additional means of monitoring, the Act mandates the submission of Annual Reports with specific information as well as specific consequences where compliance is lacking.

The Act authorizes Appropriate Government to monitor the implementation of the Act. As per the Act, 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-
 - a. By the Central Government or the Union Territory administration, the Central Government;
 - b. By the State Government, the State Government;
- ii. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

Thus to monitor the Act, the Appropriate Government has the authority to undertake any of the following measures:

5.1 Inspection

In relation to workplace sexual harassment, when it is in the public interest or in the interest of women employees, every employer/District Officer can be ordered by the Appropriate Government i.e. State and Central Government, to make available any information, record or document, including opening its workplace for inspection relating to the same.

5.2 Annual Report

The Appropriate Government is entrusted with the monitoring of the implementation of this Act and for maintaining the data on the number of cases filed and disposed of under it. In particular, the Act mandates submission of an Annual Report by the ICC/LCC to the employer/District Officer.



The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

- a. No. of complaints received;
- b. No. of complaints disposed of;
- c. No. of cases pending for more than 90 days;
- d. No. of workshops/awareness programmes carried out;
- e. Nature of action taken by the employer/DO;

The Report of ICC will be forwarded to the DO through the employer.

5.3 Penalties

An employer can be subjected to a penalty of up to INR 50,000 for:

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

Monitoring is a critical yardstick to measure success in terms of compliance with the Act. Additionally, it highlights those areas, in terms of law and practice, which may require improvement and/or additional information and guidance at both the State as well as the workplace levels.

Global Norms and Good Practices

Increasing awareness and compliance with international standards is a reminder that we must not lose sight of the goal. Over the years, the international community has developed benchmarks that provide guidance on what the laws around workplace sexual harassment should look like in practice. The key benchmarks are listed below:

1. Recognition that workplace sexual harassment is a form of human rights violation.ⁱ
2. Recognition that sexual harassment is a form of gender-specific violence.ⁱⁱ
3. Equality, dignity and worth of a human person must be emphasized.
4. Gender-based violence includes sexual harassment and impairs the enjoyment by women of several basic human rights and fundamental freedoms.ⁱⁱⁱ Some of these rights include:
 - The right to life, the right to liberty and security of the person.
 - The right to equal protection under the law.
 - The right to the highest standard attainable of physical and mental health.
 - The right to just and favourable conditions of work.^{iv}
5. Eliminating violence against women and advancing women's equality includes the right to be free from workplace sexual harassment.^v
6. Legislation on violence against women should define violence to include sexual harassment. Such legislation should also recognize sexual harassment as a form of discrimination and a violation of women's rights with health and safety consequences.^{vi}
7. The International Labour Organization (ILO) has also drawn specific attention to domestic workers, who have a right to “enjoy effective protection against all forms of abuse, harassment and violence.”^{vii}

In terms of practice, international law and policy frameworks have an important role to play in encouraging the adoption of an understanding of sexual harassment as a fundamental human right and equality issue, and not just a problem for labour/employment law to solve.

Converting these concepts into practice involves constant monitoring and adapting to changing circumstances. As a start, six simple steps to keep in mind and practice in any workplace should involve the following:

1. Make sure there is a policy that has been “effectively” communicated to all workers, irrespective of whether they are paid or volunteers.
2. Display details of both informal and formal ways available to a worker to address/complain about workplace sexual harassment.
3. Undertake orientation on workplace sexual harassment for all workers in respective organizations, establishments or institutions.
4. A Complaints Committee which is trained in terms of skill and capacity is critical for building trust.
5. Encourage senior persons/leaders/supervisors or any person who can influence employment-related decisions, to become role models.
6. Men and women should be included in building a culture which no longer tolerates workplace sexual harassment.

Legally, workplace sexual harassment can no longer be dismissed as some moral transgression. The Vishaka Guidelines raised that bar, when for the first time it recognized “each incident of sexual harassment” as a violation of the fundamental right to equality. That notion has found its way into the Act, which promotes the right of women as citizens to a workplace free of sexual harassment. Complaints Committees at all workplaces are now charged with the role to ensure that the right remains intact, through a fair, informed, user-friendly process of redress.

Prioritising prevention and establishing a redress mechanism, which comprises of 50 per cent women, a woman chair and an external third party expert, is India’s innovative model in responding to working women’s experience of sexual harassment. Assuming adequate changes follow, in both law and practice to meet global benchmarks, that model can evolve into an exemplary best practice. To get there, workplaces in India today, must rise to the requirement of promoting gender equality.

ⁱ General Recommendation 12 of 1989, Committee on the Elimination of All Forms of Discrimination against Women.

ⁱⁱ General Recommendation 19 of 1992, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

ⁱⁱⁱ Ibid.

^{iv} Article 3, Declaration on the Elimination of Violence against Women, 1993.

^v The Beijing Platform of Action drawn at the United Nations’ Women’s Conference in Beijing in 1995.

^{vi} United Nations UN Division for the Advancement of Women *Handbook for Legislation on Violence Against Women* (UN Handbook).
<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

^{vii} Article 5, ILO Decent Work for Domestic Workers Convention, 2011 (No. 189).





Towards a new dawn

Government of India
Ministry of Women and Child Development