

# Sexual Harassment of women at Workplace (Prevention , Prohibition and Redressal ) Act, 2013.

By

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# Objects and Reasons

- sexual harassment at workplace- violation of women's right to equality, life and liberty.
- Insecure and hostile work environment-discourages women's participation in work- it adversely affects their social and economic empowerment - the goal of inclusive growth.
- Articles 14 and 15 -concept of equality and prohibit discrimination on the ground of sex among other grounds, Article 19 (1) (g) -fundamental right to all citizens to practice any profession , or to carry on any occupation , trade or business.
- This Act ensures the enabling environment for women, which is equitable, safe and secure in every aspect.

# Objects and Reasons

- Article 21 - right to live with dignity, and in the case of women it means that they must be treated with due respect, decency and dignity at the workplace.
- Article 11 of the Constitution on Elimination of All Forms of Discrimination (CEDAW) – obligates India to take all appropriate measures to eliminate discrimination against women in the field of employment.
- With more women joining workforce both in organized and unorganized sectors, the government felt it imperative to ensure an enabling working environment for women through legislation.
- The legislation contains provisions to protect every woman irrespective of whether such woman is employed or not.
- ***The Act was brought into force from 9<sup>th</sup> of December 2013.***

# Sexual harassment –Definition

- S. 2(n)-"sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—
  - i. physical contact and advances; or
  - ii. a demand or request for sexual favours;  
or
  - iii. making sexually coloured remarks; or
  - iv. showing pornography; or
  - v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

## **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.

# Unwelcome\_Behavior



## Some examples –Continued

- 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.

# Unwelcome\_Behavior





# Contd.

- 10. Physical contact such as touching or pinching.
- 11. Caressing, kissing or fondling someone against her will (could be considered assault).
- 12. Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
- 13. Persistently asking someone out, despite being turned down.



# Unwelcome Behaviour

- 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.



# Impact of Inappropriate Behaviour

- **Professional**
  - Decreased work performance
  - Increased absenteeism, loss of pay
  - Loss of promotional opportunities
  - Retaliation from the respondent, or colleagues/ friends of the respondent
  - Subjected to gossip and scrutiny at work
  - Being objectified
  - Having to relocate
  - Job and career consequences
- **Personal**
  - 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)
    - Loss of confidence and self esteem
  - Withdrawal and isolation

## S.3-Prevention of sexual harassment.

- 1. No woman shall be subjected to sexual harassment at any workplace.
- 2. The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or 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.

# Hostile Environment



# Hostile Environment

- Jayanthi works in a garment factory in Bangalore.
- Varghese, Jayanthi's supervisor, often tries to touch her on one or
- the other pretext, he adjusts her *dupatta while she is* sewing at her workstation on the pretext of covering her back.
- Jayanthi is very uncomfortable with his behaviour. Her colleagues at the workplace ridicule Jayanthi and mock her for the 'special treatment' by her supervisor. They often gossip about her and Varghese.
- physical touching by Varghese is unwelcome and sexual in nature. The gossip, which is based on Varghese's behaviour towards Jayanthi at the workplace, is creating a hostile work environment for Jayanthi.



## S.9- Compliant of sexual harassment

- 1. Any aggrieved woman may make a written complaint of sexual harassment at work place to the Internal Committee (IC) or the Local Committee(LC).
- 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 Presiding Officer or any Member of the Committee shall render all reasonable assistance to the woman who can not make a written compliant .

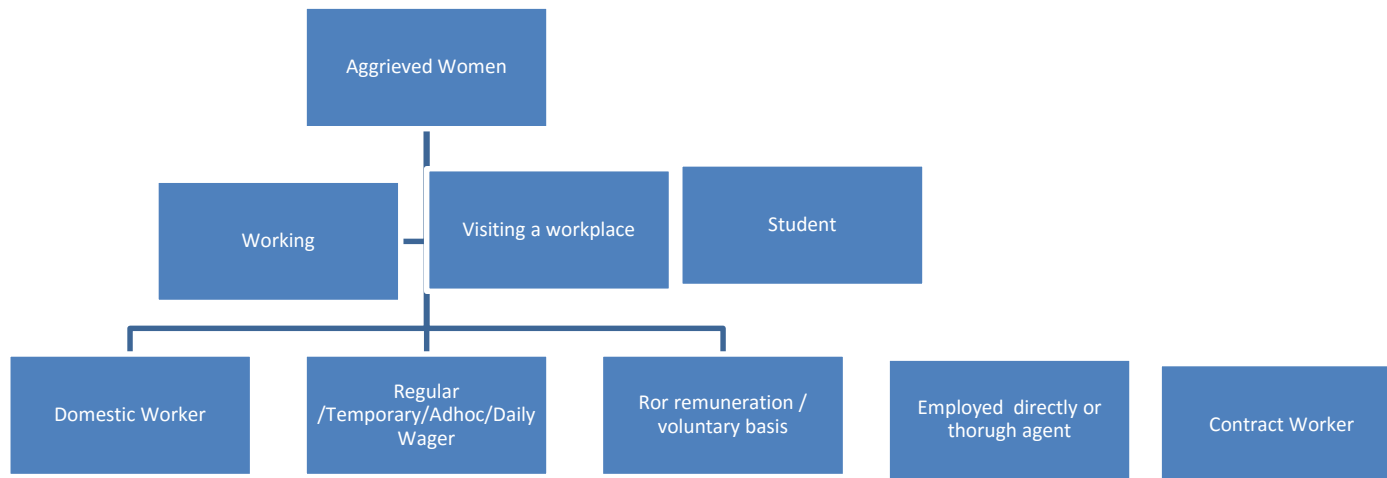
# Section-9

- IC or LC may for the reasons to be recorded in writing, extend the time limit not exceeding three months-(f it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.)
- 2. Where the aggrieved woman is physically or mentally incapable of making a complaint , her legal heir , friend or co-0worker can make a complaint.

# Aggrieved Woman-S.2(a)

- i) A woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent .
- ii) in dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

# Aggrieved Women



# Workplace- S.2(O)

- o. "workplace" includes—
  - i. any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled by the Government
  - ii. any private sector organisation or a undertaking, institution, establishment, society, trust, NGO or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services
  - iii. hospitals or nursing homes;
  - iv. any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
  - v. 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;
  - vi. a dwelling place or a house;

# Employee – S.2 (f)

- "Employee" means a person employed at a workplace for any work
- On regular, temporary, ad hoc or daily wage basis,
- Either directly or through an agent including a contractor,
- With or, without the knowledge of the principal employer,
- Whether for remuneration or not, or working on a voluntary basis or otherwise,

# Employer – S.(g)

- **g. "employer" means:—**
- **i. in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority,- The Head as has been specified by the Govt.**
- **ii. Other Places - any person responsible for the management, supervision and control of the workplace.**
- **Explanation.—"management" includes the person or board or committee responsible for formulation and administration of policies for such organisation;**
- **iii. The person discharging contractual obligations with respect to his or her employees;**
- **iv. In a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker,**

# S.4- Internal Complaints Committee

NO	MEMBER	Eligibility
1	Chairperson	<b>Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer</b>
2	2 MEMBERS (MINIMUM)	<b>From amongst employees committed to the cause of women/having legal Knowledge/experience in social work</b>
3	MEMBER	<b>From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment (<u>Half of the total members shall be women</u>)</b>



# Constitution of Local Complaints Committee- S. 6

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

# 10. Conciliation

- 1. The IC or LC may before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:
- Provided that no monetary settlement shall be made as a basis of conciliation.
- 2. Where a settlement has been arrived at conciliation the IC or LC shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
- 3. The IC or LC shall provide the copies of the settlement as recorded under conciliation process to the aggrieved woman and the respondent.
- 4. Where a settlement is arrived at by the parties , no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

# 11. Inquiry Into complaint

- 1. IC or LC shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent .
- Where no such rules exist, **in such manner as may be prescribed (Rule 7 of the Rules)**
- In the case of a domestic worker, the Local Committee shall, **if prima facie case exist**, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the Code where applicable:
- Where the aggrieved woman informs the IC or LC that any term or condition of the settlement arrived at under the conciliation agreement has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

# 11. Inquiry Into complaint

- Where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard.
- A copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.
- The court may while punishing the wrongdoer under S.509 of the IPC order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the parameters provided under section 15.

# 12. Action during pendency of inquiry

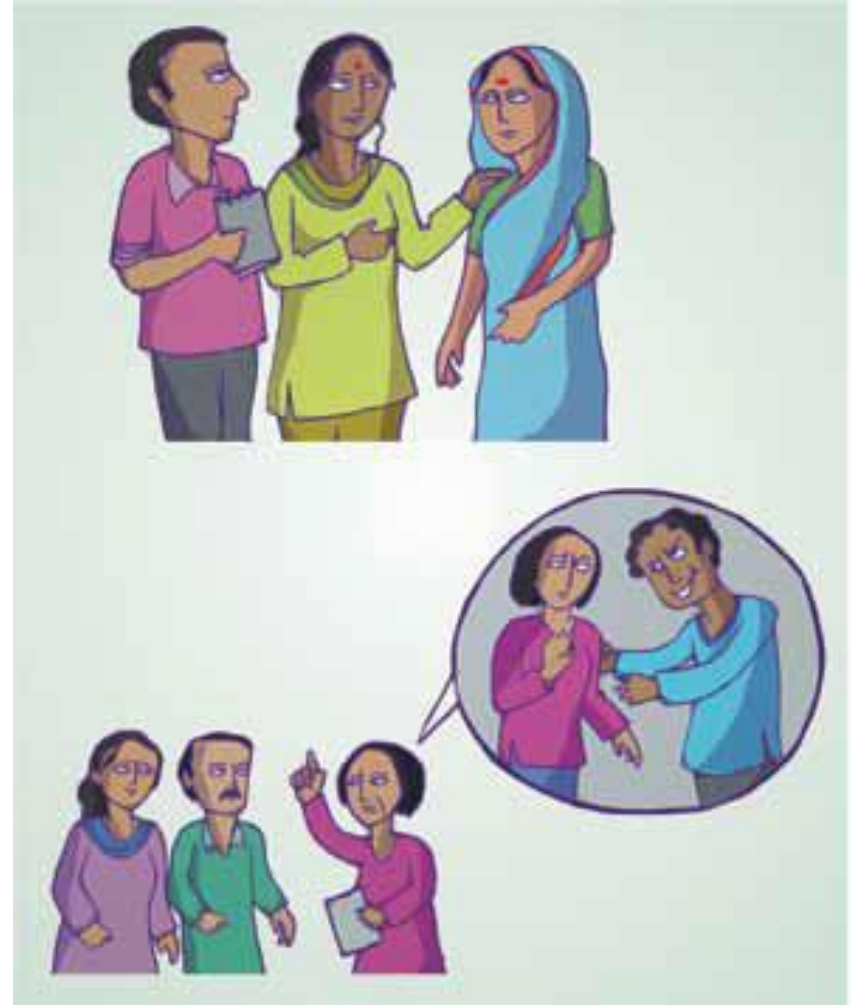
- 1. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—
  - a. transfer the aggrieved woman or the respondent to any other workplace; or
  - b. grant leave to the aggrieved woman up to a period of three months; or
  - c. grant such other relief to the aggrieved woman as may be prescribed.
- 2. The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

# Do's for the Complaints Committee

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

# Don'ts for Complaints Committee

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



# 12. Action during pendency of inquiry

- 3. On the recommendation of the IC LC, as the case may be, the employer shall implement the recommendations made under its report .
- The employer shall send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.
- Rule-8- the committee at the request of the aggrieved woman may recommend to the employer to rest train a) the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer, b)the respondent in case of an educational institution, from supervising any academic activity of the aggrieved woman.



# S.13-Inquiry Report

- 1. On the completion of an inquiry, the IC or LC shall provide a report of its findings to the employer or to the district Officer within a period of **ten days** from the date of completion of the inquiry and such report be made available to the concerned parties.
- 2. If the committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
- 3. If it arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules **or as per Rule 9 of the Rules.**

# Private Employment Conditions of Service

- Rule 9 – The committee shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counseling session or carrying out community service.
- It shall recommend the employer or the District Officer 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 , as it may determine , in accordance with provisions of S.15.
- If the employer is unable to make such deduction due to the absence or cessation of employment by the employee , it may direct to the respondent to pay such sum to the aggrieved woman and the same may be collected as an arrear of land revenue.
- Recommendation has to be acted upon within 60 days of its receipt.

# Punishment for false or malicious complaint and false evidence

- If it is found that allegation against the respondent is malicious or person making the complaint has made the complaint knowing it to be false or has produced a forged or misleading document, it may recommend to the employer or the District Officer to take action against the woman or the complainant as per service rules.
- Rule-10 – in the absence of service rules , recommendation may be as prescribed under rule 9.
- Mere inability to substantiate a complaint or provide adequate proof need not attract action against the complaint under this section.
- In case of giving false evidence non production of any forged or misleading document , it may recommend to the employer of the witness or the District Officer to take action as per service rules as per rule-10.

# 15. Determination of compensation

- For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to
  - a. the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
  - b. the loss in the career opportunity due to the incident of sexual harassment;
  - c. medical expenses incurred by the victim for physical or psychiatric treatment;
  - d. the income and financial status of the respondent;
  - e. feasibility of such payment in lump sum or in installments.
  -

# 16. Prohibition of publication or making known contents of complaint and inquiry proceedings

- Irrespective of the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:
- Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

## **17. Penalty for publication or making known contents of complaint and inquiry proceedings**

- Where any person handling with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person
- Where no such service rules exist- Rule -12 provides that the employer shall recover a sum of Rs. 500 /- as penalty from such person.

# 18. Appeal

- 1. Any person aggrieved can appeal on the following orders-
- 1. Committee's recommendation to the employer not to take any action against the Respondent on the ground that the allegation has not been proved.
- 2. Recommendation of the committee to the employer to take action against the Respondent as per the service rules on the ground that the allegation of sexual harassment has been proved .
- 3. Recommendation by the committee to the employer to deduct some sum as determined under section 15 of the Act from the salary or wages of the respondent to be paid to the aggrieved woman .
- 4. Recommendation by the committee to take action against the complaint as per the service rules on the ground that the complaint is malicious .
- 5. Recommendation of the committee to take action against the witness as per the service rule for giving false evidence or producing any forged or misleading document .
- 6. Non implementation of above orders
- 7. Penalty imposed on the employee dealing with the complaint and other information as per the service rules for parting the information .

# Appeal

- To the court or Tribunal in accordance of the provisions of the service rules .
- By employees (non govt.) to the Appellate Authority as per the Industrial Employment (Standing Orders) Act, 1946.
- Appeal shall be preferred within a period of 90days of recommendations.



## 26. Penalty for non-compliance with the Act.

- 1. Where the employer fails to—
  - a. constitute an Internal Committee
  - b. take action against the wrong doer or malicious complainant .
  - c. Contravenes other provisions of this Act or any rules
- **shall be punishable with fine which may extend to fifty thousand rupees.**
- 2. i) If any employer, after having been previously convicted of an offence punishable commits and is convicted of the same offence, he shall be liable to twice the punishment
- ii) 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.

# 27. Cognizance of offence by courts

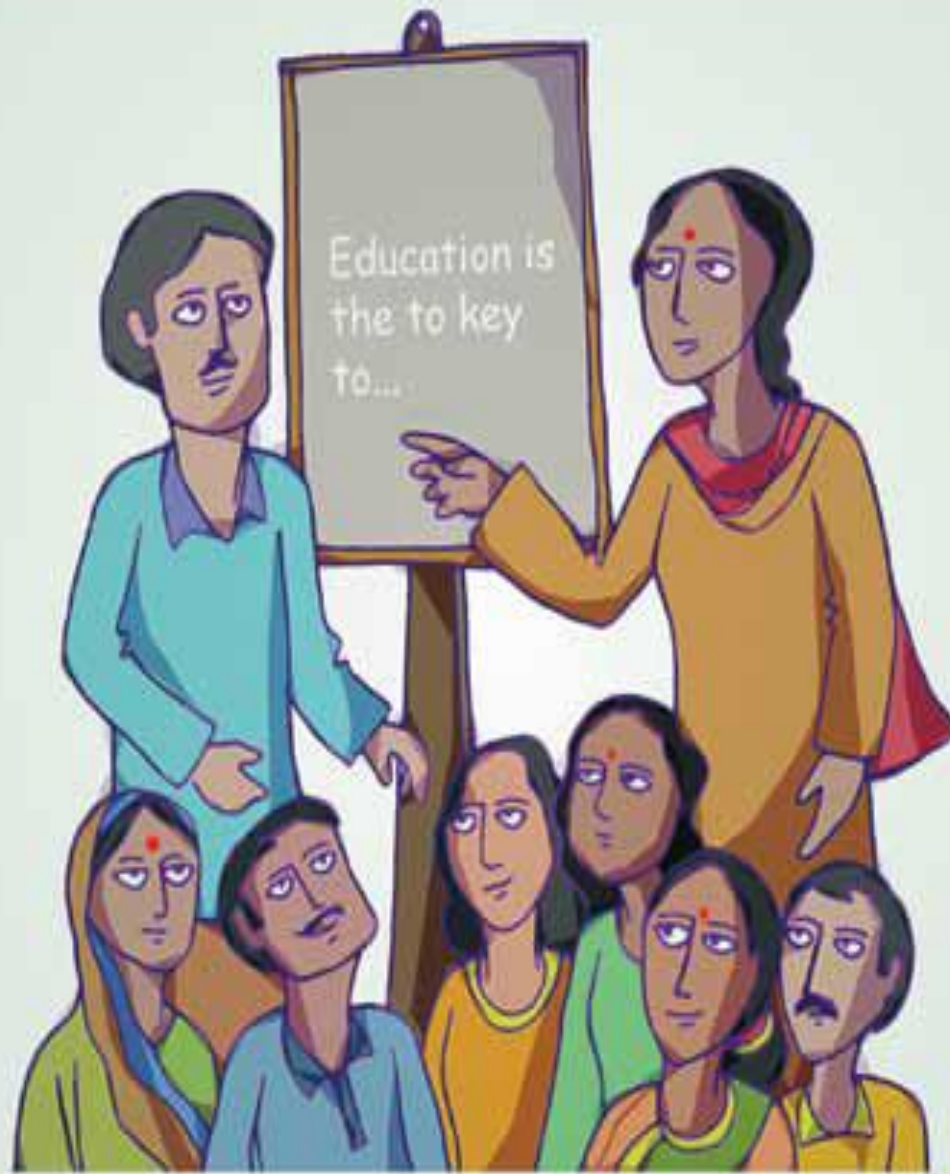
- 1. No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.
- 2. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- 3. Every offence under this Act shall be non-cognizable.

# 28. Act not in derogation of any other law.

- **The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.**
- **354 A. of IPC**
  - **1. A man committing any of the following acts—**
    - **i. physical contact and advances involving unwelcome and explicit sexual overtures; or**
    - **ii. a demand or request for sexual favours; or**
    - **iii. showing pornography against the will of a woman; or**
    - **iv. making sexually coloured remarks, shall be guilty of the offence of sexual harassment.**
  - **2. Any man who commits the offence in clause (i) or clause (ii) or clause (iii) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.**
  - **3. Any man who commits the offence specified in clause (iv) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both**

# S.19-Duties of the Employer

- **Provide a safe working environment at the workplace including the safety from the persons coming in contact at the workplace,**
- **Display art conspicuous place , the penal consequences of harassment and internal Committees**
- **Organize workshops and awareness programmes at regular interval for sensitizing the employees**
- **Provide necessary facilities to the internal Committee dealing with the complaint .**
- **Assist in securing the attendance of the respondent and witness before the committee.**
- **Assistance to woman if she chooses to file a complaint in relation to the offence under IPC**
- **Cause to initiate action under the IPC against the perpetrator, if the perpetrator is not an employee and the aggrieved woman so desires (for the incident of sexual harassment took place).**
- **Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.**
- **Monitor the timely submission of report by the Internal committee .**



## S.20-Duties of District Officer

- Monitor timely submission of reports furnished by the Local committee
- Take measures necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of the women .

# Inequality in the positions



A safe  
workplace  
is every  
woman's  
right





*Thank You*

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