

# UNDERSTANDING WORKPLACE SEXUAL HARASSMENT LAW "POSH ACT, 2013"

# ABOUT UNGENDER

Ungender Legal Advisory is a diversity and inclusion laws advisory firm - working on bridging the gender and inclusion divide at workplaces. We believe that workplaces have a long way to go before they become “inclusive” for all the existing and prospective genders interacting as their internal and external stakeholders. However, this is a journey that has begun for a lot of companies and some are just beginning to walk the path. We partner with the companies and its leaders to help them reach inclusion.

Our dedicated efforts towards this have resulted in niche advisory on compliance and implementation of the Maternity Benefits Act, 1961, SexualHarassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and other diversity based laws such as the Rights of Persons with Disabilities Act, 2016 and the Transgender Persons (Protection of Rights) Act, 2019.

We believe that solutions, like their problems, exist in the form of an ecosystem. And we need to address it together as much as possible. While majority of our work in the six years has been in private sector and workplaces, we have accumulated advisory expertise on different on-ground, mass level implementation with State and District level of government. Our collective intelligence is an output of working with over 300 companies directly, educating over 10,000 companies leaders, 250+ case investigations, and sensitizing over a lakh individuals on diversity and inclusive laws.

In addition to the above, we believe in extracting data-based insights on the on-ground activities/realities of workplaces to in turn, shape the future activities within a workplace, in the industry as benchmarks, or in the legal ecosystem.

As a part of our learning and development efforts, we are happy to share our knowledge in the public domain for the benefit of all stakeholders. For this, we have a dedicated section on our website on blogs, legal updates and handbooks on diversity and inclusion laws. Additionally, we will also bring various industry insights, through the gender lens, for you, as a stakeholder, decision maker, and an advocate of inclusion and equity to build inclusive workplaces of future.

## Disclaimer

This Handbook is a copyright of Ungender Legal advisory. The Handbook has been designed to provide basic information about Prevention of Sexual Harassment Act, 2013 read along rules and schemes framed thereunder and is in no manner construed to be professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this Handbook, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this Handbook.

# Contact

For any help or assistance please email us on [contact@ungender.in](mailto:contact@ungender.in) or visit us at [www.ungender.in](http://www.ungender.in)

# Acknowledgements

IN EVERY OUTPUT CURATED BY UNGENDER, WE SILENTLY ACKNOWLEDGE ALL THE LEGAL PROFESSIONALS, GENDER RIGHTS ADVOCATES, ACTIVISTS, RESEARCHERS, SOCIAL WORKERS, JUSTICE AUTHORITIES, ALL THE WOMEN, MEN, AND OTHER GENDERS, WHO MADE EACH LAW POSSIBLE AND ACCESSIBLE EVERYTHING THAT THE LEGAL SYSTEM AND THE SOCIETY ENJOYS TODAY IS A PRODUCT OF HUNDREDS OF YEARS OF JOURNEY.

# Individuals who have contributed to the making of this Handbook:

Ashima Rekhi  
Associate Sales, Ungender

Suruchi Kumar  
Head of Legal Services, Ungender

Pallavi Pareek  
Founder & CEO, Ungender

**SAFE WORKPLACE IS A  
FUNDAMENTAL RIGHT OF  
EVERY WOMAN.**

**BE THAT WORKPLACE.**

## **CONTACT US**

For the past six years, Ungender and the team behind it, has built its expertise in the laws that impact workplaces and the genders engaging with them.

Our insights are produced in the form of simplified handbooks like the one you are accessing right now where we simplify the complicated laws and their mandates for the stakeholders.

Our additional insights come out in the form of industry reports where we combine laws, data, and gender together to provide the nuanced reality of specific sectors.

To have access to the reports, write to us on [contact@ungender.in](mailto:contact@ungender.in)

To seek our advisory on workplace gender laws matters, write to us on [contact@ungender.in](mailto:contact@ungender.in)  
Bangalore | Delhi | NCR

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# INTRODUCTION

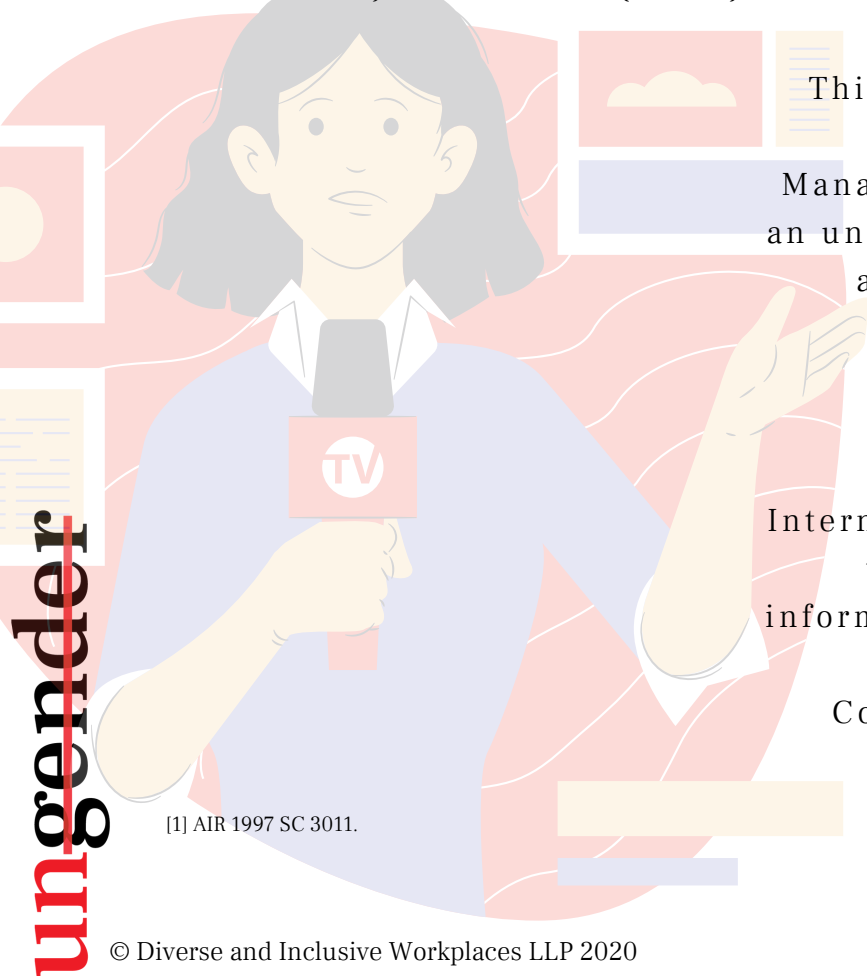
Women have been an integral part of the workforce in all sectors of employment, be it factories, BPOs or law firms. While they walk shoulder to shoulder with male employees, discrimination against women and other gender minorities is rampant which has made career progression difficult. Discrimination could be in the form of pay gap or other systemic and structural barriers that hinders their inclusion. This has led to women and other minority genders being underrepresented at every level. There are several hindrances to women being productively employed. One of the major roadblocks and the most insidious form of discrimination is sexual harassment at workplace.

The law regarding sexual harassment has grown leaps and bounds in the past decade. The judiciary and legislature alike have been exceptionally proactive in enabling this field in evolving. The landmark judgment of Hon'ble Supreme Court of India in *Vishaka v. State of Rajasthan* [1] paved the way to the law today i.e. the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 ("Act").

This Handbook has been put together with the endeavour to provide HR Managers and Legal Professionals with an understanding of steps to implement and comply with the Act to prevent instances of sexual harassment at workplace.

In addition, it is designed to offer Internal Committee/s established under the Act, with simple, user friendly information on sexual harassment; what is expected of such Internal Committee/s to redress a complaint; and what the inquiry process and outcome should include.

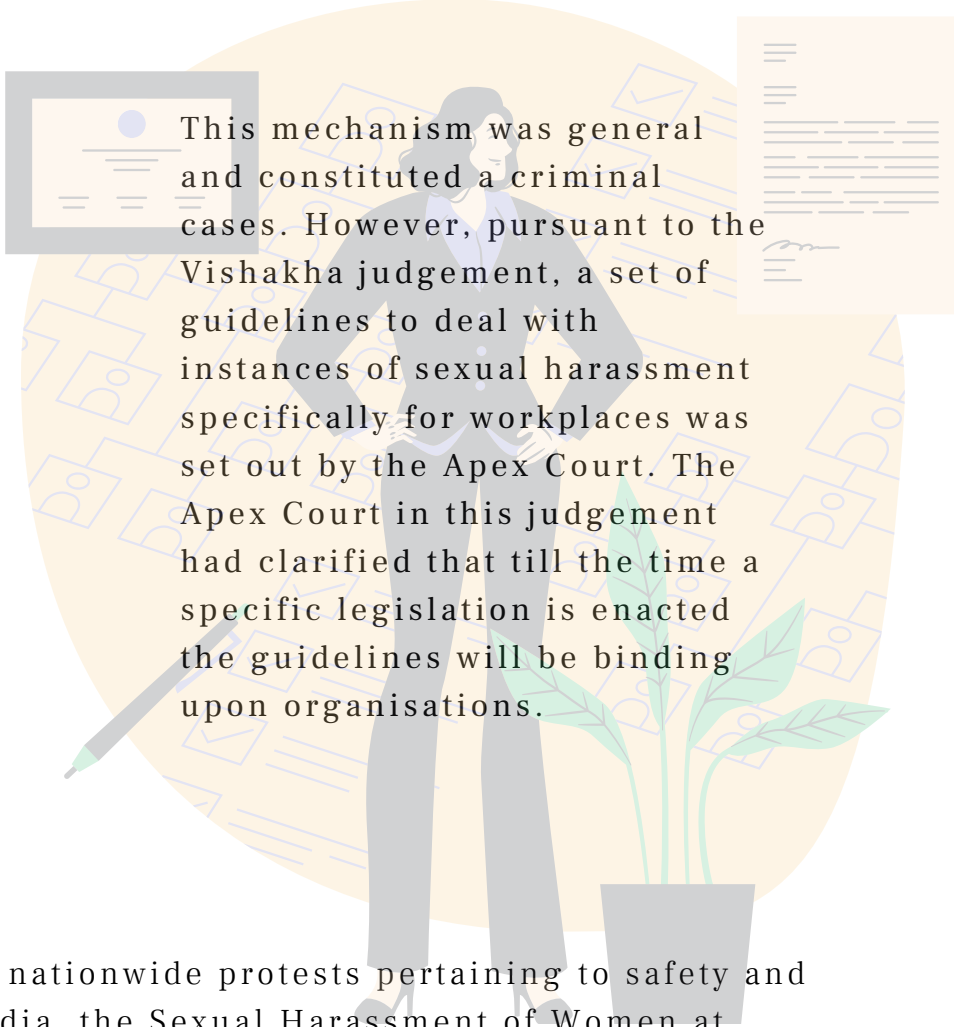
[1] AIR 1997 SC 3011.



# INCEPTION AND EVOLUTION OF THE LAW

There are several rights and protections envisaged in the constitution of India which highlight the need to eradicate workplace discrimination and harassment. These rights and protections are envisaged in Articles 14, 15, 16 and 21 of Chapter III of the constitution, the chapter dealing with fundamental rights.

**Prior to the Vishaka judgment, a woman aggrieved by any act of sexual assault or harassment had to approach law enforcement authorities under the Indian Penal Code (specifically Sections 354 and 509).**



This mechanism was general and constituted a criminal cases. However, pursuant to the Vishakha judgement, a set of guidelines to deal with instances of sexual harassment specifically for workplaces was set out by the Apex Court. The Apex Court in this judgement had clarified that till the time a specific legislation is enacted the guidelines will be binding upon organisations.

It is only by 2013, after nationwide protests pertaining to safety and security of women in India, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted. The Act also serves as an affirmation of the India's commitment to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).



# I. VISHAKHA V. STATE OF RAJASTHAN



**“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.”**

The facts of the case can be traced back to 1992. Bhanwari Devi, a dalit woman, was employed with the government of Rajasthan to curb the rampant child marriages happening in the State. However, she was brutally gang-raped by upper caste men from the village when she was attempting to stop a child marriage and carry out her duties.

Upon failure of local authorities to give her justice, Bhanwari approached the courts, however the five accused men were acquitted. the judgment of the trial court revealed systemic prejudices held by judicial members. Due to this, Vishakha, an NGO working on women’s rights, with four other women’s organisations filed a written petition in the Supreme Court on the issue of sexual harassment at the workplace. The injustice faced by Bhanwari exposed the gravity of sexual harassment in the workplace and the lack of protections women have against it.

Through its judgment the Apex Court recognised that the 'sexual harassment' is a violation of fundamental rights under Articles 14,15, 19 and 21. These articles are as follows:

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

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- **Article 14:** Equality before the law
- **Article 15:** Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- **Article 19(1)(g):** Right to practice one's profession, or to carry on any occupation, trade or business
- **Article 21:** Right to life and personal liberty

The court viewed the issue from the lens of 'gender equality'. It stated that gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right.

Taking into account the glaring gap in legislative field, the Apex Court stated that the same needs to be remedied. The court took note of international framework regarding this issue as well. In particular the court referred to India's ratification of the CEDAW which explicitly prohibits discrimination in workplace.

The following articles under CEDAW are of utmost importance:

Article 11(1)(a, f): The right to work and the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction

Article 24: States parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention

- General Recommendation No. 19: On the elimination of violence against women

After taking note of the following, the court laid down certain guidelines to be binding upon establishments till a legislation is enacted. Some of the important pointers under the 'Vishakha Guidelines' are as follows:

a) Duty of the Employer or other responsible persons in workplaces and other institutions:

It is the duty of the employer or other responsible persons in workplaces to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

b) Definition:

For this purpose, 'sexual harassment' includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

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

c) Preventive Steps:

All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. The following steps can be taken:

Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces.

Further, no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

d) Disciplinary Action:

Where the conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

e) Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. The complaint mechanism should ensure time bound treatment of complaints.

f) Complaints Committee:

The complaint mechanism should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

g) Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

h) Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.



## 2) Other cases dealing with sexual harassment-

The law against sexual harassment has benefited from other cases as well. A comprehensive list of these cases has been provided below:

### a) *Dr. Punita K. Sodhi v. Union of India & Ors.*[2]

The Delhi High Court acknowledged how sexual harassment is a 'highly subjective experience'. It laid down the test of a reasonable woman. The court held that a complete understanding of the woman's view requires an analysis of the perspectives held by both men and women. The court stated that conduct that many men consider unobjectionable may offend many women. The characteristically male view depicts sexual harassment as comparatively harmless amusement. The court stated that as men 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.

### b) *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*[3]

A man facing departmental inquiry for allegedly sexually harassing his senior woman officer contended that he could not be accused of sexual harassment at workplace as the alleged misconduct did not take place at the 'workplace' but at the official mess/ quarters of the employees. It was also argued that the complainant was even senior to the respondent and therefore no 'favour' could be extracted by the respondent from the complainant and thus the alleged act would not constitute 'sexual harassment'. The Delhi High Court while considering this matter held this as 'clearly misconceived'.

[2](2011) ILLJ371Del

[3]151(2008)DLT261

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**The court observed that the aim of formulating the Vishakha Guidelines to ensure that sexual harassment of working women is prevented and any person guilty is dealt with sternly.**

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Hence, the court did not favour follow a narrow and pedantic approach. The court stated that it is imperative to take into consideration the recent trend which has emerged with the advent of internet technology and advancement of information technology.

A person can interact business conference with another person while sitting in some other country. It has also become a trend that the office is being run by CEOs from their residence. In a case like this, if such an officer indulges in an act of sexual harassment with an employee, say, his private secretary, it would not be open for him to say that he had not committed the act at 'workplace' but at his 'residence' and getaway with the same. Noting the above, the High Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

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

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



c) Ms. GAYATRI BALASWAMY v. ISG Novasoft Technologies Ltd. [4]

Upon an employee being subjected to an instance of sexual harassment, the employee wanted to seek redressal but was faced with the rude shock of no complaints committee being constituted by the company to redress such complaint.

According to the Court, had the organisation complied with the Vishakha 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.

As this was not done, 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 Vishakha Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).



[4] (2015)1MLJ5

# IMPORTANT PROVISIONS UNDER THE ACT

## A. Definitions

The following definitions under the Act are especially important from the perspective of an employer-

### Who is an Aggrieved Woman?

An aggrieved woman in relation to a workplace is any woman of any age who alleges to have been subjected to sexual harassment.

With regards to a house, an aggrieved woman is anyone who is employed at the house. A domestic worker has been defined as a woman who does household work in a house. This work is done for remuneration in cash or kind, either directly or through any agency on a temporary, permanent, part time or full-time basis. [6]

The woman does not need to be employed at the workplace. Given that the definition does not necessitate the woman to be an employee, even a customer or a client who may be sexually harassed at a workplace can claim protection under the Act. The Act is not gender neutral and only protects aggrieved women.

In the case of Saurabh Kumar Mallick (supra), one of the contentions raised by the petitioner was that the complainant was senior to the respondent and therefore no 'favour' could be extracted by the respondent from the complainant and thus the alleged act would not constitute 'sexual harassment'. The Delhi High Court while considering this matter held this as 'clearly misconceived'

## Good Practice Tip

While the Act is not gender neutral, companies may cover all employees, irrespective of their gender, under their PoSH Policies. This will ensure protection of all employees from such instances. Irrespective of the above, any trans-employee who identifies with female gender should be covered under the PoSH Policy of any organisation.

[6] Section 2 (e)

# Who is an employee?

An employee is a person who works at any workplace. This could be for a regular, temporary, ad hoc, or daily wage basis. It could also be directly or through an agent, including a contractor, with.

An employee does not necessarily have to work for remuneration. [7]

# Who is an employer?

An employer in a private entity is any person responsible for the management, supervision, and control of the workplace. The term management would bring within its ambit persons or board or committee responsible for formulation and administration of policies for the organisation. [8]

# What qualifies as a 'workplace?'

The Act departs from the definition adopted by the Vishakha judgment and adopts a more expansive definition of workplace. While the Vishakha Guidelines talked about the traditional office set-up, recognizing the fact that sexual harassment may not necessarily be limited to the primary place of employment, the Act has introduced the concept of an 'extended workplace'.

[7] Section 2(f)

## The definition of workplace inter alia includes

- government establishments;
- private sector organisation, society, trust, non-governmental organisation, health services or financial activities including production, supply, sale, distribution or service;
- hospitals or nursing homes
- any sports institute, stadium, sports complex or competition or games venue;
- any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- and a dwelling place or a house

Any electronic medium used by the employees of a company to work and communicate internally as externally, such as emails, social messaging services etc are all covered under the definition of 'workplace.'



In the case of Saurabh Kumar Mallick (supra), one of the contentions raised by the petitioner was that the incident happened at the officers mess/ quarters and not at the office and therefore the incident did not fall under the definition of 'workplace'.

However, the Delhi High Court while considering this matter the Court observed that the following factors would have bearing on determining whether the act has occurred in the 'workplace':

Proximity from the place of work;

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

In conclusion, the Delhi High Court held that the official mess where the employee was alleged to have been sexually harassed definitely falls under 'workplace'. Further, this was a landmark judgement where the Court considered a work from home/ residence situation and working online to be covered under the definition of 'workplace'.



# What is ‘sexual harassment’

It is defined as one or more of the following unwelcome acts or behaviour. These acts may have been committed directly or by implication.

They are -

- (i) Physical contact and advances
- (ii) A demand or request for sexual favours
- (iii) Making sexually coloured remarks
- (iv) Showing pornography
- (v) Any other unwelcome physical, verbal, or non-verbal conduct of sexual nature; [10]

As is evident, that it includes both direct or implied sexual conduct. This may involve physical, verbal or even written conduct. What is necessary is that the conduct is unwanted and unwelcome.

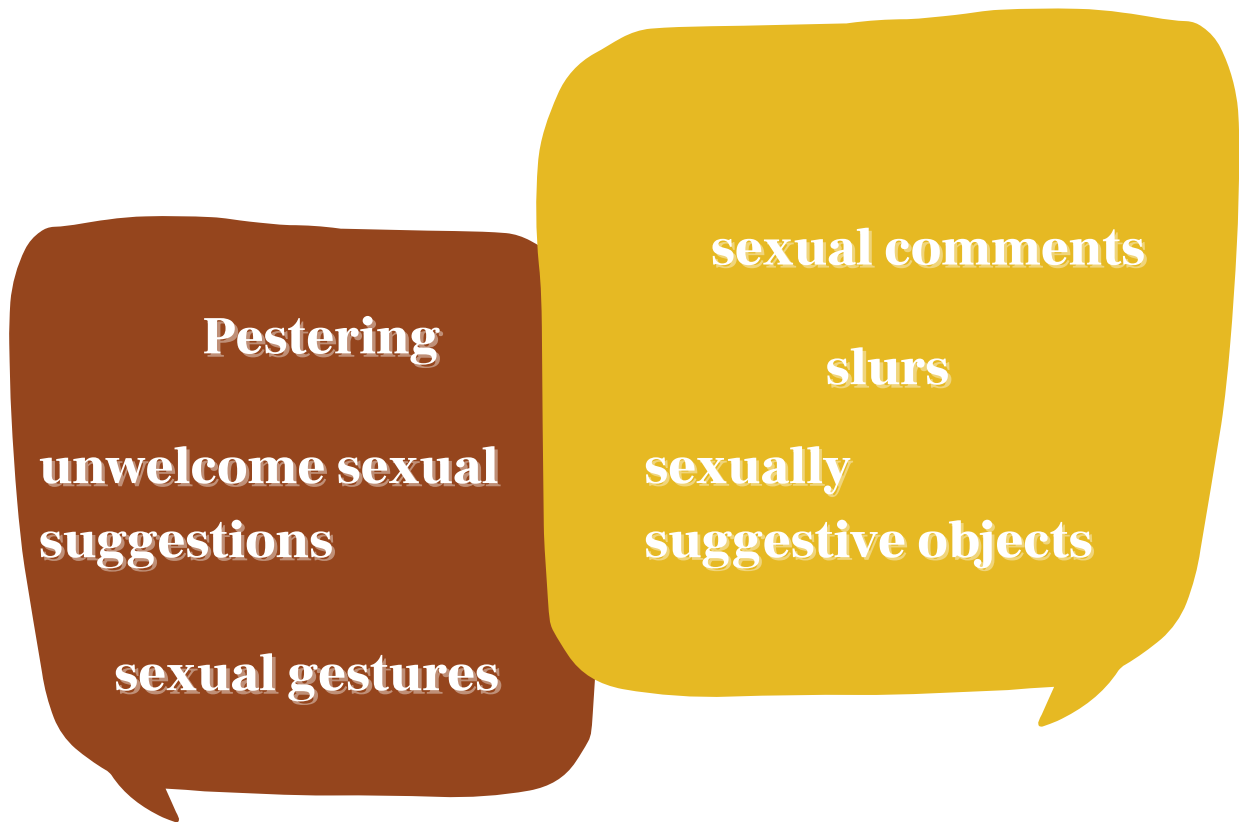
This definition also recognises quid pro quo sexual harassment. This essentially means ‘this for that’. It occurs when the accused being a person in power, pressurizes the woman employee (usually a subordinate) for sexual favours in exchange for advancement in the workplace or threat of adverse employment action.

In addition to the instances mentioned under the definition of ‘sexual harassment’, the following instances have also been construed to be sexual harassment:

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

[10] Section 2 (o)

# Unwanted sexual advances



Pestering for dates or receiving unwelcome sexual suggestions or invitations,

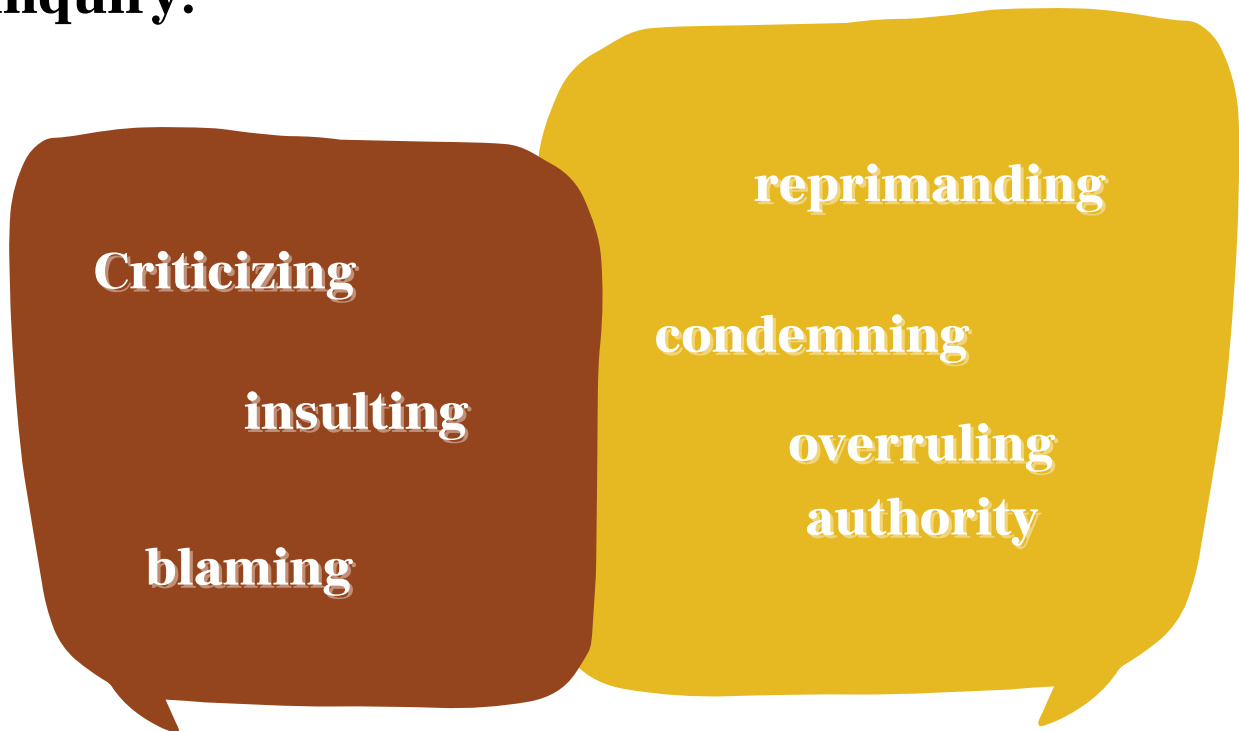
Offering employment benefits in exchange for sexual favours  
Making sexual gestures;

Displaying sexually suggestive objects or pictures, cartoons, calendars or posters;

Making or using derogatory comments, comments about a person's body or dress, slurs, epithets or sexually suggestive jokes;  
Written communications of a sexual nature distributed in hard copy or via computer network, suggestive or obscene letters, notes or invitations;

Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/responsibility/work;

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



- Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
- Exclusion from group activities or assignments without a valid reason.
- Statements damaging a person's reputation or career.
- Removing areas of responsibility, unjustifiably.
- Inappropriately giving too little or too much work.
- Constantly overruling authority without just cause.
- Unjustifiably monitoring everything that is done.
- Systematically interfering with normal work conditions, sabotaging places or instruments of work.
- Arbitrarily taking disciplinary action against an employee.
- Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed.
- The above circumstances can be covered under the ambit of 'sexual harassment', which is a specie of 'sex-based discrimination', if they are directed at a person specifically because of their gender.



# B. Complaint Mechanism

## Who deals with the complaints?

Every establishment having 10 or more employees has to constitute an 'Internal Committee' (IC) comprising of the following members:

- Presiding Officer – who is a senior woman employee in the organisation;
- 2 Members – from amongst the employees; and
- External Member – from an NGO or committed to the cause of women or experienced in dealing with cases of sexual harassment.

This body is responsible for receiving, investigating and redressing complaints of sexual harassment.

It is pertinent to note that in case a complaint is filed against the 'employer' or if an incident arises in an organisation having less than 10 employees, then such complaint is received by the 'Local Committee' formed by the District Officer.

## How does one make complaints of sexual harassment?

An aggrieved woman is required to make a complaint in writing to the IC within 3 months of the incident or within 3 months of the last incident if the same was a series.

When the complaint cannot be made in writing, the presiding officer or any member of the ICC shall assist the woman in making the complaint in writing.

An IC may extend the time limit for filing the complaint beyond exceeding three months if it deems fit.

Furthermore, where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heir can make the complaint.

## Conciliation

Before initiating an inquiry, the IC can take steps to settle the matter between the aggrieved woman and the man she has complained against through conciliation.

Conciliation is a resolution process whereby the parties use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences.

However, it must be noted that the process cannot be settled with monetary compensation.

Further, if the process works and if a settlement is arrived at, the IC must record the settlement arrived at and forwards the same to the employer or the District Officer, as the case may be. The IC is also supposed to provide a copy of the settlement of to the aggrieved woman and the accused. [11]

[11] Section 26

# Investigation of complaint

In case of failure of conciliation or not opting for it, the IC shall continue with the investigation as per the procedure prescribed under the Act. Few pointers for an investigation have been set out below:

- Follow principles of natural justice i.e. transparency of submissions, cross examination and completion of investigation only after all parties including any witnesses have been heard properly;
- Maintain quorum at all times;
- Provide interim relief wherever deemed fit; and Complete the investigation within the timelines prescribed under the law i.e. within 90 days from the receipt of the complaint.



# OTHER LAWS

## GOVERNING THE AREA

### 3) The Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 aims to create uniform standing orders in respect to workers, factories and working relationships. It ensures that the terms and conditions of the employment are known to the employee and thus to minimise exploitation of the workers. The act classifies sexual harassment as misconduct which might become the grounds of suspension or dismissal.

### 4) Educational Institutes

The Sexual Harassment of Women in Higher Education Institution (HEI) is prohibited by the University Grants Commission (Prevention, Prohibition and Redressal) Act, 1956, along with POSH. The act applies to all HEIs Campuses which includes all facilities such as Libraries, Laboratories, Lecture Halls, Residence Halls, Toilets, Hostels, Dining Halls, Canteens, Parking Area and Parks. The Act also covers within its scope 'Extended Campus' such as transportation provided the purpose of commuting to and from the institution, and locations outside the institutions such as sports meets, cultural fests etc. where the employee or student of the HEI is participating.

The UGC guidelines mandate the reconstitution of GSCASHs (Gender Sensitization Committee Against Sexual Harassment) as an Internal Complaint Committee, and the organisation of orientations and training sessions for the members of ICC. The act also gives states the Responsibilities of Higher Education Institutions to ensure that their campuses are safe and inclusive towards Women, and they have a zero-tolerance policy towards sexual harassment.

In 2015, the then HRD Minister Smriti Irani released data on 75 sexual harassment cases in HEIs between April 2014 and March 2015. These figures are from a report received by the UGC from 84 universities about cases of sexual harassment against women lecturers, professor and research scholars. This data is unable to lead to a solid conclusion since nearly 182 Universities failed to provide any data for the research.

## 5) Central Civil Services (Conduct) Rules, 1964

The Central Civil Services (Conduct) Rules, 1964 were ratified with the aim to state the rules of conduct for Government Servants which would ensure they maintain integrity while performing their duties. The act states all activities, which undertaken by a Government Servant, will be considered unbecoming of him.

These rules apply to every person appointed to a civil service or post (Including a Civilian in Defence Services) in connection with the affairs of the Union, with the exception of

- Railways Servants as defined in Section 3 of the Indian Railways Act, 1890
- Member of an All India Service
- Holder of any post in respect of which the President has, by a general or special order directed that the rules shall not apply.

Section 3(C) of the act states rules towards the prohibition of sexual harassment of working women. It is observed that the section defines the terms “sexual harassment” and “workplace” similarly to the Sexual Harassment of Women at the Workplace Act, 2013.

The rules of regulation of Civil Servants convicted of Sexual Harassment of Women at the workplace are given under the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

## 6) Central Civil Services (Classification, Control and Appeal) Rules, 1965

As per the provisions to Rule 14 (2) of CCS Rules, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department (Under the Act) for inquiring into such complaints shall also be deemed to be the Inquiring authority appointed by the Disciplinary Authority for these rules.

The complementary nature of the CCS in relation to the Act is visible here. The Complaints Committees are not only the Investigative and Disciplinary Authority (Under the Act) but also the Inquiring Authority as under Section 14(2) under the CCS. It is necessary for the ICC in Government Institutions to clearly understand their dual role.

## 7) Hospitals

Hospitals and Nursing homes fall under the ambit of Act. They are mandated to follow all guidelines of the act, to ensure their campuses are safe for the women working therein. Abuse of professional position by improper conduct with patient or by maintaining an improper association with a patient will render disciplinary action as provided under the Indian Medical Council Act, 1956 or the Concerned State Medical Council Act.

## 8) Day-Care, Pre-Schools, and Schools

The Ministry of Women and Child Development, in 2012, championed the introduction of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

The act defines a child as any person below eighteen years age and regards the best interests and well-being of the child as most important to ensure the healthy, physical, emotional, intellectual and social development of the child. The act defines different forms of sexual abuse – penetrative and non-penetrative assault, sexual harassment, and pornography.

Section 11 of the said act deals with sexual harassment of a child.

The punishment for offenders under this section is given under Section 12 of the act – 3 years of imprisonment and fine.



## 9) Sexual Harassment under the Indian Penal Code

Section 294 of the Indian penal Code lays down the punishment for obscene acts or words in public. Singing lewd songs directed at women in any public space is considered sexual harassment under Section 294. Offenders under this section can be jailed up to 3 months, or fined, or both.

Outraging the modesty of a woman either through words or gestures is an offence. Assault or use of force on a woman with the intention to disrobe her or compel her to be naked are punishable with imprisonment for a term ranging from minimum 3 to maximum 7 years.

Even abetment of disrobing has been made a punishable offence under this section.

Section 354(C) of the IPC makes voyeurism a punishable offence. Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed; or disseminates such image without her consent will be punished with imprisonment for a minimum term of one year, and on subsequent conviction shall entail a minimum imprisonment for three years.

Following someone without their knowledge counts as stalking and is an act of Sexual harassment as per section 354(D). The perpetrators can face jail time ranging 3-5 years, or fine, or both. Morphing pictures of a woman and sharing them with an intent to harass and defame her is a crime as per Section 499 if the IPC. Punishment may include imprisonment up to 2 years, or fine, or both.

If a woman's clear refusal to someone's sexual advances is met by threats to harass her, either physically or by tainting her reputation or property, it is a crime under Section 503 of the IPC. The perpetrator(s) can face jail time of 2 years, or fine, or both. Uttering any word or making any gesture intended to insult the modesty of a woman is an offence under Section 509 of the IPC. It is punishable by imprisonment for 1 year, or fine, or both.

## 10) Sexual Harassment and the Violation of a Woman's privacy under the Information Technology Act, 2000

Section 66 (E) of the Information Technology Act, 2000 states the punishment for violation of privacy. Anyone intentionally or knowingly, capturing or transmitting the naked or undergarment clad areas of human anatomy of any person without his or her consent violates the privacy of that person. Such an offence is punishable with imprisonment up to 3 years or with fine up to 2 Lakh Rupees or with both.

## Measures to ensure compliance

Sexual harassment is fundamentally a social, economic, and cultural issue influenced by the dynamics of power between genders. It is about deep-rooted biases and power play. The measures to reduce are it are also myriad.

As per official data collected by the Ministry of Women and Child Development, registered cases of sexual harassment at Indian workplaces increased 54% from 371 in 2014 to 570 in 2017. In all, 2,535 such cases were registered over the four years ending July 27, 2018, that is nearly two cases reported every day, as per government data tabled in the Lok Sabha (lower house of parliament) on July 27, 2018 and December 15, 2017[12]. statistics such as these indicate how we are still to go a long way before we completely eradicate this problem. Till then, we must ensure that every workspace has effective mechanisms to deal with the issue and mitigate the harm caused. The following are some measures that can be deployed to ensure compliance:

### Duties of employer

Employers are supposed to do the following-

- Provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace
- Display at any conspicuous place in the workplace, the consequences of sexual harassments
- Display at any conspicuous place in the workplace the order constituting the Internal Committee.
- Organise workshops and awareness programmes at regular intervals for sensitising the employees POSH and orientation programmes for the members of the Internal Committee.
- Provide necessary facilities to the IC for dealing with the complaint and conducting an inquiry
- Assist in securing the attendance of respondent and witnesses before the IC
- Aid the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law.
- Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct
- monitor the timely submission of reports by the Internal Committee.[13]

[12] <https://inc42.com/buzz/india-records-14-rise-in-sexual-harassment-cases-at-workplace/>

[13] Section 19

## Prevention of Sexual Harassment

Companies need to take active steps to prevent sexual harassment. Companies and employers need to ensure that the following behaviour is not perpetuated as it would amount to workplace harassment. The acts are as follows-

- (i) Implied or explicit promise of preferential treatment in her employment
- (ii) Implied or explicit threat of detrimental treatment in her employment
- (iii) Implied or explicit threat about her present or future employment status
- (iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her
- (v) Humiliating treatment likely to affect her health or safety. [14]

## Constitute an Internal Committee

Every employer must constitute an IC. If the office has multiple sub-divisions or administrative units, the IC shall be constituted for all the sub-divisions. The IC is supposed to consist of the following members. These members are to be nominated by the employer. The people to be elected are-

- It must consist of a presiding officer who shall be a woman employed at a senior level at workplace from amongst the employees. If the senior level woman employee is not available, the presiding officer must be nominated from other offices. If that is also not possible, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation.
- At least two members must be from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.
- One member from amongst NGO or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.
- Further, it must be noted that at least one-half of the total Members so nominated shall be women.



[14] Section 3

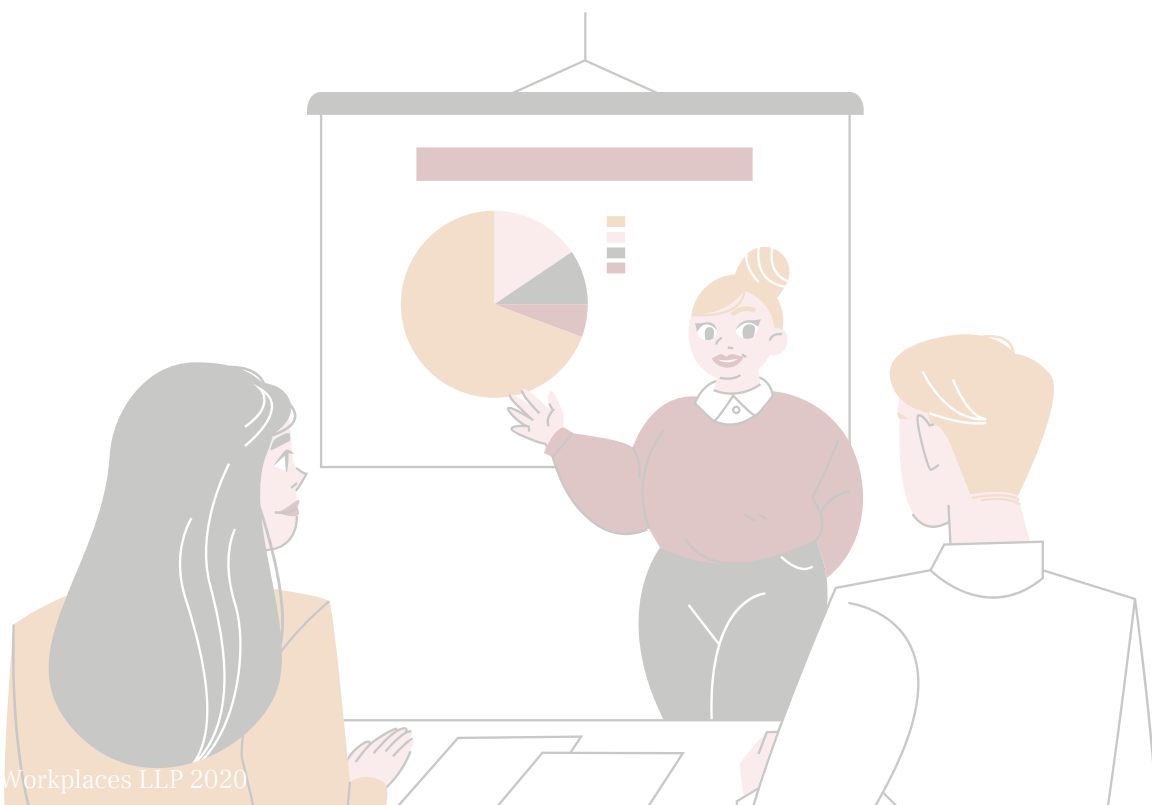


Furthermore, there are other things one must keep in mind with regard to the functioning of the IC

- Tenure: The presiding officer and every Member of the IC shall hold office for not more than three years from the date of their nomination as may be specified by the employer.
- Removal from panel: If the presiding officer or member of the ICC has been convicted for an offence or is found guilty in any disciplinary proceedings or if they have a disciplinary proceeding is pending against him or if they have abused their 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. [6]

If the employer fails to constitute an IC they will be punished with fine which may extend to fifty thousand rupees. [15] Further, if any employer is previously convicted of an offence under POSH, and if they are convicted of the same offence, they will be liable to pay twice the punishment and can also be subjected to cancellation of business licence.

In states such as Telangana and Maharashtra, it is compulsory for an IC to be registered. While employers in Mumbai were required to register their ICs with the office of the District Women and Child Development Officer in the prescribed format, employers in the state of Telangana were required to register their ICs on the Sexual Harassment Electronic Box (“T-she box”).



## What the employer needs to do while the IC adjudicates

During the pendency of an inquiry, the IC may recommend the employer to take the following steps-

- Transfer the aggrieved woman or the respondent to any other workplace.
- Grant leave to the aggrieved woman up to a period of three months.
- Grant such other relief to the aggrieved woman as may be prescribed.
- Change reporting lines or departments, wherever feasible.

If leave is granted to the aggrieved woman this will be in addition to the leave she would be otherwise entitled. [16]

## Inquiry Report

When the inquiry is completed, the IC has to provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry.

If the IC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.

However, when the IC arrives at the conclusion that the allegation against the accused has been proved, it may recommend to the employer, the following things:

- To take action as per the recommendations of the IC or treat sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent, if applicable.
- To deduct, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.
- Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman.[17]

[16] Section 12

[17] Section 13

# Punishment and Compensation

The Act prescribes the following punishments that may be imposed for indulging in an act of sexual harassment:

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

The Act also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined on the basis of the following factors-

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

Punishment for false or malicious complaint and false evidence-

In the following circumstances the IC may recommend that action must be taken against the aggrieved woman or the person who made the complaint as per the rules applicable-

- If the IC arrives at the conclusion that the allegation is malicious, or that the woman made the complaint knowing that it was false.
- Or the aggrieved woman or any other person making the complaint has produced any forged or misleading document

However, a mere inability to substantiate a complaint or provide adequate proof need not attract action against the aggrieved woman.

Prohibition of publication or making known contents of complaint and inquiry proceedings-

The identity and address of the woman aggrieved, or any information related to conciliation and inquiry proceedings, recommendations of the IC, and the action taken by the employer shall not be published, communicated or made known to the public, press and media in any manner.

However, information may be disseminated regarding the justice secured to any victim of sexual harassment. This must be done without disclosing the name, address, identity, or any other particulars. [18]

[18] Section 16

# THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

## CONTACT US

For the past six years, Ungender and the team behind it, has built its expertise in the laws that impact workplaces and the genders engaging with them.

Our insights are produced in the form of simplified handbooks like the one you are accessing right now where we simplify the complicated laws and their mandates for the stakeholders.

Our additional insights come out in the form of industry reports where we combine laws, data, and gender together to provide the nuanced reality of specific sectors.

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