Sexual Harassment of Women at Workplace in India
(Prevention, Prohibition, and Redressal)

Act & Rules

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Legal Framework

• The sexual harassment of women at workplace (Prevention, Prohibition, and Redressal) Act, 2013

• The sexual harassment of women at workplace (Prevention, Prohibition, and Redressal) Rules, 2013

• Erstwhile Vishaka Guidelines of 1997 by Supreme Court now replaced
# Legislative progress of the Law

Speed in implementation was a response to the public outrage over Nirbhaya case

<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>2007</td>
<td>Bill introduced by Women &amp; Child Dev Minister</td>
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<tr>
<td>Jan, 2010</td>
<td>Union cabinet approved the bill</td>
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<tr>
<td>3\textsuperscript{rd} Sep, 2012</td>
<td>Lok Sabha passed the bill</td>
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<tr>
<td>26\textsuperscript{th} Feb, 2013</td>
<td>Rajya Sabha passed the bill</td>
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<tr>
<td>11\textsuperscript{th} Mar, 2013</td>
<td>Lok Sabha again passed bill with changes</td>
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<tr>
<td>22\textsuperscript{nd} Apr, 2013</td>
<td>The bill got President’s assent</td>
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<tr>
<td>9\textsuperscript{th} Dec, 2013</td>
<td>Issuance of Rules</td>
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<tr>
<td>9\textsuperscript{th} Dec, 2013</td>
<td>Act &amp; Rules Notified, Law comes in force</td>
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Why this Law

Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and

her right to life and to live with dignity under article 21 of the Constitution and

her right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment under article 19(1)g
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.

The Act extends to Whole of India
Scope of the Act

- The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private.

- This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere.

- The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.
Vishaka v State of Rajasthan (1997)

• The Act uses a definition of sexual harassment which was laid down by the case

• Case established that actions resulting in a violation of one's rights to ‘Gender Equality’ and ‘Life and Liberty’ is in fact a violation of the victim’s fundamental right under Article 19 (1) g

• The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury
CHAPTER I

Preliminary
Important Definitions

**Aggrieved Woman**
- At workplace, any woman
  - whether employed or not
  - irrespective of any age
  - who alleges to have been subject to any act of sexual harassment by the respondent*

  (* A person against whom an aggrieved woman has made a complaint)
- At a dwelling place or house, a woman
  - of any age
  - who is employed in that dwelling place or house
Important Definitions

**Domestic Worker**

Means a woman who is employed to do the household work in any household for a remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, **but does not include any member of the family of the employer**
Important Definitions

**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 of that department, organisation, undertaking, establishment, enterprise, institution, branch or unit or such other officer as the appropriate Government or a local authority, as the case may be, may by an order specify in this behalf.
Important Definitions

**Employer** means

• (ii) in any workplace not covered above, any person responsible for management, supervision and control of the workplace

“management” includes a person or board or committee responsible for administration and formulation of policies for such organisation

• (iii) in relation to workplace covered above, the person discharging contractual obligations with respect to his or her employees
Important Definitions

**Employer** means

- (iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of *domestic worker*, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.
Important Definitions

Sexual Harassment

Includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-

• Physical contact or advances or
• A demand or request for sexual favours or
• Making sexually coloured remarks
• Showing pornography
• Any other unwelcome physical, verbal or non verbal conduct of sexual nature
Important Definitions: Workplace

- Nursing Homes
- Farms
- Corporations
- Educational Institutions
- Companies
- NGOs
- House
- Sports Facilities
- Hospitals
- Service Providers
- Cooperative Societies
Prevention of Sexual Harassment (Sec 3)

• No woman shall be subjected to sexual harassment at any workplace
• 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*:-
  • Implied or explicit (a) preferential treatment or (b) threat of detrimental treatment or (c) threat about her present or future employment status, in her employment or
  • Interference with her work or creating scary or offensive or hostile work environment for her or
  • Humiliating treatment likely to affect health or safety
CHAPTER II

Constitution of Internal Complaints Committee (ICC)
Constitution of ICC (Sec 4)

• Every employer to constitute ICC by an order in writing
• ICC to be constituted at each place of administrative units or offices
• ICC to constitute following members nominated by employer: (at least 50% should be women)
  • Senior level woman employee as presiding officer
  • 2 employees committed to cause of women or having exp in social work or having legal knowledge
  • 1 person from NGO or association committed to the cause of women or familiar with sexual harassment issues
Constitution of ICC (Sec 4)

- ICC members may be nominated max for 3 years.
- NGO member on ICC to be paid fees by employer as prescribed (Rule 3)
- Any member of the ICC shall be removed if he/she
  - Contravenes the provisions of Sec 16
  - Has been convicted for an offence
  - An enquiry into an offence under law is pending against..
  - Has been found guilty in any disciplinary proceedings or if any disciplinary proceeding is pending against…
  - Has abused the position ….prejudicial to public interest
- Casual vacancy to be filled in by fresh nomination
CHAPTER III

Constitution of Local Complaints Committee (LCC)
Notification of District Officer

• Sec 5 of the Act

• Appropriate Government to notify a district officer for every District

• To exercise power or discharge functions under this Act

• District Officer (DO) shall be either District Magistrate or Additional District Magistrate or Collector or Deputy Collector
Constitution & Jurisdiction of LCC (Sec 6)

• Every DO to constitute LCC in District
• LCC to receive complaints from establishment where ICC is not constituted due to less than 10 workers or if complaint is against employer
• DO to designate one Nodal Officer (NO) in every
  • Block, taluka and tehsil in rural area and
  • Ward or municipality in urban area
• DO to receive complaints and forward to LCC within 7 days
• Jurisdiction of LCC shall be the area in which it is constituted
Constitution of LCC (Sec 7)

• LCC to constitute following members nominated by DO:
  • Chairman to be nominated from amongst eminent women in the filed of social work or committed to the cause of women
  • 1 member from women working in block or taluka or tehsil or ward or municipality in the district (Fees as per Rule 5)
  • 2 members (at least 1 woman) from NGO or association committed to cause of women or familiar with SH issues which may be prescribed (Defined in Rule 4)
  • (provided 1 nominee to have legal knowledge or background and 1 woman nominee to be from SC/ST/OBC)
  • 1 ex-officio member-officer dealing with social welfare or women & child development in district (Fees as per Rule 5)
  • Max tenure of office by every member shall not exceed 3 years
Constitution of LCC (Sec 7)

- Chairman & NGO member on LCC to be paid fees as prescribed
- Any member of the LCC shall be removed if he/she
  - Contravenes the provisions of Sec 16
  - Has been convicted for an offence
  - An enquiry into an offence under law is pending against...
  - Has been found guilty in any disciplinary proceedings or if any disciplinary proceeding is pending against...
  - Has abused the position ....prejudicial to public interest
- Casual vacancy to be filled in by fresh nomination
Grants & Audit (Sec 8)

- Central Government to provide grants to State Governments for payment of fees to Chairman & NGO member on LCC
- State Government to make agency and transfer grants to agency
- Agency to pay requisite sums to DO
- Accounts of Agency to be audited and maintained as prescribed in consultation with Accountant General of the State
CHAPTER IV

Complaint
Complaint of Sexual Harassment (Sec 9)

- Aggrieved woman to complain of Sexual Harassment (SH) within 3 months of the incident and in case of series of incidents, within 3 months from the last such incident.
- Complain to be made to ICC if constituted or else LCC.
- Complain to be in writing.
- Reasonable assistance to be provided by member of ICC or LCC as the case may be to the aggrieved for lodging a written complaint in case of any inability.
- Time limit of 3 months could be extended by ICC or LCC by a maximum of another 3 months.
- If aggrieved is incapacitated to make complain, her legal heir can make complaint in the manner prescribed [Rule 6](#).
Conciliation (Sec 10)

- ICC or LCC before making an enquiry into a complaint may take steps to settle the matter between the aggrieved and respondent through **non-monetary** conciliation.
- In case of settlement, recorded proceedings to be sent to DO/Employer with recommendation for necessary action.
- Copies of settlement to be provided to both the parties
- No further enquiry shall be permissible in case of a settlement.
Incident of Sexual Harassment

3 months

Complaint made to ICC/LCC

Employee requests for a settlement

➢ Not monetary;
➢ ICC to record settlement and forward to LCC and parties
➢ No further

Reasons for delay to be recorded in writing

Beyond 3 months

Employee does not request for settlement

INQUIRY

No settlement

Beyond 3 Months

Employee does not request for settlement

Beyond 3 months

Reasons for delay to be recorded in writing

No further
Inquiry into Complaint (Sec 11)

• In case of a respondent who is an employee, the ICC to carry out enquiry proceedings as per service rules applicable to employee. If no rules exist then in a manner prescribed. *(Rule 7)*

• Proceedings to begin by forwarding a complaint to Police within 7 days of its registration under the applicable provisions of the IPC.

• Also if the aggrieved informs the ICC or LCC as the case may be of non-adherence of the terms of the settlement by the respondent, such proceedings shall be accordingly initiated in the manner stated above

• Inquiry to be completed within 90 days
Inquiry into Complaint (Sec 11)

- In case both parties are employees, an opportunity of being heard shall be given to both the parties during the course of enquiry.
  - Findings to be shared with both of them
  - To enable them to represent their case against the findings of the Committee.
- Notwithstanding anything contained in Sec 509 of IPC, the Court may order such sum of payment as it may consider fit by the Respondent to the Aggrieved having regard to the provisions of [Sec 15](#)
- When trying a suit, ICC or LCC to have same powers of a Court as in CPC 1908 in respect of summoning, examination of a person on oath or production of documents or any other matter as may be prescribed
CHAPTER V

Inquiry into Complaint
Action during pendency of inquiry (Sec 12)

• The aggrieved woman may make a written request during the pendency of inquiry.

• On such request, the ICC or LCC may recommend to the employer:
  • To transfer her to any other workplace.
  • To grant her leave of up to 3 months.
  • To grant her such other relief as prescribed (Rule 8).

• The leave of 3 months mentioned herein would be in addition to the otherwise entitled leave.

• The employer shall implement the recommendations.

• The employer to then send a report of such implementation to the ICC/ LCC as the case may be.
Inquiry Report (Sec 13)

• On completion of inquiry the ICC or the LCC will have to forward the copy of the report within 10 days of completion to the employer/DO (as the case may be) and to the parties concerned.

• Where on completion of inquiry the allegation against the respondent is not proved, the recommendation by the ICC/ LCC to the employer/DO would be: no action to be taken against the respondent.

• If allegation proved: (i)(a) to take action for sexual harassment as a misconduct under the service rules (i)(b) if no service rules, then in such manner as may be prescribed (Rule 9)
• If allegation proved: (ii) Notwithstanding anything in the service rules, deduction from salary or wages, such sum as may be prescribed
  - To the aggrieved woman or to her legal heir, as it may determine
• In case the employer is unable to deduct from salary or wages due to his absence from duty or cessation of employment
• In that case, the respondent is directed to pay
• Recommendations to be acted upon within 60 days of its receipt by the Employer/DO
Punishment for false complaint (Sec 14)

- False or malicious compliant against the respondent
- False evidence (forged or misleading document)
  If on an inquiry by the ICC/ LCC, any of the above is established against the:
  - Aggrieved woman
  - Person making the compliant
  - Witness(es)
  It may recommend to the Employer/ DO to take action against the woman or the person making the compliant, as per the service rules or in the absence of service rules, in the manner as may be prescribed. (Rule 10)
Before imposing punishment under sec 14, conditions has been laid down:

- Mere inability to substantiate a complaint

- Mere inability to provide adequate proof
Need not attract against the complainant under sec 14

Most importantly:

- Before any action is recommended under sec 14, malicious / cruel intent have to be established on the part of the complainant after an inquiry in accordance with the procedure prescribed
Section 14(2)

- If the ICC/ LCC reaches to a conclusion that during the inquiry, any witness has given:
  - any false evidence or
  - produced any forged or misleading document

It may recommend to the Employer of the witness/DO to take action as per the service rules of the witness’s employment or in absence of service rules, as may be prescribed.
While determining the amount of compensation as has been mentioned in section 13(3)(ii) of the Act, the ICC/LCC shall regard the following points:

- The mental trauma and emotional distress caused to the aggrieved woman
- The loss in the career opportunity due to the incident of sexual harassment
- Medical expenses incurred by the victim for physical or psychiatric treatment
- The income and financial status of the respondent
- Feasibility of such payment in lump sum or in instalments
Prohibition of publication of inquiry proceedings (Sec 16)

The following shall not be published, communicated or made known to the public, press and media in any manner:

• The contents of the complaint made u/s 9
• The identity and addresses of the aggrieved woman, respondent and witnesses
• Any information relating to conciliation and inquiry proceedings
• Recommendations of the ICC/ LCC
• Action taken by the Employer/ DO

Information may be disseminated without disclosing the above. The provision is without prejudice to RTI Act
Penalty for not following sec 16 (Sec 17)

• On contravening the provisions of section 16:
  • The person entrusted with the duty to handle with the compliant, inquiry or any recommendations or action to be taken under the provisions of this Act
  • Shall be liable to penalty
  • As per the service rules applicable to the said person
  • In the absence of service rules, in the manner as may be prescribed (As per Rule 12 it is Rs 5000/-)
Appeal (Sec 18)

• Any person aggrieved from the recommendations made under sections 13(2), 13(3)(i), 13(3)(ii), 14(1), 14(2) or section 17
• Any person aggrieved from the non-implementation of the recommendations made
• May prefer any appeal to the Court or Tribunal in accordance with the service rules applicable to the said person
• And if no service rules exist, in the manner as may be prescribed (without prejudice to the provisions of any other existing law) - Rule 11
• Important: Appeal to be made within 90 days of the making of recommendations
CHAPTER VI

Duties of Employer
Duties of employer (Sec 19) – See Rule 13

- Provide a safe working environment
- Display at a conspicuous place at the work place
  - Penal consequences of Sexual Harassment
  - Order constituting the ICC
- Organise regular programmes
  - Awareness workshops for sensitizing the employees
  - Orientation programmes for ICC members
  - Involve both men and women employees
- Provide necessary facilities to ICC or LCC as the case may be for dealing with a complaint & conducting inquiry
- Assist in securing the attendance of respondent and witness before the ICC or LCC
Duties of employer (Sec 19)

• Make necessary information available to ICC or LCC in regard to the complaint made
• Provide assistance to woman if she chooses to file complaint under the IPC or any other law in force
• Cause to initiate action under the applicable law in force against the perpetrator or if the aggrieved woman so desires where the perpetrator is not an employee, in the workplace in which the incident of SH took place
• Treat SH as misconduct under the service rules and initiate action accordingly
• Monitor the timely submission of report by ICC
CHAPTER VII

Duties & Powers of District Officer
Duties & Powers of DO (Sec 20)

• District Officer to
  • Monitor the timely submission of report filed by LCC
  • Take such measures as may be necessary for engaging NGOs for creation of awareness on SH and rights of women
CHAPTER VIII

Miscellaneous
Miscellaneous (Sec 21 to 30)

• ICC or LCC as the case may be to prepare annual report every calendar year in prescribed format (Rule 13) and submit to the Employer and DO.

• DO to send brief report on the annual reports received to State Government.

• The Employer to include in its report no of cases filed and their disposal. Also to be included in the annual report of the organisation. If no such annual report is required to be prepared then submit to DO.

• Appropriate Government (AG) to monitor implementation and maintain data under this Act

• AG to spread awareness, conduct workshops, training & orientation programs subject to availability of funds.
Miscellaneous (Sec 21 to 30)

- AG on being satisfied in interest of public or women at workplace may by order in writing
  - Call upon employer or DO to furnish information in writing relating to SH
  - Authorise any officer to inspect and submit a report as directed.
- Every employer and DO shall produce on demand records and information before the aforesaid inspector.
- Initial punishment to a employer who fails to comply with the provisions of this Act is a max of Rs 50000/-
- For repeat of same offence
  - Double the above punishment
  - Court to take cognizance of higher punishment prescribed under any other law
  - Cancellation, non approval of business license
Miscellaneous (Sec 21 to 30)

- No court to take cognizance of any offence punishable under this Act or related Rules save on a complaint made by aggrieved Woman or any person authorized by ICC or LCC

- No Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of first class shall try any offence punishable under this Act

- Every offence under this Act to be non-cognizable

- CG to make rules for carrying out provisions of this Act
RULES
Fees or Allowance of ICC Member (Rule 3)

- Member appointed from NGO entitled to an allowance
- of Rs 200/- per day for holding ICC Proceedings
- and reimbursement of travel cost
  - Train AC Three Tier
  - AC Bus
  - Auto-rickshaw
  - Actual whichever is less
- Employer to pay above allowances
Person familiar with SH Issues (Rule 4)

• Person having expertise pertaining to SH issues and includes the following

• Social worker with 5 yrs experience in the field of social work which leads to creation of societal conditions favorable towards empowerment of women and in particular addressing the workplace SH

• A person who is familiar with labor, service, civil or criminal law
Fees or Allowance of LCC Member (Rule 5)

• Chairperson entitled to an allowance of Rs 250/- per day for holding LCC Proceedings.
• 1 member from women working in block or taluka or tehsil or ward or municipality in the district and the ex-officio member is entitled to an allowance of Rs 200/- per day for holding LCC Proceedings
• and reimbursement of travel cost
  • Train AC Three Tier
  • AC Bus
  • Auto rickshaw
  • Actual whichever is less
• DO shall be responsible for payment of allowances
SH Complaints (Rule 6)

• Who can make complaints if aggrieved woman is unable to make one due to physical incapacity?
  • Relative
  • Friend
  • Co-worker
  • Officer of National Commission for the Women
  • State Women’s Commission
  • A person who has knowledge of the incident with written consent of the woman

• Who can make complaints if aggrieved woman is unable to make one due to mental incapacity?
  • Relative
  • Friend
SH Complaints (Rule 6)

- Special Educator (means a person trained in communication with people with special needs in a way that addresses their individual differences and needs)
- Qualified Psychologist or Psychiatrist
- A guardian or authority under whose care she is receiving treatment or care
- A person who has knowledge of the incident jointly with any of the abovementioned persons

- Who can make complaints if aggrieved woman is unable to make one due to any other reason? -- A person who has knowledge of the incident with her written consent

- Who can make complaints if aggrieved woman is unable to make one due to any other reason? -- A person who has knowledge of the incident with written consent of her legal heir
Manner of Enquiry into Complaints (Rule 7)

- Complainant to submit 6 copies of complaints along with supporting documents and names and addresses of witnesses to Complaints Committee (CC)

- CC to send 1 copy to the respondent within 7 working days

- Respondent to file reply within 10 working days

- CC to make enquiry in accordance with principle of natural justice
Manner of Enquiry into Complaints (Rule 7)

• No legal practitioner allowed to be brought in by any of the parties

• Minimum of 3 members of the CC including the Presiding Officer or the Chairperson as the case may be shall be present in inquiry conduction.

• CC has to right to terminate inquiry proceedings or give an ex-parte order if the respondent refrains from attending three consecutive hearing proceedings without proper reason after giving 15 days written notice.
Relief to Complainant (Rule 8)

- Reliefs to complainant as follows may be provided during pendency of the inquiry

- CC may at the written request of the aggrieved woman may recommend the employer to

- Restrain the respondent from reporting on the work performance of aggrieved woman or writing her confidential report and assign the same to another officer;

- Restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman
Manner of Taking Action for SH (Rule 9)

- If Service Rules exist...the same needs to be followed
- Else if CC concludes that allegation against respondent is proved, it shall recommend to the employer or DO as the case may be to take any action including a
  - written apology
  - Warning, reprimand or censure
  - Withholding of promotion, pay rise or increments
  - Termination from service
  - Undergoing a counseling session
  - Carrying out community service
Action for false or malicious complaint (Rule 10)

• If Service Rules exist… the same needs to be followed
• Else if CC concludes that allegation against respondent is malicious or false or based on misleading document it shall recommend to the employer or DO as the case may be to take any action including a
  • written apology
  • Warning, reprimand or censure
  • Withholding of promotion, pay rise or increments
  • Termination from service
  • Undergoing a counseling session
  • Carrying out community service

Where will the Appeal Lie (Rule 11)

Appeal u/s 18: Appellate authority notified under Sec 2(a) of the Industrial Employment (Standing Order) Act, 1946 (20 of 1946)
Manner to Organise Workshop (Rule 13)

- Every employer (subject to Sec 19) shall
  - Formulate and widely disseminate SH policy
  - Promoter gender sensitive safe spaces
  - Remove factors contributing to hostile work environment against women
  - Carry out orientation programs and seminars for members of ICC
  - Carry out awareness programs
  - Create forum for dialogues involving panchayati raj institution, gram sabha, women’s groups, mothers’ committee, adolescent groups, urban local bodies or any other bodies considered necessary
  - Conduct capacity building and skill building programs for members of ICC
  - Declare contact details of all members of ICC
  - Use modules developed by state government to sensitize the provisions of SH amongst employees, to create awareness & conduct workshops
SAFE ENVIRONMENT FOR WOMEN AT WORK PLACE

A. What Constitutes Harassment:
Unusual behaviour against WOMEN EMPLOYEES at work place i.e.:
i. Physical contact and advances ii. Sexually coloured remarks iii. Showing any pornography, or iv. Any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

B. Punishment:
Legal Provisions against crimes against women under INDIAN PENAL CODE 1860:

<table>
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<th>Section</th>
<th>Offence</th>
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<tbody>
<tr>
<td>354 IPC</td>
<td>Assault or use of criminal force to women with intent to outrage her modesty</td>
</tr>
<tr>
<td>354A IPC</td>
<td>Sexual Harassment of the nature of unwelcome physical contact and advances or a demand or request for sexual favours showing pornography.</td>
</tr>
<tr>
<td></td>
<td>Sexual Harassment of the nature of making sexually coloured remark</td>
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<tr>
<th>Punishment</th>
<th>Bailable/Non-Bailable</th>
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<tbody>
<tr>
<td>Imprisonment for one year, or may be extend to five years with fine.</td>
<td>Cognizable and Non-Bailable</td>
</tr>
<tr>
<td>Imprisonment up to three years or fine, or both.</td>
<td>Cognizable and Bailable</td>
</tr>
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</tbody>
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C. SOLUTION:
Complaints may be made to the Complaints Committee or to National Commission for Women through website www.ncw.nic.in.

A safe workplace is every women's right.

Dr. V. Savitri, ACMS/BZA - 9701373501
Dr. B. Keerthi - 9848542521 ★ Sr DPO / BZA-9701373600

Complaints can be dropped in the complaints-box placed near the DRM/BZA's stair case.
Preparation of Annual Report (Rule 14)

• Annual Report of CC under Sec 21 shall contain
  • No of complaints on SH received in a year
  • No of complaints disposed off in a year
  • No of cases pending form more than 90 days
  • No of workshop or awareness programs against SH carried out
  • Nature of action taken by Employer or DO

Share report with District Collector / Project Director Women and Child Development, Krishna District.
LET US JOIN TO MAKE A DIFFERENCE . . .