A Handbook for ICC Members

FAQ’s on

SEXUAL HARASSMENT

at the Workplace
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WPC was born out of the realization that, despite substantial grassroots efforts, women’s organizations and groups in India lacked the necessary co-ordination needed for translating their efforts into legislative and policy outcomes necessary for real progress.

Despite the fact that parliamentarians have the zest to address issues related to women’s rights and empowerment, they lack the mechanism to address this in a smooth manner as the information provided to them by the various grassroots organizations is voluminous and incoherent. It was, therefore, felt that a national level agency could bridge the gap between the activities of the organizations working at the grassroots and the institutions that can bring about policy level outcomes.

The organization which began in 2005, today is a national level body with a membership base of over 1,400 individuals and NGOs, spread across the country. An integral aspect of WPC is its commitment to addressing gender discrimination from all angles and creating a gender just society by working towards the political, social and economic empowerment of women. Through successful partnerships with governmental bodies both at National and State level, UN Agencies and its selected partner organizations in different states WPC has been working on important issues and projects. This involves extensive policy analysis, policy advocacy, media advocacy, capacity building, research, alliance formation and community mobilization to engender social change and community empowerment.

WPC’s overarching aim is to create an interface between civil society organizations and governmental bodies and provide a platform for highlighting ground-level experiences. This has proven to be immensely effective in the delineation of key recommendations, identification of barriers to strategic policy implementation, facilitating the formation of committees with civil society and governmental representation.
WPC’s focus areas include:

- Passage of the Women’s Reservation Bill.
- Gender Budgeting
- Effectively addressing the problem of Gender Based Violence.
- Empowering girls by addressing the issue of Child Marriage.
- Economic Empowerment of women including building people’s movement for pro - women farmer policies.
- Arresting declining child sex ratio and the implementation of the Pre - Conception and Pre - Natal Diagnostics Techniques Act (PCPNDT) Act, 1994.
- Enhancing value of girl child.

This Handbook for Members in Complaints Committees is an outcome of the project
About Project Wajood

Wajood ‘Triumph of Courage – Effectively addressing Violence against Women in Delhi – NCR Region’. Project Wajood aims at reducing the prevalence of Gender Based Violence in Delhi and provides survivors with appropriate services.

WPC in collaboration with Population Services International (PSI), Project Wajood, has worked on making the corporate workplace more gender friendly and on sensitizing the corporate workplace on the issues of Domestic Violence (DV), Intimate Partner Violence (IPV) and Sexual Harassment at the Workplace. WPC has conducted trainings for ICC members and other employees in the corporate sector on gender, DV/ IPV, and sexual harassment at the workplace as part of the project. Training workshops facilitated by WPC aim towards bringing about changes in attitudes, and not just dissemination of information.

This Handbook is based on questions asked at the trainings conducted by WPC, and is presented in the form of questions and answers. While it is intended for external members in Internal Complaints Committees, other stakeholders, including employees, employers or aggrieved women would also find it useful. As the Handbook is intended primarily for the external ICC Members, it focuses on the Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013. The option of using criminal law is available to an aggrieved woman in cases of sexual harassment. As the 2013 Act places an obligation upon the employer to assist the aggrieved woman (should she choose to file a criminal complaint), the ‘how-to’ of approaching the police is discussed briefly in this Handbook.

This Handbook does not delve into CCS/CCA Rules applicable to government officers, nor does this Handbook deal with Rules drafted by Universities under their statutes.
Introduction to the Handbook

The right to work is a fundamental right. Growing numbers of women are entering the formal work force in India. Yet globally, India has one of the lowest female labour force participation rates. As per Census 2011, the workforce participation rate for women was 25.51 percent, which is less than other countries in South Asia such as Nepal and Bangladesh. More women are present in low paying jobs and in the service sector. Although in terms of numbers the presence of women in the formal workforce is growing, the proportion of women in the formal workforce has reduced. Social factors, including gender bias at the workplace, play a role in reducing women’s labour participation.

Data under criminal law, that is, under section 354A IPC dealing with sexual harassment, was collected by the NCRB for the first time in 2014, wherein 21,938 cases were registered. This would be a miniscule representation of the actual number of cases, many of which are not reported to the police but to ICC’s instead, and also many cases that go unreported. Out of these, 17,561 cases were sent for trial in 2014. In total, 1,273 cases were compounded or compromised, while 282 cases were disposed by plea bargaining and 3 were withdrawn by the government. This data indicates a high rate of both compromise and pendency of cases. Pendency in sexual harassment cases is 86.2%, while the conviction rate is 34.5%.

Out of 9,735 cases of ‘insult to the modesty of women’, 57 such cases occurred at office premises, 469 such cases at other places related to work, and 121 such cases in public transports and 9,088 such cases at other places during 2014. Most of the cases of insult to the modesty of women at office premises were reported in Delhi (11 cases) and Maharashtra (10 cases).
Gender bias at the workplace not only prevents women from achieving their full potential at the workplace, but can also lead to harassment and violence against women. It is critical for any organization to have redressal mechanisms in place to address violence against women.

Violence leads to a non conducive environment for the affected individuals and it may have severe impact on their work. It has many direct and indirect costs to the workplace such as: decrease of productivity, increased health care costs, absenteeism, errors, employee turnover, and time spent coping with problems, stress, etc. Hence there is loss of tax revenue from the reduced output and income. There is also administrative time and costs of search, hiring and training replacements.\textsuperscript{10} There is a clear indicator that sexual harassment at the workplace not only negatively impacts the survivor but also the co-workers, the company and the nation.

While organizations are interested in developing expertise on sexual harassment, there is a great deal of confusion over the issue of sexual harassment and the law within workplaces in India. Based on questions received at trainings conducted by WPC, it is apparent there is confusion over sexual harassment and other laws in place dealing with VAW. Third party members have expressed the need for clarifications on procedures involved in conducting inquiries.

This Handbook has been developed for ICC members, but it contains information which would be useful for any ‘employee’, ‘employer’ or ‘aggrieved woman’. This Handbook has been prepared in a Question and Answer format using simple language. The aim of this Handbook is to promote a gender friendly atmosphere at the workplace which is conducive for women’s empowerment in India.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (“the Act”) came into force on 9th December 2013. As the title suggests, the Act is not focused on punishing perpetrators of sexual harassment at the workplace. Rather, it has wider objectives, specifically:

- **Prevention** of sexual harassment – The Act requires sensitization of workers, and regular workshops to be held on creating awareness about sexual harassment. The Act makes it necessary for workplaces to display the adverse consequences of sexual harassment at conspicuous places in the workplace. The Act requires offices to have policies in place that promote gender sensitive workplaces and remove the underlying factors that contribute towards a hostile work environment towards women.

- **Prohibition** of sexual harassment at the workplace – The Act requires that no woman be subjected to sexual harassment at the workplace. It provides an option to the aggrieved woman to complain to an in-house complaints committee set up for the purpose of dealing with cases of sexual harassment.

- **Redressal** for the aggrieved woman in case of sexual harassment – The Act offers civil remedies for acts of sexual harassment. One essential difference between a criminal law and a civil law is that while criminal law reprimands or punishes the respondent / perpetrator, civil law focuses on redressal to the aggrieved woman for the violence she has incurred. As per the Act, a deduction from the perpetrator’s salary or wages is stipulated if the act of sexual harassment is proved. Depending upon the nature of the offence, the redressal suggested by the complaints committee may be an apology, warning or it could even be termination from employment.

The overall objective of the Act is to make workplaces safe for women and to encourage women to work. Recognizing that criminal procedures are lengthy and that in-house mechanisms can resolve disputes without recourse to litigation, the Act puts in place procedures for speedy resolution of disputes. The Act requires that conciliation of a dispute be attempted (but only at the request of the aggrieved woman). Further, the process of inquiry must be completed within ninety days as per the Act.

The Act extends to all workplaces – whether in the formal sector or in the informal sector. The Act makes it mandatory for all workplaces with ten or more workers to have
an Internal Complaints Committee (ICC) in place. The composition of the ICC in the Act is similar to the composition of the Complaints Committee made mandatory by the Supreme Court in *Vishaka vs. State of Rajasthan* (“Vishaka”) to deal with cases of sexual harassment. In *Vishaka*, the Supreme Court made it mandatory for workplaces to have Complaints Committees, with not less than half its members as women, headed by a woman and including an external member (either NGO or another body familiar with the issue of sexual harassment).\(^\text{11}\) The Act necessitates constitution of Local Complaints Committees (LCC’s) to conduct inquiries in establishments that have less than ten workers and in cases relating to domestic workers.\(^\text{12}\) The LCC’s are also mandated to deal with cases where the respondent is the employer.

As the definition of ‘respondent’ as per the Act is ‘a person’ against whom the aggrieved woman has made a complaint [section 2 (m)], it can be interpreted that a woman can file a complaint against another woman. However, no other provision in the Act or case law has as yet validated this possibility.

The law is intended for women and not to be used against women.

The Act does not seek to prohibit all forms of sexual expression at the workplace. The Statement of Purpose (SoP) clarifies the Act is in accordance with Article 14, Article 15 and Article 21 of the Constitution of India, i.e., a woman’s right to substantive equality and right to a life with dignity. The SoP observes “…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 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.” While the Act aims at preventing sexual harassment, equally, it is not a tool for “…compromising women’s sexual and equality rights…”\(^\text{13}\) For instance, the right to freedom of expression on issues of sex and sexuality (teaching sex education, respectful discussions on sex in a case involving sexual violence and so on) is compatible with the Act. The Act seeks to prevent unwanted sexual conduct, and not legitimate expressions on sex/sexuality that may be necessary in a certain context.

The 2013 Act is for women only. It applies to a woman of ‘any age’. However, it is necessary to note that in case of sexual harassment of a child (i.e., any person under the age of 18 years), the police would have to be mandatorily involved.\(^\text{14}\) Therefore, criminal law will necessarily apply in child sexual abuse cases, but a case under the Act may also be filed. In cases of sexual harassment against children in schools only criminal law will apply. A school is not a workplace as far as children are concerned.

\(^\text{11}\) AIR 1997 SC 3011

\(^\text{12}\) In response to an RTI Application sent by WPC, the office of the District Magistrate (South East) responded on 6th May 2016 that formation of LCC’s in respect of South East District is under process. The LCC for New Delhi District is 12/1, Jam Nagar House, Shahjahan Road, New Delhi – 110001 and the Chairperson is Ms. Sarita Sabharwal, SDM (HQ). Formation of LCC in North District is under process.

\(^\text{13}\) Kapur Ratna ‘Sexcapades and the Law’ Seminar (2001)

\(^\text{14}\) Section 19 of the Protection of Children from Sexual Offences Act, 2012
1. What is “Sexual Harassment”?

Sexual harassment refers to any unwanted sexual conduct including ogling, sexually coloured remarks, pinching of breasts or buttocks, ‘accidentally’ brushing against breasts, flashing, or more violent forms of sexual attacks. Rape is an extreme form of sexual harassment. Indian law deals with rape as a separate offence.

The term ‘outraging the modesty of a woman’ has historically been used in Indian law to cover cases of sexual harassment. The term ‘shocking the sense of decency of a woman’, ‘freedom from coarseness, indelicacy or indecency’ and ‘a regard for propriety in dress, speech or conduct’. This phrase is not used in other countries (such as the U.K, Canada, Germany or South Africa), where terms such as ‘sexual assault’ or ‘indecent acts’ are used instead – thereby focusing on the conduct of the perpetrator and not on the conduct of the aggrieved woman. The phrase ‘outraging the modesty of a woman’ remains in the IPC, however by virtue of section 354A of the IPC (as amended in 2013) ‘sexual harassment’ is now a separate offence.

“Sexual Harassment” in the context of the workplace was defined for the first time in India by the Supreme Court in the case of Vishaka. In Vishaka, women’s rights organisations brought to the attention of the Supreme Court the need to enforce fundamental rights of working women. The Vishaka case was filed as a reaction against the rape of Bhanwari Devi, a woman working in Rajasthan as a “sathin” (friend) in a State government project to end child marriages. In 1992, Bhanwari Devi tried to prevent a child marriage of two families of rich farmers belonging to a high caste. The families of the children decided that Bhanwari Devi needed to be taught a lesson and in September 1992, Bhanwari Devi was gang raped.

While adjudication in the rape case of Bhanwari Devi is still pending in the High Court of Rajasthan, the Supreme Court developed guidelines to deal with sexual harassment at the workplace in Vishaka back in 1997. As India ratified the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW) in 1993, the Supreme Court was able to refer to the CEDAW provisions while drafting the guidelines in Vishaka. The General Recommendation to Article 11 of CEDAW (Violence and Equality in Employment), 1989, defines ‘sexual harassment’ as:

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15 Section 354 and section 509 of the Indian Penal Code prior to the 2013 amendment read as follows:

Section 354: Whoever assaults or uses criminal force to any woman, intending to outrage her modesty, shall be punished with imprisonment...

509. 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...

16 Bajaj v. KPS Gill (1995) 6 SCC 194
“Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment. Effective complaints procedures and remedies, including compensation, should be provided.”

The definitions of ‘sexual harassment’ in Vishaka and the 2013 Act are similar. Section 2 (n) of the 2013 Act defines ‘sexual harassment’ as:

‘sexual harassment’ includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

a) Physical contact and advances; or

b) A demand or request for sexual favours; or

c) Sexually-coloured remarks; or

d) Showing pornography; or

e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.”

The definition of “unwelcome” is different from the definition of “non consensual” used in criminal law. Under the Act, what is unwelcome will depend upon the subjective perception of the complainant.17

The definition includes a wide variety of acts, gestures, verbal and non verbal conduct. Acts ranging from staring at private parts, ogling, sending love letters, making sexually coloured jokes to pinching, touching or sexual assault will fall under the definition.

17 The Justice Verma Committee in 2013 recommended adding an explanation defining “unwelcome” under the Act: “…in determining whether the behaviour or act complained of is unwelcome, one of the factors to be given due weight shall be the subjective perception of the complainant.” (This clarification was not ultimately included in the Act).
Section 3 (2) of the 2013 Act lists the following circumstances, amongst other circumstances, if it occurs, or is present in relation to or connected with any act or behavior 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;
(v) Humiliating treatment likely to affect her health or safety.

By virtue of section 3 (2) of the Act, quid pro quo harassment is a form of sexual harassment at the workplace. In quid pro quo cases, an implied or direct benefit is offered in exchange for sexual acts. For example, if a woman is asked out on a date by her employer and if she declines, her salary increment is denied to her, that would be a case of quid pro quo harassment.

The woman’s acceptance of the favour or benefit in a case of quid pro quo harassment is not a valid defense argument. For example, if a woman agrees to date her employer in exchange for a promotion at work, the very offer remains an act of sexual harassment. The woman would still be free to file a complaint despite having received the promotion.

A hostile work environment simply means an environment which makes working conditions for the aggrieved woman/women difficult due to sexually coloured conduct or due to their resistance to sexual harassment. A hostile work environment is a form of sexual harassment. For example,

- A workplace where calendars of scantily clad women are displayed;
- Frequent gossiping about the sexual partners of a woman colleague;
- Demeaning sexual terms used commonly for women employees – for example, ‘babes’ or ‘chick’.

For an act to be considered as sexual harassment for the purpose of the 2013 Act, it would have to contain all of the following ingredients:

- Unwelcome; and
- Sexual in nature; and
- Perpetrated upon a woman/ women (or other genders, but only if the office policy so specifies); and
- Perpetrated by any person/s and;
- Perpetrated at the ‘workplace’ as defined under the Act.
Physical contact is not necessary for an act to be considered as sexual harassment.

The following acts may also constitute sexual harassment:

- Staring or ogling at a woman;
- Sitting very close to a woman;
- Sending love letters to a woman.

Sexual harassment may be oral, verbal or written apart from being physical.

In Apparel Export Promotion Council vs. A.K. Chopra, the Chairman of the company made sexually coloured remarks and sat very close to the complainant. When the matter came to court, the perpetrator (Chairman) argued in his defence that he never actually touched the complainant. However, the Supreme Court held that a hostile environment was created, thereby resulting in sexual harassment.

- No act is too small or trivial to be dismissed as not being important enough to be considered as sexual harassment, provided it is unwelcome and has a sexual connotation: “Accidental” touching, gossiping about a woman colleague’s sexual partners, or repeatedly asking a woman out on dates may all be considered to be acts of sexual harassment. Not only acts that are directly sexual but also acts that imply a sexual interest are covered by the definition of sexual harassment. For example, asking a woman if she works out at the gym while staring at her body is an indirect act expressing sexual interest.

- It is the aggrieved woman’s reasonable but subjective interpretation of the sexual act as constituting harassment, which determines what is ‘sexual harassment’.

In the case of Punita K. Sodhivs Union of India and Ors, a doctor complained of sexual harassment by another male colleague who would call her repeatedly, ask for assistance in surgeries even when it was not required and try to touch her. The High Court of Delhi referred to foreign case law dealing with the definition of ‘sexual harassment’ and observed -

We therefore prefer to analyze harassment from the victim’s perspective. A complete understanding of the victim’s view requires, among other things, an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. A male supervisor might believe, for example, that it is legitimate for him to tell a female subordinate that she has a ‘great figure’ or ‘nice legs.’ The female subordinate, however, may find such comments

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18 (1999) 1 SCC 759
19 (2010) 1 LLJ 371 (Del)
offensive. Men tend to view some forms of sexual harassment as ‘harmless social interactions to which only overly-sensitive women would object’. The characteristically male view depicts sexual harassment as comparatively harmless amusement.”

“Water-cooler” or informal talk amongst male colleagues commenting upon the physical attributes of women colleagues or comparisons between women colleague’s looks are examples of sexual harassment. However, a comment without sexual intent (for example, an HR official asking a woman colleague to dress in formals as per office policy) is not sexual harassment.

2. What is gender based harassment? Does the law protect women from gender based harassment?

Sexual harassment is not the same as gender based harassment, or harassment per se. To harass a person means to pester, badger, pressurize or intimidate. For example, cases where a boss harasses an employee by making frequent calls outside of office hours or shouts at an employee may be considered as cases of ‘harassment’. As there is no sexual behavior associated with such actions, they would not be covered by the law. Harassment does not fall under the purview of the Act.

Gender based harassment occurs when a person is targeted because of his or her gender. Gender based harassment does not necessarily require sexual interest. It may be purely motivated by a desire to humiliate or dominate a person because of his/her gender. For example, if women employees are never included in important meetings but confined to secretarial tasks - that would be a case of gender based harassment. Gender based harassment also does not fall within the definition of sexual harassment. Cases where only women workers are asked to serve tea to visitors to an office, or where a woman employee’s services are terminated after pregnancy, would not fall within the scope of the Act.

However, there is very often a thin line between sexual harassment and gender based harassment. Gender bias perpetuates both forms of harassment. As educating all employees as to what is sexual harassment at the workplace is part of the employer’s responsibility, it is highly recommended that gender based harassment also be included in trainings. Rule 13 (a) makes it a duty for the employer to have policies in place which check not just sexual harassment, but also promote a gender sensitive workplace and remove underlying factors that contribute towards a hostile work environment against women. Yet, there is no ‘anti-discrimination’ law in India which would penalize offenders who discriminate on the basis of gender in the private sector.

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20 Section 19 (c) of the Act
3. **What is the “Workplace”?**

The term workplace is not limited to the physical space where people work under the Act. The definition includes the transport used in order to reach the place of work, locations visited during the course of work, educational institutions, and so on. The definition is ‘inclusive’ ie, it is not confined to the examples provided below, but incorporates other work related spaces.

The term “workplace” is widely defined in Section 2(o) of the 2013 Act to include:-

- Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is owned/controlled/financed by a local government, local authority or government corporation or cooperative society;
- Any private sector organisation or venture, NGO, which is carrying on commercial, professional, vocational, educational, entertainment, industrial, health of financial activities;
- Hospitals and nursing homes;
- Any sports complex or stadium, including residential;
- 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;
- A dwelling place or a house.

The definition covers work related spaces not mentioned in the Act as well. For example:

- Online harassment – such as, a whatsapp group for office colleagues;
- Office parties and get togethers;
- The residence of an employer if a worker/s visit for any work related matter;
- A coffee shop where two employees discuss a project.

- **It is not necessary for the act of harassment to have taken place during office hours / working hours for it to be considered as sexual harassment.** A lewd joke sent by a colleague by sms at midnight to a woman colleague who is at her home can be considered as sexual harassment.

- **The workplace is not confined to the office only.** The journey to an office and back in an auto, bus, metro or car, the stairs/elevator leading to the office, the kitchen, the canteen and all other places frequented by an employee in the course of her work are covered as ‘workplace’. Places outside the workplace where the perpetrator and victim of harassment may meet for official purposes are also covered.
Home based work is covered by the Act as is the unorganized sector. The Act makes separate procedures for workplaces with less than ten workers. Workplaces with less than ten workers includes the unorganized sector and small scale enterprises - such as, making cakes or pickles at home for sale, small shopkeepers, beedi workers or casual labour. When such persons are sexually harassed in the context of their work, they can approach the local complaints committee in their district.

Domestic workers are covered by the Act: For domestic workers there is a different procedure to be followed (please see FAQ no. 20).

4. Can there be romantic / intimate relationships between colleagues working together in a workplace?

Yes, there can be. The purpose of the Act is not to prevent workplace romance which is consensual. The purpose of the Act is to prevent sexual harassment which is unwelcome.

It is possible to ask a woman colleague out on a date or express romantic interest in her without the same being considered as sexual harassment. However, if the woman declines or expresses through direct or indirect means that she finds such attention unwelcome, then it is advisable not to pursue further.

In certain offices, there may be workplace policies which prevent workplace romantic relations. In other offices, Human Resources (HR) department has to be informed of any workplace intimate relationship. It is not a requirement under the Act to have an office policy specifying whether office relationships are permissible or not.

It is advisable that offices clarify what their position is with regard to consensual relationships between colleagues.

As acts of sexual harassment are dependent on the subjective interpretation of the aggrieved woman, it is important for an aggrieved woman to speak up and express her displeasure with sexual jokes, sexual innuendos or requests for dates etc. While in all cases it may not be possible for a woman to speak up, as far as possible women must be encouraged by office management to express themselves. This can be done orally, or in writing or through gestures and non verbal forms of communication.

Employers have a duty to create an enabling atmosphere where women can express themselves freely. This can be done by creating awareness about sexual harassment, the law and widely disseminating an internal policy on sexual harassment.
5. Who can file a complaint under the Act against whom?

Section 3(1) of the 2013 Act states:

“No woman shall be subjected to sexual harassment at any workplace.”

An aggrieved woman can make a complaint to the Internal Complaints Committee or Local Complaints Committee.

The definition of an ‘aggrieved woman’ as per section 2 (a) of the Act means:

(i) in relation to a workplace, 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 relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

Consequently, an aggrieved woman is not only an employee. She could also be a visitor to the office / workplace, a guest or an intern.

Where the harassment is of a nature that it creates a hostile work environment, it is not necessary that only the affected party file the complaint, since there are many affected parties.

- A friend or relative or well-wisher cannot – in normal circumstances - file a complaint on behalf of the aggrieved woman.

However, where an aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, or who for any other reason cannot file a complaint, her legal heirs or another person can make a complaint on her behalf. It is advisable that where possible, the written consent of the aggrieved woman be taken before a complaint is filed on her behalf.

In case the aggrieved woman is illiterate, the Members of the Complaints Committee shall assist her in writing the complaint.

- An ‘aggrieved woman’ is not only a woman employee.

The Act is not limited to preventing, prohibiting and redressing acts of sexual harassment against women employees alone! All women are covered including employees and non working women. A complaint can be made by a mother who goes to pick up her child from school and is sexually harassed by a school teacher, a woman who goes to a shop to buy shoes and is sexually harassed by the store owner, or a homemaker who visits a High Court and is sexually harassed by a lawyer.

This interpretation of the law has been affirmed by the High Court of Madras in M. Kavya vs. The Chairman, wherein a University was deemed to be a 21 WP 11217/2014
workplace and the petitioners (students at the University) were aggrieved women as per the Act of 2013.

- **The respondent does not necessarily have to be an employee.**
  
The respondent is a person against whom the aggrieved woman has made a complaint.

The Act seeks to prevent, prohibit and redress sexual harassment at the workplace BY its employees AND anyone else, of ALL women who are either employed at the workplace or are visiting/interning/accessing the workplace.

Therefore, for example, if a woman employee in Company X goes out to attend a meeting at Company Y and is sexually harassed at Company Y, she has the following options vis a vis the Act:

- She can make a complaint with Company X; or
- She can make a complaint with Company Y.

In case the respondent (perpetrator of sexual harassment) is an employee of Company Y and if the aggrieved woman complains to the Internal Complaints Committee (ICC) of Company Y, Company Y would be able to initiate an inquiry. Alternatively, if the aggrieved woman complains to the ICC of Company X, they could attempt conciliation (upon the request of the aggrieved woman) or transfer her complaint to Company Y for an inquiry.

In case the respondent is not an employee of either Company, assistance can be taken from either for filing a police case.

- **It is recommended that the office policy specify the assistance the ICC will render to an aggrieved woman when the respondent is not an employee.**

The Act does not cover sexual harassment in the private realm – for example, a household.

- **In case a family member living in the shared household is sexually harassed by another family member, she can always file a case under the Protection of Women from Domestic Violence Act, 2005.**

A whatsapp group is formed by office colleagues. Lewd and offensive jokes are shared by two male colleagues. Can the aggrieved women file a complaint against the administrator of the whatsapp group?

No. The complaint would have to be filed against the two male colleagues making such jokes. The administrator of the whatsapp group is not liable under the Act.

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22 Please refer to section 11 of the Act
6. Can men be sexually harassed, and can men file complaints under the Act?

Yes, men can be sexually harassed at the workplace. But this Act is gender specific and does not cover cases of sexual harassment against men.

- Offices are free to draft internal policies which cover acts of sexual harassment against men.

In *NALSA vs Union of India and Ors.*, the Supreme Court affirmed the Constitutional rights of ‘third gender’ persons. The Supreme Court held that “the gender to which a person belongs is to be determined by the person concerned”. The Supreme Court upheld the right to freedom of speech and expression as well, and held that “no restriction can be placed upon ones personal appearance or choice of dressing, subject to the restrictions contained in Article 19(2) of the Constitution.” Hence, while reasonable restrictions can be imposed, a workplace cannot deny a person his/her right to express his/her gender identity – for example, the right to be feminine or masculine.

Sexual harassment at the workplace often arises out of gender based discrimination. Stereotypes of women as docile or passive, and men as ambitious and aggressive perpetuates discrimination at the workplace. Equally, a gay man may face sexual harassment from another man if he is perceived as being weak or a meek person who will accept the sexual harassment. Acceptance of all gender identities by workplaces is important for creating a sexual harassment free environment.

In *Dr. B.N.Ray vs. Ramjas College and Ors.*, male students of the college submitted complaints alleging sexual harassment against a male lecturer. The respondent tried to argue that the University Ordinance applied only to female aggrieved persons, but this argument was rejected. It was held that the University Ordinance applied to any ‘member of the University’ and was gender neutral.

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23 (2014) 5 SCC 438
24 W.P (C) 4427/2008, 21.5.2012
7. In case a child is sexually harassed at school, would this law apply to the child?

No. A school is not a ‘workplace’ as far as a child-student is concerned. Therefore, this law does not apply to children studying in schools.

The law in India is very strict in cases of sexual offences against children. The Protection of Children from Sexual Offences Act 2012 (POCSO) provides for **mandatory reporting** of sexual abuse of a child or apprehended sexual abuse of a child, which includes sexual harassment. Any person (including a child) who has apprehension that an offence of sexual abuse on a child is likely to be committed or that such an offence has been committed shall provide such information to the Special Juvenile Police Unit or the local police. Sexual intent is necessary for an offence of sexual harassment to be made out under the POCSO Act.

8. What can a woman do in case she experiences sexual harassment at the workplace?

In case a woman experiences sexual harassment at the workplace she must inform in writing:

- The Internal Complaints Committee (if her workplace / perpetrator’s workplace has more than ten employees); or
- The Local Complaints Committee (if her workplace / perpetrator’s workplace has less than ten employees, or in case she works in the unorganized sector, OR if the complaint is against her employer).

A woman can also pursue other options such as filing a police complaint or a civil suit for damages. However, it would be practically difficult to convince the police to register an FIR in cases involving subtle and indirect acts of sexual harassment. For example, in a case where a male colleague sits too close to the aggrieved woman, the police may consider the incident too trivial and not record an FIR.

Six copies of the written complaint along with supporting documents and names and addresses of the witnesses should be submitted by the aggrieved woman to the Complaints Committee.

An aggrieved woman has **three months** to file a complaint from the date of the incident. However, the Complaints Committee may extend the time limit by a maximum of **three more months** for reasons that would have to be recorded in writing.

**Please note:**

(a) Limitation runs from the date of the incident, or if it is a continuing harassment, then from the date of the LAST incident.
(b) If the woman has crossed the limitation period, she can always approach the police. As per section 468 Cr.P.C, the limitation period for an offence under Section 354A (i) to (iii) is three years, and for an offence under Section 354A (iv) is one year.25

(c) The aggrieved woman could also file a civil suit for damages, even if she cannot file a complaint under the 2013 Act.

(d) The aggrieved woman can exercise her right to approach the High Court under Article 226 for violation of fundamental rights. The right to move the High Court would arise in cases where the workplace is a State / statutory body or performs a public function or discharges a public or statutory duty.26 There is no limitation period for exercise of Article 226 rights, although it is generally understood that there should be no undue delay.

9. **What is an ICC?**

An Internal Complaints Committee (ICC) is a Committee set up within a workplace with the purpose of preventing incidents of sexual harassment, attempting compromise (at the request of the aggrieved woman) should an incident occur, holding inquires, providing interim relief, suggesting redressal measures to the employer, and drafting an annual report.

The ICC may also provide assistance to the woman if she chooses to file a complaint under criminal law, or any other law. For example, the ICC may make official records available for her.

The genesis of ICC’s lie in *Vishaka*, where the Supreme Court noted that the civil and penal laws in India did not adequately provide for specific protection of women from sexual harassment at work places. The Supreme Court found it necessary for employers in work places to set up committees in every workplace to deal with cases of sexual harassment.

25 Section 354A 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 specified in clause (i) or clause (ii) or clause (iii) of sub-section (i) 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) of sub-section(i) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

26 See for example Bassi Reddy v. International Crops Research Institute AIR 2003 SC 1764
10. How can an ICC be formed in an office?

All workplaces with more than ten employees need to establish ICC's.

An 'employee' under the Act is defined as:

"...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 whether the terms of employment are express of implied and includes a co-worker, probationer, trainer, apprentice, or called by any other such name"[section 2 (f)].

An ICC may consist of more than four members; however the Presiding Office must be a woman, there must be an external member, and at least half of the members must be women. Four is the minimum requirement for an ICC.

The ICC must consist of the following members:

- Presiding officer (or Chairperson), who must be a woman and employed at a senior level at workplace from amongst the employees. In case a woman employee at a senior position is not available, the Presiding Officer may be from another office or unit of the workplace. If still no woman holding a senior position is available, the Presiding Officer shall be nominated from any other workplace of the same employer, or another department or another organization.

- Not less than two members of the ICC must be from amongst employees preferably committed to the cause of women or who have experience in social work or have legal knowledge.

- One external member from among NGO's or associations committed to the cause of women who have experience in social work or have legal knowledge.

- At least 50% of the members of an ICC must be women.

Once the members are decided upon, a notification or intimation needs to be provided to all workers regarding the constitution of the ICC.

For conducting an inquiry, a minimum of three Members is necessary, including the Presiding Officer or Chairperson.

The rationale for why an external member is required in a Complaints Committee was provided in Vishaka. The Supreme Court in Vishaka held, “...to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party.” As ICC members who are employees may be influenced by the senior management, an external member is required whose income is not dependent on the workplace in question. The external member's participation in the enquiry proceeding should be read as being mandatory.
In case a complaint of sexual harassment is against a member of the ICC or the LCC, that Member shall not be part of the inquiry proceedings. Such person should be disqualified from being a part of the ICC. Disqualification of such a person would benefit in maintaining the integrity of the ICC / LCC.

Once a workplace has determined the composition of an ICC, the order constituting the formation of the ICC must be displayed at conspicuous places at the workplace (for example, near the canteen, on the official website, or near the washrooms).

11. Who can be an external member?

The external member should be a person familiar with issues relating to sexual harassment. The external member may be a social worker with at least five years experience of working on women’s empowerment issues.

The external member may also be a person familiar with civil law, criminal law, service laws or labour laws.

It is not necessary that only a lawyer be appointed as the external member. It is more important that the external member have dealt with issues of sexual harassment rather than that he/she be a lawyer.

12. What happens if an employer does not set up an ICC?

Failure to set up such ICC’s is a non-cognisable offence under section 26 (1) (a) of the 2013 Act, which can lead to:

- Fine of upto Rs. Fifty thousand;
- If the ICC is still not set up after payment of fine, cancellation of the license of the workplace or of the registration required for carrying out its business.

13. What are the responsibilities of an ICC?

An ICC has the following responsibilities:

- Preventing sexual harassment at the workplace—The responsibility of the ICC should not be construed as being limited to conducting inquires when a complaint arises. The ICC should work with the employer in providing a safe working environment to all persons who work or visit or come into contact with the workplace. Trainings and creating awareness amongst ICC members on the issue of sexual harassment is a way to prevent sexual harassment from taking place in the first place.

- Conduct inquiry into a complaint of SHW – In case conciliation fails or the woman does not want to compromise on her complaint, and the respondent is an employee, the ICC shall begin inquiry proceedings.

- Inquiries by the ICC must be in accordance with the principles of natural justice – Please see FAQ no. 15 for more details.
In case of government employees or workers in government projects/offices including Universities or PSU’s an inquiry by the ICC will be in accordance with the service rules. Service rules are the laws that regulate employment of government employees or other staff in State run organizations. For example, the conditions of service and employment for IAS officers, army personnel or consultants working in Ministries will be as per the service rules of the appropriate government.

Please refer to FAQ 14 on the steps involved in conducting an inquiry.

- **Annual monitoring report** – The ICC or LCC as per Rule 14 needs to prepare an annual report which gives details of the number of complaints of sexual harassment in the year, the number of complaints disposed off during the year, number of cases pending for more than ninety days, number of workshops conducted on sexual harassment, and the nature of action taken by the employer or the District Officer in such cases.

  This report needs to be submitted to the District Officer even if no case of sexual harassment came up before the Complaints Committee.

  Please see Annexure 1 for a format for submitting the annual report.

14. What is an LCC and what are the responsibilities of an LCC?

A Local Complaints Committee (LCC) is a District level Committee set up by the District Officer to receive complaints of sexual harassment from workplaces where the number of employees is less than ten, or where the complaint is against the employer, or complaints of SHW by domestic workers.

The LCC consists of the following Members to be nominated by the District Officer:

(a) A Chairperson to be nominated amongst the eminent women in the field of social work and committed to the cause of women;

(b) One Member to be nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district;

(c) Two Members of whom at least one shall be a woman, to be nominated amongst an NGO or association committed to the cause of women, or a person familiar with the issue of sexual harassment.

- One of the Members should preferably have a background in law or legal knowledge;

- Also, one of the Members should be a woman from SC or ST or OBC background, or a minority community;

(d) The concerned officer dealing with social welfare or women and child development in that district shall be an *ex officio* member.
The responsibilities of an LCC are similar to those of an ICC, i.e., preventing sexual harassment by creating awareness, conducting inquiries and submission of an annual report to the District Officer.

15. What are the steps involved in conducting an inquiry?

The steps involved in conducting an inquiry as per the Act are the following:

a) The aggrieved woman can file a complaint **in writing** within three months of the last incident of sexual harassment at the workplace. The Complaints Committee can extend the limitation period by **another three months** if it is satisfied with her reasons for not filing within the three-month limitation period. The reasons for extending the limitation period must be recorded in writing.

b) If the aggrieved woman cannot make the complaint in writing, the Complaints Committee shall render reasonable assistance to her to help her make the complaint in writing.

c) **Six copies** of the complaint need to be provided to the Complaints Committee, along with supporting documents and the names and addresses of witnesses.

> **Particulars of witnesses do not necessarily need to be provided in writing at any other stage that one.**

> **Some companies accept complaints submitted on email. This is a good practice which simplifies the procedure of filing the complaint and does away with the need for 6 copies.**

d) The Complaints Committee **shall** send a copy of the complaint to the respondent within seven days of receipt.

> **It is advisable to serve the copy of the complaint to the respondent in person. The ICC members will be able to gauge his reaction at this time.**

e) The respondent has **ten working days** to respond to the complaint along with supporting documents and names and addresses of witnesses from the date of receipt of the complaint.

f) At the request of the aggrieved woman, the complaints
committee may take steps to settle the matter through conciliation. But monetary settlement cannot be the basis for the settlement.

g) If a settlement is reached, the Complaints Committee shall forward the same to the employer (in case of an ICC) or District Officer (in case of an LCC) to take action as per its recommendations.

h) A copy of the settlement shall be given to the aggrieved woman and the respondent.

i) If the terms of the settlement are not complied with by the respondent, the Complaints Committee shall make an inquiry into the complaint, or forward the complaint to the police.

j) In case a settlement is not reached and the aggrieved woman is a domestic worker, the LCC shall forward her complaint to the police.

k) In all other cases, if settlement is not reached, the Complaints Committee shall proceed to make an enquiry in accordance with the principles of natural justice (for details on ‘natural justice’ please see FAQ no.15). Prior to starting the enquiry, the ICC shall give both employees an opportunity to present their version of the case. A copy of the findings of the ICC should be given to both employees. For the purpose of conducting an enquiry, the ICC has the same powers as a Civil Court in respect of summoning any person and examining him/her on oath, requiring the production of any document or any other matter.

l) The enquiry shall be completed within a period of ninety days. NO lawyers (as per the Act) are permitted to represent the parties at any stage before the Complaints Committee.

m) The Complaints Committee shall have the right to terminate the enquiry or give an ex-parte decision if the respondent fails to present himself for three consecutive hearings. A written notice fifteen days in advance, should be given to the respondent before terminating the proceeding or giving an ex-parte order.

n) The Complaints Committee can take action during the pendency of the inquiry to prevent victimization of the aggrieved woman (for details please see FAQ no 26).

o) On the completion of the enquiry, a Complaints Committee shall give the enquiry report to both parties within ten days.

p) On the completion of the enquiry, a Complaints Committee shall give the enquiry report to the employer (or District Officer) within ten days of completing the enquiry.
ICC shall give recommendations to the employer:

- Where the Complaints Committee arrives at the conclusion that the allegation of sexual harassment has not been proved, it shall recommend to the employer (or District Officer) that no action be taken.

- Where the allegation of sexual harassment is proved, the Complaints Committee can recommend deduction from the salary or wages of the respondent a suitable amount to be paid to the aggrieved woman (or her legal heirs) having regard to the mental trauma, loss in career opportunity or medical expenses she may have incurred. The financial status of the respondent shall be taken into account when making the determination of amount and the feasibility of paying a lump sum or in installments.

- Action to be taken against the respondent- Actions the Complaints Committee can recommend to the employer include written apology, warning, reprimand, or censure, withholding of promotion, withholding of pay rise or increment, terminating the respondent from service or undergoing a counseling session or carrying out community service.

The ICC can recommend action to be taken to the employer, and not take action based on its own recommendations. For example, if the ICC recommends termination from employment, then the employer can act upon this recommendation (either accept the suggestion or not accept the suggestion).

16. What are the principles of ‘natural justice’?

Essentially, the principles of natural justice means a fair opportunity is provided to both the complainant and the respondent to represent themselves and a fair hearing is given to both. Fairness in conducting of proceedings includes providing reasonable opportunity to both sides to prepare themselves, sensitivity during cross examination, irrelevant questions relating to past sexual history of the aggrieved woman should not be asked, witnesses should not be threatened and so on.

Failure to follow principles of natural justice by a Complaints Committee places a question mark on the validity of the entire proceedings. For example bias of an ICC member can render an inquiry proceeding void.

In cases of sexual harassment at the work place, unequal power relations can make it difficult for the witnesses to testify. Bringing the complainant and the respondent face to face in one room can be extremely stressful for the complainant. Some institutions have developed a method of providing questions in writing to the complainant / respondent, which prevents face to face confrontation. All things taken together the consideration would be whether the respondent had or did not have a fair hearing.
In *Dr. Virendra Singh vs. Banaras Hindu University*,\(^{27}\) the High Court of Allahabad noted how difficult it is for women to give evidence in cases of sexual harassment in the presence of the respondent. In this case, the ICC of a University collected and sifted the evidence given by women students without cross examination. The respondent argued that this was in violation of natural justice, but the Court held that rules of natural justice are not the same in all cases. The court noted that women students would not have come forward to give evidence if the inquiry was held in a regular manner, in the presence of the respondent.

- **It is recommended that examination of the aggrieved woman and the respondent should be done separately, or in writing but not together in the same room.**

As a general principle, the ICC/LCC should provide the statement of the witnesses to the respondent. However, there may be instances where the ICC / LCC decides that it is advisable for the sake of natural justice to not provide the respondent with the statement of the witnesses.\(^{28}\)

- **It is highly advisable in such cases that the Complaints Committee record its reasons in writing. As the respondent can file an appeal against the recommendations of the Complaints Committee, the reasons should be clearly noted.**

17. **Can the contents of the sexual harassment complaint be made public?**

No.

It is important to note that the contents of the aggrieved woman’s complaint, her identity, her address, and the identity and particulars of the respondent and witnesses have to be kept confidential by the Complaints Committee, and also by anyone connected with the enquiry. Therefore, there is a burden not only on the members of the ICC, but also upon the complainant and respondent, upon all the witnesses, upon the clerical staff in the office of the ICC and the employer himself. **The Right to Information Act, 2005 will not apply** in cases of seeking the contents of a sexual harassment complaint from a public / State institution. Information relating to the proceedings are also to remain confidential, ie, there can be no publication or communication of the same in the press, media or to the public.

Failure to maintain confidentiality can lead to imposition of a fine.

However, information may be disseminated regarding the justice secured to any survivor of sexual harassment without disclosing her identity or identity of the witnesses.

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\(^{27}\) Writ Petition 35877/2014, 19.2.2015

\(^{28}\) State Bank of Patiala and Ors vs S.K Sharma AIR (1996) SC 1669
18. What if an aggrieved woman files a false complaint?

In cases where the Complaints Committee arrives at the conclusion (in a separate inquiry) that the allegation is malicious or the aggrieved woman made a false complaint, or a witness gave false evidence, action against such person may be recommended to the employer.

- A “false complaint” is not the same as an “unproved complaint”. Simply because a woman is unable to prove her allegation does not mean her allegation is false.

19. Who is an employer? Who is the District Officer?

An ‘employer’ as per the Act is not only the senior most person in the organization. The employer is also the person who is responsible for the smooth running of the workplace, and whose duties would involve supervising the other employees.

The employer means (in relation to any government body), the head of the department, organization, undertaking, establishment, enterprise, institution, office, branch or unit. In any other workplace, the employer is any person responsible for the management, supervision and control of the workplace.29

The ‘District Officer’ has to be notified by the Government and may be either a District Magistrate or an Additional District Magistrate or the Collector or Deputy Collector of that district.30

20. What are the roles and responsibilities of an Employer / District Officer?

As under Vishaka, setting up of the ICC is an important duty of the employer, failure of which can lead to imposition of fine or cancellation of license/registration.

The employer is under a duty to consider the recommendations of the ICC and act upon them within sixty days of receipt [section 13 (4) of the 2013 Act].

In addition, the employer also has the following duties:

- **Displaying at conspicuous places the order constituting the ICC and the penal consequences of sexual harassment** – The contact details of the Members could also be mentioned, however, this is optional.

  It is recommended that Members of the ICC be asked by the employer if they are comfortable with their contact details being displayed publicly, before their details are made public.

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29 Section 2 (g) of the Act
30 In response to an RTI Application sent by WPC, the office of the District Magistrate (South East) responded on 6th May 2016 that the District Officer for South East Delhi district is the District Magistrate (South-East), Old Gargi College Building, Behind LSR College, Lajpat Nagar IV, New Delhi – 110024. The District Officer for New Delhi is Mr. Sanjay Kumar, IAS/DM.
- Organizing workshops and awareness programmes at regular intervals for sensitizing the employees – while all employees should have basic knowledge of the Act, separate trainings can be organized for ICC members orienting them on the office policy (where such policy exists), on procedures to be followed, and skill building in holding inquiries and conducting fact finding.

- Create employee awareness programmes and create forum for dialogue which may involve Panchayati Raj Institutions, Gram Sabha women’s group, mothers committees, adolescent groups, urban local bodies and any other body as may be considered necessary – Such programmes and workshops would should focus on gender sensitization as well as sexual harassment at the workplace.

- Assisting the ICC in conducting inquiries and dealing with complaints (for example, providing access to documents, providing a space for interviewing witnesses, assisting in summoning witnesses).

- Providing assistance to the woman if she chooses to file a complaint under the IPC or any other law – This is an important obligation as in cases where the woman chooses another option (for example, a criminal case, or a civil suit for damages, or a writ petition), the employer’s duties towards the aggrieved woman do not cease. The employer must render all possible assistance, such as helping her register an FIR. However, it is the aggrieved woman who should ideally lodge the FIR, and not anyone else. The employer can assist by providing her with access to documents or emails establishing her case.

- Monitoring the timely submission of reports by the ICC.

- Carry out orientation programmes and seminars for members of the ICC: Capacity building of the members of the Internal Committee is an important duty of the employer.

- Using modules prepared by the State government for conducting workshops on the Act.

The employer and the District Officer have to act upon the recommendations of the Complaints Committee within sixty days of receipt of the Inquiry Report.

An essential duty of the employer as per the Act is to ensure a safe working environment for women employees, which is free from sexual harassment.

Every employer should ideally formulate an internal office policy to not only prohibit, prevent and redress sexual harassment but also to promote a gender sensitive space and removing the underlying factors that cause sexual harassment in the first place. Some suggestions that could be adopted by companies to promote a gender sensitive work environment are:
• Separate washrooms for men and women;
• In case of late evenings related to work, ensuring safe transportation for women or those who do not have their own vehicle;
• Complaint boxes to be placed at strategic locations;
• Ensuring non discrimination on the basis of gender.

Please refer to Annexure 3 for a sample office policy on sexual harassment at the workplace.

At trainings organized by WPC on gender sensitization a number of working women have referred to discrimination at the stage of interviewing for the job / position. Women are asked their marital status, whether they have children or not and how they will be able to balance long hours with household chores. The HR team in particular must be sensitized to not discriminate on the ground of gender between candidates.

Duties of a District Officer

The duties of the District Officer are:

• Monitoring the timely submission of reports furnished by the Local Committee.
• Taking such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of women.
• Ensuring that the recommendations of the LCC with regard to interim protection to the complainant are complied with, and a compliance report is sent to the LCC.
• Preparation and forwarding of report consolidating all the annual reports received to the State government.
21. Does the law protect domestic workers as well? How are domestic workers covered under the Act?

Yes. The law covers domestic workers. The definition of ‘domestic worker’ as per the Act is:

‘...a woman who is employed to do the household work in any household for 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.’

Complaints by domestic workers regarding SHW are made to the LCC. The procedure to be followed in case an LCC receives a complaint of sexual harassment from a domestic worker is separate from the procedure in other cases where inquiry is to be conducted.

In case of sexual harassment of a domestic worker, where conciliation is not possible, the LCC shall transfer the case to the police. This provision is in acknowledgment of the grossly unequal relationship between an employer and a domestic worker, thereby necessitating use of criminal law.

22. No witnesses are willing to come forward in a case of sexual harassment and depose. What can the ICC do?

Sometimes, witnesses are unwilling to come forward and depose as they feel they may be placing their career in jeopardy by testifying against an influential respondent. In such case, the ICC can consider not mentioning the names of the witnesses in the report,

- It is highly advisable that as a general rule, the ICC should refer to the witnesses through codes in the inquiry report in order to protect their identity and in compliance with the confidentiality clause.

The witnesses must be assured their careers will not suffer as a result of deposing for or against any individual in a sexual harassment case. Any kind of backlash against a witness for deposing in a sexual harassment complaint will be an actionable wrong.

23. The employer does not agree with the findings of the ICC supporting the aggrieved woman. What can the aggrieved woman do?

The aggrieved woman has the right to appeal against the recommendations made by the Complaints Committee if the finding is that the allegation against the respondent has not been proved. She also has the right to appeal against the non implementation of the recommendations of the Complaints Committee.

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31 Section 2 (e) of the Act
The Act also provides for filing an appeal in the following situation:\(^{32}\)

- Where the Committee arrives at a finding that the allegation of sexual harassment at the workplace has been proved and recommends to the employer to take action against the respondent in such manner as may be prescribed;

- Where the Committee arrives at a finding that the allegation of sexual harassment at the workplace has been proved and recommends to the employer to deduct appropriate sums from the salary or wages of the respondent to be paid to the aggrieved woman;

- Where the Committee arrives at the conclusion that the allegation of sexual harassment at the workplace is malicious or false or based upon a forged or misleading document;

- Where the Committee arrives at the conclusion that a witness has given false evidence or produced a forged / misleading document;

Where penalty is imposed on any person entrusted with the duty to handle the complaint, who has violated the confidentiality provisions of the law.

24. Where and how can the aggrieved woman file an appeal?

The aggrieved woman has a right to appeal within a period of ninety days of the action / recommendation appealed against.

As per the Act, the appellate authority notified under the Industrial Employment (Standing Orders) Act 1946 entertains appeals on sexual harassment.\(^{33}\)

The appellate authority would differ from State to State depending upon the notification. At the Central level, the Central Government Industrial Tribunal cum Labour Courts have been notified as appellate authorities.\(^{34}\)

Where no appellate authorities have been notified, a writ petition can be filed before the High Court of that State both for review of the decision, and also to direct the State government to notify the appellate authority.

25. What is ‘victimization’ of the aggrieved woman?

Very often, women who speak up about unfair treatment at the workplace are denied visibility (such as, promotions, or being sent for important meetings) by the workplace. Similarly, in cases of sexual harassment at the workplace, women complainants find that they are sidelined at work once they complain.

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\(^{32}\) See also Jaising, Indira ‘Sexual Harassment at Workplace’ (2014) at page 152.

\(^{33}\) The Industrial Employment (Standing Orders) Act 1946 applies to ‘industries’ (usually with over 100 workmen). With the introduction of the Sexual Harassment (Prevention, Prohibition and Redressal) Act 2013, the appeal provisions would now be applicable to workplaces with 10 or more workers.

\(^{34}\) Jaising, Indira ‘Sexual Harassment at Workplace’ (2014) at page 151.
‘Victimization’ simply mean the process of becoming a victim. In the context of sexual harassment, ‘victimization’ refers to the processes whereby an aggrieved woman experiences discrimination at work as a result of having made a complaint of sexual harassment. So, for example, if she is excluded from office trips and important meetings as a result of having made a complaint against her senior, that would be a case of victimization.

Addressing victimization is important both in order to encourage women to speak up about sexual harassment, and also to prevent women from dropping out of the inquiry proceedings.

26. How can the Complaints Committee prevent victimization from taking place?

The Complaints Committee can take action during the pendency of an inquiry as per Sec 12 (1) and Rule 8 of the Act and Rules. Upon receipt of the complaint, or at any stage of the proceedings, on a written request made by the aggrieved woman the ICC/LCC may recommend:

(i) interim protective measures for the aggrieved woman such as transfer of the respondent or the aggrieved woman, or
(ii) three months leave for the aggrieved woman or
(iii) other relief as may be prescribed.

The employer shall implement the interim recommendations, and send the report of such implementation to the Complaints Committee. This clause ensures that – as far as possible - the aggrieved woman is not victimized during the process of inquiry.

27. As an ICC member, I am being pressurized by the senior management to decide against the aggrieved woman even though I believe she is telling the truth. What can I do?

As an ICC Member, you have the right to record your difference of opinion in the inquiry report. Equally, it is the duty of the external member to ensure that if there is a difference of opinion, it is properly recorded. An ICC member who succumbs to the pressure to arrive at an incorrect finding is not only failing in her duty, she also opens herself up to being taken to task by the Appellate Authority, in case the matter goes in appeal.

If the pressure continues, it may become necessary to inform the head of the organization as much. Do consult a lawyer before taking a decision.
28. A company has two branches. Is it necessary for an ICC to be formed in both branches? What happens if an ICC is not formed in one of the branches?

Yes. It is necessary to form an ICC in both branches of the organization if more than ten employees are employed at both branches.

In case an ICC is not formed in one of the branches, the aggrieved woman has the following options:

- Firstly, the aggrieved woman can approach the Local Complaints Committee in case the ICC has not been constituted in the branch;
- Alternately, she can submit her complaint with the ICC of the other branch. However, this would require her to travel for deposing her testimony which may be tedious.
- Finally, the aggrieved woman can also approach the High Court of the State and file a writ petition. But for this, she would have to travel to the State capital. She can approach the High Court of the State where the ICC has not been formed with a complaint regarding non-formation of the ICC, and seek directions for formation of an ICC in the branch concerned.
Sample Format for Annual Report by the ICC to the District Officer

Internal Complaints Committee
XYZ Company
Branch Address
Date

Sub - Annual Report on cases of Sexual Harassment

Dear Sir / Ma’am,

As per section 21, Rule 14 of The Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013 please find enclosed the annual report on implementation of the sexual harassment law from 1st April 2016 to 31st March 2017.

Yours sincerely

(Presiding Officer)
## Annual report on Implementation of the Sexual Harassment Act

**1st April 2016 – 31st March 2017**

<table>
<thead>
<tr>
<th>Sl No</th>
<th>Information</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Number of complaints of sexual harassment received</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>Number of complaints disposed off</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Number of cases pending for more than ninety days</td>
<td>2</td>
</tr>
</tbody>
</table>
| 4     | Number of workshops or awareness programmes against sexual harassment carried out | 1. Training programme on the Sexual Harassment Act conducted by an NGO ‘…’ on 29.4.2016 for ICC Members where basics of the Act were explained to the Members.  
2. Training programme for ICC members on procedures to be followed in an inquiry conducted by Advocate ‘Ms…’ on 1.7.2016  
3. Dialogue with women’s groups in Delhi on gender sensitization for all employees conducted on 8.10.2016. Employees interacted with three different women’s rights groups on issues of gender based discrimination. |
| 5     | Nature of action taken by the employer or District Officer | All recommendations recommended by the ICC members in 4 cases were accepted by the employer and action taken accordingly.  
Action taken was –  
1. withholding of increment and written apology  
2. termination from employment and transfer of case to the police  
3. written apology |
SEXUAL HARASSMENT POLICY OF XYZ Company

INTRODUCTION

XYZ Company is an equal opportunity company. Roughly, an equal number of men and women are employed at XYZ Company. XYZ Company takes complaints of sexual harassment seriously, and will take all necessary steps in accordance with the ‘Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013’ to deal with such complaints.

XYZ Company expects all employees and staff to be respectful to each other and to be sensitive to each other’s gender identities. Employees are expected to refrain from any conduct unbecoming of an employee at XYZ. It is also made expressly clear that, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint will not be tolerated.

WHAT IS SEXUAL HARASSMENT

The definition of sexual harassment as per the law includes any of the following unwelcome acts:

- Physical contact and advances
- Demand or request for sexual favors
- Sexually colored remarks
- Showing any pornographic material

Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature. Threats or lucrative offers in exchange for sexual favours at the workplace fall within the definition of sexual harassment.

If employees create a hostile work environment for other colleagues due to inappropriate sexual conduct / behavior, such employees will also be liable to face disciplinary action.
APPLICABILITY
This office policy extends to:

- All ‘employees’, which includes consultants, interns, or other staff at Finesse.
- All visitors to Finesse.
- Where an employee of XYZ is sexually harassed by a person who is not an employee at the workplace, the ICC shall assist such an employee with making a complaint to the police, or transferring the case to the appropriate Complaints Committee.

POLICY ON OFFICE RELATIONSHIPS
Should employees enter into intimate relationships with other employees at Finesse, the Human Resource department shall be informed of this relationship.

COMPOSITION OF THE COMMITTEE
The Internal Complaints Committee consists of the following persons:

- Ms. A (Presiding Officer)
- Mr. B
- Mr. C
- Ms. D (External Member)

ROLE OF THE COMMITTEE
The role of the Committee is:

- To receive complaints of sexual harassment.
- To inquire into such complaints in accordance with the principles of natural justice.
- In addition, the Committee shall also render all reasonable assistance to aggrieved persons in filing complaints with the police, where necessary.
- The Committee will prepare and send the annual report to the District Officer.

PROCEDURE TO BE FOLLOWED BY THE COMMITTEE IN INQUIRIES

- A ‘complaints box’ shall be kept near the cafeteria for collection of any complaints regarding cases of sexual harassment. Aggrieved persons may also approach the ICC members directly.
- The complaints box shall be checked every three days. Anonymous complaints may also be put into the box.
Once a complaint is received, the ICC members will read it and deliberate on whether an inquiry needs to be held or not. All complaints shall be shared with the employer. Inquiries may not be held in the following circumstances:

- In cases where the complaint is not related to sexual harassment;
- In cases where there is no respondent/s who can be identified;
- In cases where the aggrieved person has not filed the complaint, but a third party has done so for no reasonable reason.
- Anonymous complaints will be inquired into at the discretion of the ICC members.

- In case the ICC decides that an inquiry needs to be held, the inquiry shall be held in accordance with the provisions of the Act.
- Cross examination / examination of the aggrieved person(s) will not take in front of the respondent.
- All witnesses have the option of providing their testimony in writing.
- Where the employer disagrees with the final recommendations of the ICC, she shall submit her opinion in writing to the ICC expressing her reasons for disagreement.

**DISCIPLINARY ACTION FOR SEXUAL HARASSMENT**

Disciplinary action at XYZ will include:

- Public apology;
- Suspension from work without pay;
- Transfer;
- Withholding of increments;
- In extreme cases, termination from employment.
SAMPLE APOLOGY LETTER

I (Name of the respondent), hereby place on record that my misbehavior on (date/s) at (name of the place/s) constitutes an act/s of sexual harassment. I sincerely apologize for my conduct.

I hereby state that I will not commit any act in future that threatens your privacy or violates your human rights. Furthermore, I will respect your right to confidentiality pertaining to this complaint of sexual harassment against me.

I will attend the next gender sensitization training programme to be organized by (Name of the workplace). I hereby declare that I will not perpetrate any act of sexual harassment again.

Signature

(Name)

Date

Place
Sample Format for Filing a Complaint with the ICC

1. Particulars of the Complainant(s)
   - Name
   - Address
   - Phone number / Email
   - Designation / Name of Workplace

2. Particulars of the Person(s) against whom the complaint is filed (Please fill whatever is known to you)
   - Name
   - Address
   - Phone number / email
   - Designation / Name of Workplace

(If none of the above information is known to you, please provide a physical description of the)

3. Nature of the Complaint (Please provide a brief description)

   - Is this the first incident? If not, was the first incident reported by you to anyone?
   - Is the person known to you?
   - When did the last incident take place?

Signature:

Date:
Registered Office:
WomenPowerConnect
2, Nelson Mandela Marg, Vasant Kunj, New Delhi-110070
Phone: +91 11 2689 9998/2612 5583 • Fax: +91 11 2613 7823
E-mail: mail@womenpowerconnect.org
Website: www.womenpowerconnect.org

Mailing Address:
WomenPowerConnect
A1/271, 1st Floor, Safdarjung Enclave, New Delhi - 110029
Phone: +91 011 42705170/71/72
Email: mail@womenpowerconnect.org
Website: www.womenpowerconnect.org

September, 2016