

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

Introduction:

Over the last decade, there has been a growing awareness worldwide of the existence and extent of sexual harassment in the workplace. The issue pertaining to sexual harassment at workplace is being considered as a very severe matter in today's growing world.

Before, the verdict of Supreme Court in Vishaka v. State of Rajasthan, women were experiencing sexual harassment at workplace and they had to lodge a complaint under Section 354 of the Indian Penal Code that deals with the criminal assault of women to outrage women's modesty, and Section 509 that punishes an individual or individuals for using a word, gesture or act intended to insult the modesty of a woman.

The entire scenario changed in 1997 with the introduction of Vishaka guidelines. The Supreme Court for the first time recognized, acknowledged and explicitly defined sexual harassment as an – unwelcome sexual gesture or behaviour aimed or having a tendency to outrage the modesty of woman directly or indirectly. On 23rd April 2013, the legislature finally brought into force a comprehensive legislation dealing with the protection of women against sexual harassment at workplace by enacting **“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.”** This law was mainly introduced on basis of Vishaka case. The Supreme Court had laid down Vishaka guidelines and the same later became law.

This law is applicable to all types of employees in organized and unorganized sectors by holding them responsible for providing safe work environment for women. In this article, you will be mainly introduced about the overview of the law on sexual harassment at workplace in context of employees' health and safety. The law mainly focuses on understanding workplace sexual harassment, evaluating workplace situations, and identifying how to respond to sexual harassment at work.



Meaning of Sexual Harassment:

- ✚ Sexual harassment is a hazard encountered in workplaces across the world that reduces the quality of working life, jeopardizes the well-being of women and men, undermines gender equality and imposes costs on firms and organizations.
- ✚ For the International Labour Organization, workplace sexual harassment is a barrier towards its primary goal of promoting decent working conditions for all workers.
- ✚ Governments, employers' and workers' organizations in both industrialized and developing countries have introduced a range of laws, policies and procedures aimed at preventing and combating it.
- ✚ Given this proliferation of measures designed to prevent sexual harassment, it is useful to review their development and consider the range of issues encountered in designing them, as an aid to identifying the most effective ways to combat harassment at the workplace, national and international levels.

Definition:

Sexual harassment may be one or a series of incidents involving unsolicited and unwelcome sexual advances, requests for sexual favours, or any other verbal or physical conduct of sexual nature. Sexual Harassment at the workplace includes:

- ❖ Unwelcome sexual advances (verbal, written or physical),
- ❖ Demand or request for sexual favours,
- ❖ Any other type of sexually-oriented conduct,
- ❖ Verbal abuse or 'joking' that is sex-oriented,

Forms of 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.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Act mainly stipulates that a woman shall not be subjected to sexual harassment at any workplace. As per the statute, presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment; threat of detrimental treatment in employment; threat about present or future employment; interference with work or creating an intimidating or offensive or hostile work environment; or humiliating treatment likely to affect the lady employee's health or safety may amount to sexual harassment.

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.



Salient Features of the Act:

- ✚ The ambit of the Sexual Harassment Act is very wide and is applicable to the organized sector as well as the unorganized sector.
- ✚ In view of the wide definition of '**workplace**', the statute, inter alia, applies to government bodies, private and public sector organisations, non-governmental organisations, organisations carrying on commercial, vocational, educational, entertain mental, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals.
- ✚ As per the Sexual Harassment Act, a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment.
- ✚ "**AGGREIVED WOMEN**" 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.
- ✚ The Act also covers a woman, who is working in a dwelling place or house.

"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"

Prevention and Prohibition:



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.	Two 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

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:

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: • 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
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DO'S AND DON'TS FOR COMPLAINTS COMMITTEE:

DO'S	DON'TS
✚ Create an enabling meeting environment.	✚ Get aggressive
✚ Use body language that communicates complete attention to the parties.	✚ Insist on a graphic description of the sexual harassment.
✚ Treat the complainant with respect.	✚ Do not interrupt.
✚ Discard pre-determined ideas.	✚ Discuss the complaint in the presence of the complainant or the respondent.

Complaints Procedure:

The Act stipulates that aggrieved woman can make written complaint of sexual harassment at workplace to the ICC or to the LCC (in case a complaint is against the employer):

- Within a period of three months from the date of incident; and
- In case of a series of incidents, within a period of three months from the date of last incident.
- If the aggrieved woman is unable to make complaint in writing, reasonable assistance shall be rendered by the presiding officer or any member of the ICC (or in case the aggrieved woman is unable to make complaint in writing to the LCC, the reasonable assistance shall be rendered by the Chairperson or any member of the LCC) for making the complaint in writing.

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, in case the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed inter alia by her relative or friend or her co-worker or an officer of the National Commission for Woman or State Women's Commission or any person who has knowledge of the incident, with the written consent of the aggrieved woman.

Penalties under this Act:

- Where the employer fails to:**
 - Constitute an Internal Committee under sub-section (1) of section 4;
 - Take action under sections 13, 14 and 22; and
 - Contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under, he shall be punishable with **fine which may extend to fifty thousand rupees.**
- If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:**

- Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;
- Cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

Applicability of law if company not having female employees:

- For applicability of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the number of employees in the establishment is irrelevant.
- The Act applies to dwelling place or house also where woman is employed for remuneration. only a member of the family (of the house) is excluded. Therefore, the Act applies to all establishments where woman are engaged either as employee or otherwise (say one who comes to the work place as a customer or intern or doing some project or survey can also raise a complaint if she is subjected to sexual harassment).
- Though the Act applies on every organisation irrespective of the number of employees, however, the constitution of Internal complaints committee is not mandatory for organisations having less than 10 workers. In such cases, the complaint can still be made with the Local Complaints committee and the employer has to follow other obligations under the Act.

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:

- ❖ Be thoroughly prepared;
- ❖ Know the Act, Policy and/or relevant Service Rules;
- ❖ Gather and record all relevant information;
- ❖ Determine the main issues in the complaint ;
- ❖ Prepare relevant interview questions;
- ❖ Conduct necessary interviews;
- ❖ Ensure parties are made aware of the process and their rights/responsibilities;
- ❖ Analyse information gathered;
- ❖ Prepare the report with findings/recommendations.

Impact on Annual Report under this Act:

Committee shall in each financial year prepare and submit annual report to the employer and employer shall include in its Annual Report the number of cases filed and their disposal under the Act. All companies need to make necessary disclosure about compliance with the said law as per section - 22 and 28 of the said act in their annual report to be filed by the registrar of companies for every financial year ending.

Note: In case of a Company which submits its annual report to the ROC, the only thing that need to be mentioned is the number of cases filed and the number of disposals in the Annual Report

itself. In other cases where there is no requirement of filing Annual Reports, the same information needs to be sending to the District Officer.

Therefore, there is no due date specified for filing the annual return under Sexual Harassment at Workplace Act, 2013.

What if men face sexual harassment??

- ✚ While over half of all women in the workplace report experiencing some form of sexual harassment on the job, the issue of sexual harassment of men is starting to get more media attention. The sexual harassment of men largely remains a hush affair in our country. It doesn't happen as often as sexual harassment of women by men but sexual harassment of males in work places is also very common.
- ✚ According to the Indian law, modesty, if at all, exists only in women. The Law pertaining on the issue of male sexual harassment is not yet been come into force. "The only form in which a wrong sexual advancement on a man is recognized as an offence is as sodomy under the 377 section of the IPC. Apart from that there is no law to punish a person for molesting a man."
- ✚ The collective psyche that men can only abuse and only men can abuse needs to be shunned in light of the rising issue of sexual harassment of male employees. There also rises a need to address this problem more publicly and accumulate data specific to the male gender.
- ✚ The majority of cases (78.4 per cent) were female complaints against males. However, women were accused of sexually harassing men in 5 per cent of cases and men accused other men in 11 per cent of cases.
- ✚ The conclusions of the study suggest that sexual harassment faced by men, it is also important to have supportive complaints mechanisms in workplaces, including for men, who may find about it more difficult to report sexual harassment.

Current Scenario:

- ✚ The number of complaints registered with the National Commission for Women (NCW) concerning sexual harassment of women at workplaces has been showing an increasing trend lately, has been reported by the government.
- ✚ As per the data provided by her for the current year, 336 complaints of sexual harassment at workplace were registered in NCW till December 12, 2014. There were 249 such cases registered in 2013, 167 in 2012 and 170 in 2011 with the NCW, as per the data provided by the minister.

Sexual harassment cases that shocked India:

- ✚ A former researcher at Delhi's The Energy and Resources Institute has alleged the institution's and had sexually harassed the women for which he was being triggering outrage on social media. The conclusion of the above case comes to the decision that he was being removed from the post of the Director General and also the court said the principles of natural justice have not been followed at all by the internal complaint committee, contrary to rules
- ✚ One of India's best known software executives and a rising star at the time, had to resign from the best known company for making software in the field of information technology in 2002

after his secretary accused him of sexual harassment. The conclusion of the said case was been settled for \$3 million outside court. He was also sacked by an American IT firm in 2013 on sexual harassment charges.

- ✚ The former Supreme Court judge stepped down as head of the West Bengal human rights commission in 2014 after a law intern accused him of sexually harassing her at a hotel room. A three-member Supreme Court panel indicted for “unwelcome behaviour” and “conduct of sexual nature”, prompting his resignation.
- ✚ In a 2012 suicide note, 23-year-old airhostess was being charged, a former Haryana minister, of sexually harassing her and forcing her to take her life. The case is being tried in the Delhi high court.

Conclusion:



- ✚ Despite increased public awareness, sexual harassment continues to plague Indian workplaces. If left unchecked, this could be devastating not only to the lives and careers of individual employees but also invariably weaken productivity and the morale of employees.
- ✚ The Act, however, came out to be the most significant step towards improving awareness about the obligations of employers and rights of employees in case of workplace sexual harassment. Perhaps this legislation will help the silenced voice of women audible by taking off the feet that force women's necks.
- ✚ The content of this article is intended to provide a general guide to the employees about how important this matter pertaining to sexual harassment of women at workplace. With the passage of time, it was felt that guidelines and norms are not sufficient to deal with the incidents of sexual harassment of women at workplaces and a strong piece of legislation is the need of the hour and accordingly the Act was enacted in 2013.

How do we help?

- ✚ We provide professional advice and ensure compliance with the said act and compliances required to be done under the said law.

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