Prevention of Sexual Harassment at the Workplace & Complaint Mechanism

Dr. K. Rani Rajitha Madhuri
SEXUAL HARASSMENT IS NOT...

• A “women’s thing”
• A passing fad
• Something to joke about
• Something to be ignored
• A cause for paranoia and fear
• It’s a legal requirement to prevent, prohibit and address this issue at “Workplace”
Bhanwari Devi
Indian Dalit Woman
Village Bhateri, Rajasthan

Winner of “Neerja Bhanot Memorial Award” for her "extraordinary courage, conviction and commitment

HER STORY

“Bhanwari Devi continues to be ostracized by her village. She lives on the outskirts of the village Bhateri, just 55 kms from Jaipur, with her husband who’s supported her fight throughout. She now runs a self help group with other women from her community and works with an NGO to support her family.”
“In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for this purpose. ...and it is further emphasised that this would be treated as the law declared by this Court under Art. 141 of the Constitution.”

The judgment of August 1997 provided the basic definitions of Sexual Harrassment at the workplace and provided guidelines to deal with it. It is seen as a significant legal victory for women's groups in India

Established that “Sexual Harassment violates a woman’s right in the workplace and is thus not just a matter of personal injury”
Delhi Gang Rape Case 2012

- the central government appointed a judicial committee headed by J. S. Verma, a former Judge of Supreme Court, to suggest amendments to criminal law to sternly deal with sexual assault cases.

- The Cabinet Ministers on 1 February 2013 approved for bringing an ordinance, for giving effect to the changes in law as suggested by the Verma Committee Report. [12]

- The Criminal Law (Amendment) Ordinance, 2013 passed
ADVENT OF LAW

By adopting the Vishakha Guidelines and recommendations of Justice Verma Committee, the Parliament enacted the **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013** read with **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013** (effective Dec 2013)

This statute supersedes the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

The Statute extends to the “Whole of India”

It is only for the protection of “Women at Workplace”
SECTION I

BASICS
PREAMBLE

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.
NO WOMEN SHALL BE SUBJECT TO SEXUAL HARASSMENT AT ANY WORKPLACE [SEC 3(1)]
UNDERSTANDING BASICS

What is

• Sexual Harassment
• Workplace
• Aggrieved Woman
AGGRIEVED WOMAN

- All women working or visiting any workplace
  - Regular employee
  - Temporary employee
  - Adhoc
  - Daily wages
- Engaged directly or indirectly (contractor)
- Working for remuneration, voluntary or otherwise
- Terms of employment may be express or implied
- Could be a co-owrker, contract worker, probationer, trainee, apprentice, visitor
- Also covers woman working in dwelling place or house
**Workplace**

- Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer
- Covers organised and unorganised sector
- Govt organisations
- Pvt sector organisations
- Hospitals/nursing homes
- Sports institutes, facilities
- Dwelling or house
Workplace.. extended

- Office parties
- Off sites
- Out bound trainings
- Client meetings
- Training sessions
- Travel for office purpose
- Any place where one visits in the course of due to employment
SEXUAL HARRASSMENT

Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors. In most modern legal contexts, sexual harassment is illegal.

Sexual harassment is gross violation of women’s right to equality and dignity
Sexual Harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

- physical contact and advances; or
- a demand or request for sexual favour; or
- sexually colored remarks; or
- showing pornography; or
- other offensive or derogatory pictures, cartoons; or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
Following acts when in relation to behaviour of Sexual Harassment may amount to sexual harassment

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment: or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) Humiliating treatment likely to affect her health or safety.
FORMS OF WORKPLACE SEXUAL HARASSMENT

- **Quid Pro Quo** *(this for that)*
  - Implies or explicit promise of preferential / detrimental treatment in employment
  - Implied or express threat about her present or future employment status

- **Hostile Work Environment**
  - Creating hostile, intimidating or an offensive work environment
  - Humiliating treatment likely to affect her health and safety
Sexual Advances

Making sexual advances or demanding sexual favours

Tonight, our little project team will do great work, won’t it?
UNSAVOURY REMARKS

Singing embarrassing film songs
JOKES CAUSING OR LIKELY TO CAUSE AWKWARDNESS OR EMBARRASSMENT

Cracking jokes which cause awkwardness or embarrassment
INNUENDOS AND TAUNTS

You’re just a woman. We need a man for this assignment!

Discriminating on the basis of gender
GENDER BASED INSULTS OR SEXIST REMARKS

Making babies is all you women are good for

Using gender based insults
UNWELCOME SEXUAL OVERTONES IN ANY MANNER

Making obscene gestures or using indecent language
Touching or brushing against any part of the body and the like

Arrey, you are like my beti...

Hugging or touching on some pretext
DISPLAYING PORNOGRAPHIC OR OTHER OFFENSIVE OR DEROGATORY PICTURES, CARTOONS, PAMPHLETS OR SAYINGS

Displaying pornographic material at the workplace

I like to see the female body in its natural form...
FORCIBLE PHYSICAL TOUCH OR MOLESTATION
Physical confinement against one’s will and any other act likely to violate one’s privacy.
ABUSE OF AUTHORITY OR POWER

Stop this or I’ll complain...

Then I’ll stop your promotion...

Threatening adverse consequences on raising objections or resisting advances
IN SHORT....

Workplace Sexual Harassment is when the behaviour is
- Unwelcome
- Sexual in Nature
- A Subjective Experience
- Impact not the intent matters
WORKPLACE SEXUAL HARASSMENT

typically involves acts of which the victim has *reasonable apprehension* that they are

- Humiliating
- Unsafe
- Unhealthy
- Discriminatory
- Career limiting
- Otherwise causing adverse circumstances
SEXUAL HARASSMENT is a serious CRIMINAL OFFENSE!!!
Few provisions of the IPC

- 354. Assault or criminal force to woman with intent to outrage her modesty.

Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both
Sexual Harrassment under Sec 354 A of the Indian Penal Code

Physical contact and advances involving unwelcome and explicit sexual overtures or
- A demand of request for sexual favours or
- Showing pornography against the will of a woman or
- Making sexually coloured remarks
Imprisonment for upto 5 years or fine or both
294. Obscene acts and songs

Whoever, to the annoyance of others-
(a) does any obscene act in any public place, or
(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.
509. **Word, gesture or act intended to insult the modesty of a woman**

Whoever, *intending to insult the* modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
Assault or use of criminal force to woman with intent to disrobe

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked,

shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.
Voyeurism

- 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 either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanations

For the purpose of this section, “private act” includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim’s genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

- Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.
IPC 354D: Section 354D of the Indian Penal Code

Stalking

(1) Any man who— follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or

- monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;
- Provided that such conduct shall not amount to stalking if the man who pursued it proves that—
  - it was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
  - it was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
  - in the particular circumstances such conduct was reasonable and justified.

(2) Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.
CIVIL REMEDY UNDER THE POSH

CRIMINAL REMEDY UNDER THE IPC
SECTION II
PREVENTION AND PROHIBITION
WHO IS RESPONSIBLE AND ACCOUNTABLE FOR PREVENTION?

WHAT IS THE ROLE OF WORKPLACE IN PROHIBITING AND HOW?
THE EMPLOYER SHALL CREATE A WORKPLACE FREE OF SEXUAL HARASSMENT
EMPLOYER DEFINED

1. Workplace of Central Government / State Government/ Local Authority/Body
   The Head or the Officer Specifies

2. Private Workplace
   The Person responsible for the management/supervision/control

3. Dwelling House
   The person who employs /benefits from the employment
DUTIES OF EMPLOYER

Every employer shall--

(a) Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) Display at any conspicuous place in the workplace, the penal consequences of sexual harassments: and the order constituting, the Internal Committee under this law;

(c) Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
DUTIES OF EMPLOYER

f) Make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under this law

(g) Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) Cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) Monitor the timely submission of reports by the Internal Committee
THE EMPLOYER SHALL

- Create and communicate a detailed Policy
- Ensure Awareness and Orientation on the issue
- Constitute Complaints Committee
- Ensure that the Complaints Committee is trained in skill and capacity
- Prepare Annual Report to be submitted to the DO
- Report in the Directors Report
It is the Employer’s responsibility to...

prevent or deter the committing of any act of Sexual Harassment by means of

- Creation of appropriate working conditions
- Ensuring female employees are not treated as sex objects
- Ensuring that no male employee or third party will outrage or insult the modesty of a female colleague
- Ensuring that no male employee or third party will make any type of sexual advances to female colleagues
- Establishment of a Complaints Committee
ICC/LCC

- Members to hold office for a term not exceeding three years
- ICC for each branch, offices if there are multiple

Functions
  - To educate and sensitize employee about the issue
  - To address the compliant, conduct enquiry etc.

- Operates as a Quasi Judicial Body with powers to
  - Summon and enforce attendance
  - Call for evidence, documents
**INTERNAL COMPLAINTS COMMITTEE**  
**CONSTITUTED THROUGH A WRITTEN ORDER**

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<thead>
<tr>
<th>50% shall always be women</th>
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<tr>
<td>Chairman</td>
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<tr>
<td>2 members</td>
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<tr>
<td>Member</td>
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If offices are located at different places, each place needs to have an ICC.
**Local Complaints Committee (constituted by District Officer)**

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<th>50% shall always be women</th>
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<tr>
<td>Chairman</td>
<td>Eminent Women in the field of social work and committed to the cause of women</td>
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<tr>
<td>Member</td>
<td>Nominated from among the women working in the block, tehsil or ward</td>
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<tr>
<td>2 members</td>
<td>From amongst the employees committed to the cause of women/having legal knowledge/experience in social work</td>
</tr>
<tr>
<td>Ex Offio Member</td>
<td>The concerned officer dealing with social welfare of women and child development in the district</td>
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COMPLAINT COMMITTEE SHOULD

I. Be thoroughly prepared
II. Know the Act, Policy and/or relevant Service Rules
III. Gather and record all relevant information
IV. Determine the main issues in the complaint
V. Prepare relevant interview questions
VI. Conduct necessary interviews
VII. Ensure parties are made aware of the process and their rights/responsibilities within it
VIII. Analyse information gathered
IX. Prepare the report with findings/recommendations
X. Maintain Confidentiality
XI. Be impartial, non retaliation
XII. Clinical
SECTION III
COMMUNICATING
Education and Awareness is the key
POLICY

• Employer shall create a policy which
  ● Prohibits sexual harassment at workplace
  ● Provides a detailed framework for the redressal of complaint

• Policy to be Communicated
COMMUNICATION

• Carry out awareness and orientation for all employees

• Create forums for dialogue

• Ensure capacity and skill building for the Complaints Committee

• Widely publicize the names and contact details of members of Complaints Committee
SECTION IV
REDRESS
Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Complaints Committee, 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.

The time limit may be extended for another three months if the CC is satisfied with the reasons for non-filing.

If woman is unable to make a complaint in writing, CC to provide assistance.
WHO CAN MAKE THE COMPLAINT

- The woman herself
- In case of mental incapacity
  - Her relative
  - Friend
  - Special educator
  - Qualified psychiatrist/psycologist
  - Guardian under whom she is receiving care
  - Any person who has information about incident with written consent of any of the above
WHO CAN MAKE THE COMPLAINT

- In case of Physical incapacity
  - Her relative
  - Friend
  - Co-worker
  - Officer of the National / State commission for women
  - Any person who has information about incident with the written consent of woman

- In case of death any person who has information about incident with the written consent of legal heir

- In any other case, by any person Any person who has information about incident with the written consent of woman

- is unable to make complaint due to death or physically or mentally incapacity, her legal heir or a person authorised by her may make the complaint
THE COMPLAINT

- The complaint (six copies) by the aggrieved person should contain all the material and relevant details concerning the alleged sexual harassment which includes:
  - the name of contravener
  - the complainant
  - Date
  - Time
  - Location
  - Working Relationship between parties
  - Names and addresses of witnesses, if any
THE COMPLAINT MECHANISM

- On receiving such a complaint, the chairperson will inform other members of Committee at the earliest possible and Committee will take further steps in the matter as required. The first meeting is to be held immediately within reasonable time but not later than 07 working days of receiving the written complaint of the Aggrieved.

- The ICC shall investigate the Complaint and submit its Report containing the findings/ recommendations along with relevant documents.

- In conducting inquiry, a minimum of three members of CC including chairperson to be present.
UPON RECEIPT OF COMPLAINT

• Review the Complaint to ensure
  ● It has all the information
  ● The conduct of respondent was towards complainant and
  ● is improper and may form SH at Workplace
  ● The incident occurred in workplace or at any location/any event related to work

• Send complaint to Respondent within seven days of receipt to respond within 10 days

• Meet up with complainant for any settlement/conciliation
CONCILIATION

- Initiate conciliation process in the form of
  - Verbal warning
  - Counselling
  - Educating
  - Appoint neutral conciliator to resolve
- Forward the findings/ conciliation resolution to employer
- The choice is of the complainant
INQUIRY

- Initiate enquiry
- Interview the Complainant, Respondent, Witnesses
- Listing of the Events
- Fact Finding
- Confidentiality and Impartiality is the key
INQUIRY PROCESS

• Follow the Principles of natural Justice

• Order Ex-parte or terminate the proceedings if the complainant or Respondent fail to be present for three consecutive hearings

• Legal Practitioners are not permitted

• Confidentiality to be maintained
COMMITTEE MUST ADHERE TO THE RULES OF NATURAL JUSTICE

There are three important rules to be observed by the Committee:

- Hearing - Nobody can be condemned without being heard
- Fair Play - The judge must be impartial and act fairly and in good faith
- Reasoned Orders
INTERIM MEASURE

- To prevent ongoing SH at the written request of the woman or event otherwise, CC may recommend
  - Restrain the respondent from
    - reporting on work performance of the Aggrieved woman
    - Writing her Confidential Report, appraisal
    - Supervising her academic activities
  - Transfer the Complainant or Respondent
  - Place Complainant or Respondent on Leave
RECOMMENDATIONS

- In case allegations are Proven
  - Service Rules to be followed as for “misconduct”
  - Disciplinary Actions like Written Apology; Warning;
  - Reprimand
  - With-holding of promotion
  - With-holding of pay increase or increments
  - Counselling Sessions
  - Community Service
  - Termination from services
  - Financial Damages
  - Additional recommendations to address underlying factors
False or malicious complaint

Where the Internal Committee, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer, to take action against the woman or the person who has made the complaint, as the case may be, in accordance with the provisions applicable to her or him. Provided further that the malicious intent on part of the complainant has been established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

If the ICC comes to the conclusion that any witness has given wrong statement or evidence, it may recommend the employer to take action against such employee as well.
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<th>TIMELINES</th>
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<tr>
<td>Submission of Complaint</td>
<td>Within 3 months of the last incident</td>
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<tr>
<td>Notice to the Respondent</td>
<td>Within 7 days of receiving copy of the complaint</td>
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<td>Completion of Inquiry</td>
<td>Within 90 days of complaint</td>
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<tr>
<td>Submission of Report by ICC/LCC to employer/DO</td>
<td>Within 10 days of completion of the inquiry</td>
</tr>
<tr>
<td>Implementation of Recommendations</td>
<td>Within 60 days Appeal Within 90 days of the recommendations</td>
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<tr>
<td>Appeal</td>
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CONFIDENTIALITY
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.

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

- Submission of Annual Report
  - No of cases received
  - No of cases disposed of
  - No of case pending more than 90 days
  - No of workshops/awareness sessions carried out
  - Nature of action taken by employer

- Inspection
  - Make available any information, records or document including physical inspection of workplace

- Mention in the Directors Report
NON COMPLIANCE — PENAL CONSEQUENCES

- Penalty of INR 50,000/-, where the employer
  - Fails to constitute an CC
  - Fails to act on the recommendation of the CC
  - Fails to file Annual report
  - Contravenes or abets the contravention of the provisions of the Act

- In the event of repeat of a breach
  - Twice or higher the punishment prescribed
  - Cancellation/ withdrawal/ non renewal of license/ registration for carrying out the business
APPEAL

- A person Aggrieved by the orders of the CC or in the case of non-implementation of the orders may file an Appeal with appropriate authority

- Either party can chose to seek justice through the regular court of justice
SECTION VI
SUMMARY
SUMMARY...

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.
SECTION VII

Q & A
THANK YOU

ACKNOWLEDGEMENT
Monika Mehndiratta Gupta