ROLES OF STAKEHOLDERS - GOVT., DISTRICT OFFICERS, EMPLOYEES & WORKERS IN IMPLEMENTING THE SEXUAL HARASSMENT ACT. 2013

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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
Sexual Harassment Act. 2013

“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
Sexual Harassment Act. 2013

- 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.
Sexual Harassment Act. 2013

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.
Sexual Harassment Act. 2013

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.
Sexual Harassment Act. 2013

- 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.
Sexual Harassment Act. 2013

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.
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 argued that where this is to be captured, women’s overall work participation would be 86.2 per cent. While the official data 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.
Sexual Harassment Act. 2013

THE GENESIS

In 1992, a rural level change agent, Bhanwari Devi, was engaged by the state of Rajasthan as a Sathin 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.
Sexual Harassment Act. 2013

In a landmark judgment, Vishaka vs. State of Rajasthan (1997), 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).
WHO IS AN AGGRIEVED WOMAN?

- Working
  - Domestic Worker
  - Regular/Temporary/Ad Hoc/Daily Wager
  - For remuneration/Voluntary basis/Otherwise

- Visiting a Workplace

- Student
  - Employed directly/Through an agent
  - Contract Worker/Probationer/Trainee/Apprentice/called by any other such name
WHAT IS A WORKPLACE?

- Nursing Homes
- NGOs
- Corporations
- Farms
- Educational Institutions
- Companies
- Hospitals
- Sports Facilities
- Service Providers
- Cooperative Societies
- Government Organisations
- House
WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

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
Differentiate between welcome and unwelcome sexual behaviour.

<table>
<thead>
<tr>
<th>UNWELCOME</th>
<th>WELCOME</th>
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<tbody>
<tr>
<td>Feels bad</td>
<td>Feels good</td>
</tr>
<tr>
<td>One-sided</td>
<td>Reciprocal</td>
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<tr>
<td>Feels powerless</td>
<td>In-control</td>
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<td>Power-based</td>
<td>Equality</td>
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<tr>
<td>Unwanted</td>
<td>Wanted</td>
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<tr>
<td>Illegal</td>
<td>Legal</td>
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<tr>
<td>Invading</td>
<td>Open</td>
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<tr>
<td>Demeaning</td>
<td>Appreciative</td>
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<tr>
<td>Causes anger/sadness</td>
<td>Happy</td>
</tr>
<tr>
<td>Causes negative self-esteem</td>
<td>Positive self-esteem</td>
</tr>
</tbody>
</table>
### Impact of Inappropriate Behaviour

<table>
<thead>
<tr>
<th>Professional</th>
<th>Personal</th>
</tr>
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<tbody>
<tr>
<td>• Decreased work performance</td>
<td>• Depression</td>
</tr>
<tr>
<td>• Increased absenteeism, loss of pay</td>
<td>• Anxiety, panic attacks</td>
</tr>
<tr>
<td>• Loss of promotional opportunities</td>
<td>• Traumatic stress, Sleeplessness</td>
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<td>• Retaliation from the respondent, or colleagues/friends of the respondent</td>
<td>• Shame, guilt, self-blame</td>
</tr>
<tr>
<td>• Subjected to gossip and scrutiny at work</td>
<td>• Difficulty in concentrating</td>
</tr>
<tr>
<td>• Being objectified</td>
<td>• Headaches, Fatigue, loss of motivation</td>
</tr>
<tr>
<td>• Becoming publicly sexualized</td>
<td>• Personal Difficulties with time</td>
</tr>
<tr>
<td>• Defamation</td>
<td>• Eating disorders (weight loss or gain)</td>
</tr>
<tr>
<td>• Being ostracized</td>
<td>• Feeling betrayed and/or violated</td>
</tr>
<tr>
<td>• Having to relocate</td>
<td>• Feeling angry or violent towards the</td>
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<tr>
<td></td>
<td>respondent, Feeling powerless</td>
</tr>
<tr>
<td>• Job and career consequences</td>
<td>• Loss of confidence and self esteem</td>
</tr>
<tr>
<td>• Weakened support network</td>
<td>• Over all loss of trust in people</td>
</tr>
<tr>
<td></td>
<td>• Problems with intimacy</td>
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<tr>
<td></td>
<td>• Withdrawal and isolation</td>
</tr>
</tbody>
</table>

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

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

1. Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties.

2. Insults or humiliations, repeated attempts to exclude or isolate a person.

3. Systematically interfering with normal work conditions, sabotaging places or instruments of work.

4. Humiliating a person in front of colleagues, engaging in smear campaigns.

5. Arbitrarily taking disciplinary action against an employee.

6. 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.
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
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.
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).
RESPONSIBILITIES OF THE AFOREMENTIONED AUTHORITIES

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

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
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).

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.
Local Complaints Committee (LCC)

- **Chairperson**: Nominated from amongst the eminent women in the field of social work and committed to the cause of women.

- **Member**: Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district.

- **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.

- **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.
External Members on the Complaints Committee/s

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.
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.
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.
WHO CAN COMPLAIN AND WHERE?

**Complaints Committee**

**In case of physical incapacity:**
- Complainant’s relative
- Complainant’s friend
- Co-worker
- Officer of NCW or SCW

**In case of mental incapacity:**
- Complainant’s relative
- Complainant’s friend
- Special educator
- Qualified psychiatrist/psychologist
- Guardian/authority under whose care the complainant is receiving treatment/care

**In case of Complainant’s death:**
- Any person with knowledge of the incident with the written consent of the complainant

**In case Complainant is unable to file the complaint for any other reason:**
- By any person who has knowledge of the incident with her written consent

**Any person who has knowledge of the incident with the written consent of the complainant**
THE SEXUAL HARASSMENT COMPLAINT PROCESS

Stage One: Receipt of the Complaint
Step 1: Receive and acknowledge receipt of the complaint
Step 2: Meet and talk to the complainant to explore options for formal and informal resolution
Step 3: Informal mechanism
Step 4: Formal mechanism
Step 5: Respondent and response

Stage Two: Planning Carefully
Step 6: Prepare the file
Step 7: Consideration

Stage Three: Interviews
Step 8: Prepare an interview plan for the hearing: Complainant, Witnesses and Respondent.
Step 9: Assess the completeness of the information collected.

Stage Four: Reasoning
Step 10: Analyse and assess the information gathered during the inquiry.
Step 11: Create a timeline to help establish the sequence of events related to the complaints.
Step 12: Compare similarities and differences within each of the statements made by interviewees

Stage Five: Finding and Recommendation
Step 13: Finding
Step 14: Recommendations

Stage Six: Report
Step 15: Writing the Report
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.
Incidence of SEXUAL Harassment

The respondent fulfils his obligations as agreed upon: the case is closed

The respondent fails to fulfil his obligations as agreed upon: an inquiry will commence

INFORMAL

CONCILIATION
If not satisfied by the recommendations or non-implementation of such recommendations, the complainant and the respondent can appeal to a tribunal/court within 90 days

COMPLAINT NOT UPHELD: INCONCLUSIVE
Recommend to employer/DO that no action is required to be taken

If appealed, the complaint to be submitted to the respondent, to which the respondent needs to reply within 10 days

Inquiry report to be completed within 90 days by the ICC/LCC

If not satisfied by the recommendations or non-implementation of such recommendations, the complainant and the respondent can appeal to a tribunal/court within 90 days

COMPLAINT UPHELD: Recommendations to be implemented by the employer/DO within 60 days on receipt of the report

Report of the findings to be submitted to the employer or district officer (DO) and concerned parties within 10 days of completion of the inquiry
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