

## **Overview**

# **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

## **THE MANDATE**

Today, all workplaces in India are mandated by law to provide a safe and secure working environment free from sexual harassment for all women.

## **INTRODUCTION**

The Prevention of Workplace Sexual Harassment Act and the Prevention of Workplace Sexual Harassment Rules have been enacted 16 years after the Supreme Court of India's landmark judgement in Vishaka and others v. State of Rajasthan<sup>4</sup> ("Vishaka Judgement"). The Supreme Court, in the Vishaka Judgment, laid down guidelines making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women ("Guidelines").

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Prevention of Workplace Sexual Harassment Act") was made effective from December 09, 2013 by the Ministry of Women and Child Development, India. The Government has also notified rules under the Prevention of Workplace Sexual Harassment Act titled the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 ("Prevention of Workplace Sexual Harassment Rules").

The Prevention of Workplace Sexual Harassment Act has been enacted with the objective of preventing and protecting women against sexual harassment at workplace and for the effective redressal of complaints of sexual harassment. The statute seeks to fill the legislative void on the subject and provide every woman, irrespective of her age or employment status, a safe and secure working environment free from all forms of harassment. The year 2013 also witnessed the promulgation of the Criminal Law (Amendment) Act, 2013 ("Criminal Law Amendment Act") which criminalized offences such as sexual harassment, stalking and voyeurism.

## **Provisions under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**

### **I. Applicability and Scope**

The Prevention of Workplace Sexual Harassment Act extends to the 'whole of India' and stipulates that a woman shall not be subjected to sexual harassment at her workplace. It is pertinent to note that the statute protects only women and is not intended to be a gender neutral legislation. As per the statute, an 'aggrieved woman' in relation to a workplace, is a woman of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment.

Further, the Prevention of Workplace Sexual Harassment Act applies to both the organized and unorganized sectors in India. The statute, inter alia, applies to government bodies, private and public sector organisations, non-governmental organisations, organisations carrying out commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals and a dwelling place or a house.

### **Sexual Harassment -Definition**

The Prevention of Workplace Sexual Harassment Act defines 'sexual harassment' in line with the Supreme Court's definition in the Vishaka Judgment. As per the statute, 'sexual harassment' includes unwelcome sexually tinted behaviour, whether directly or by implication, such as

- (i) physical contact and advances,
- (ii) demand or request for sexual favours,
- (iii) making sexually coloured remarks,
- (iv) Showing pornography, or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

Presence or occurrence of circumstances of implied or explicit promise of preferential treatment in employment; threat of detrimental treatment in employment; threat about present or future employment; interference with work or creating an intimidating or offensive or hostile work

environment; or humiliating treatment likely to affect the lady employee's health or safety could also amount to sexual harassment.

### **Employee**

The definition of an 'employee' under the Prevention of Workplace Sexual Harassment Act is fairly wide and covers regular, temporary, ad hoc employees, individuals engaged on daily wage basis, either directly or through an agent, contract labourers, co-workers, probationers, trainees, and apprentices, with or without the knowledge of the principal employer, whether for remuneration or not, working on a voluntary basis or otherwise, whether the terms of employment are express or implied.

### **Workplace**

Recognising that sexual harassment of women may not necessarily be limited to the primary place of employment, the Prevention of Workplace Sexual Harassment Act has introduced the concept of an 'extended workplace'. As per the statute, 'workplace' includes any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for the purpose of commuting to and from the place of employment.

### **Complaints Committee**

An important feature of the Prevention of Workplace Sexual Harassment Act is that it envisages the setting up of grievance redressal forums for both organized and unorganized sectors.

#### **A. Internal Complaints Committee**

The Prevention of Workplace Sexual Harassment Act requires an employer to set up an 'internal complaints committee' ("ICC") at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.

#### **B. Constitution of the ICC**

Presiding Officer: Woman employed at a senior level at the workplace from amongst the employees.

Members :Not less than 2 members from amongst employees.Preferably committed to the cause of women or who have had experience in social work or have legal knowledge.

External member :From an NGO or association committed to the cause of women or person familiar with issues relating to sexual harassment.

Not less than half of the ICC Members shall be women

The term of the ICC Members shall not exceed 3 years

A minimum of 3 Members of the ICC including the Presiding Officer are to be present for conducting the inquiry.

### **C. Local Complaints Committee**

At the district level, the Government is required to set up a 'local complaints committee' ("LCC")to investigate and redress complaints of sexual harassment from the unorganized sector or from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer.

### **D. Powers of the ICC/LCC**

The Prevention of Workplace Sexual Harassment Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

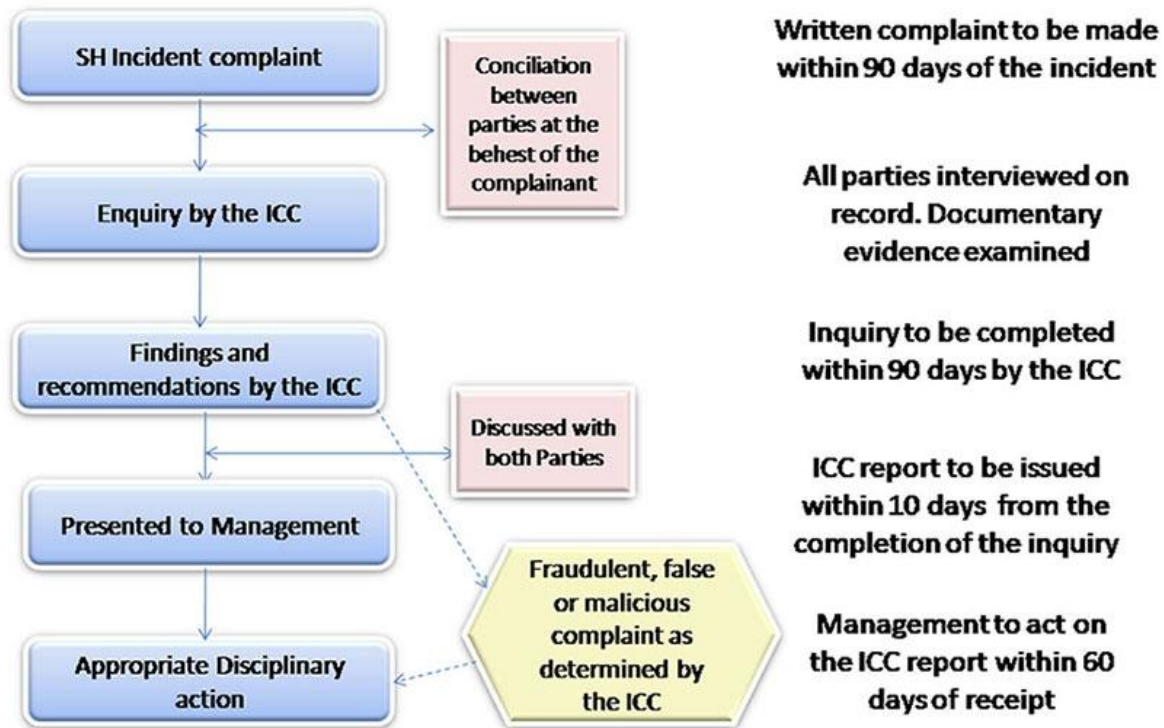
- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents; and
- iii. any other matter which may be prescribed

### **Complaint Mechanism**

An aggrieved woman who intends to file a complaint is required to submit six copies of the written complaint, along with supporting documents and names and addresses of the witnesses to the ICC or LCC, within 3 months from the date of the incident and in case of a series of incidents, within a period of 3 months from the date of the last incident. The ICC/ LCC can extend the timeline for filing the complaint, for reasons to be recorded in writing, by a period of 3 months. The law also makes provisions for friends, relatives, co-workers, psychologist, psychiatrists, etc. to file the complaint in situations where the aggrieved employee is unable to make the complaint on account of physical incapacity, mental incapacity

or death.

## Redressal Process



## Interim Reliefs

The ICC/LCC is also empowered to, at the request of the complainant, recommend to the employer interim measures such as:

- i. transfer of the aggrieved woman or the respondent to any other workplace
- ii. granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement
- iii. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

## Punishment and Compensation

The statute prescribes the following punishments that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- i. punishment prescribed under the service rules of the organization;

ii. if the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counselling session, or carrying out community service; and

iii. deduction of compensation payable to the aggrieved woman from the wages of the respondent. The statute also envisages payment of compensation to the aggrieved woman. The compensation payable shall be determined based on:

- i. the mental trauma, pain, suffering and emotional distress caused to the aggrieved employee;
- ii. the loss in career opportunity due to the incident of sexual harassment;
- iii. medical expenses incurred by the victim for physical/ psychiatric treatment;
- iv. the income and status of the alleged perpetrator; and
- v. feasibility of such payment in lump sum or in installments.

In the event that the respondent fails to pay the aforesaid sum, ICC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

### **Confidentiality**

The statute specifically stipulates that information pertaining to workplace sexual harassment shall not be subject to the provisions of the Right to Information Act, 2005. The statute further prohibits dissemination of the contents of the complaint, the identity and addresses of the complainant, respondent witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the ICC/LCC and the action taken to the public, press and media in any manner.

### **Role of the company and the employee**

#### **Company**

- Ensure “zero tolerance”, at all times towards any form of harassment
- Provide training and information to employees
- Promptly investigate and deal with all complaints of harassment
- Provide protection and support to employees who are harassed

## **Employee**

- Understand company's policy on sexual harassment
- Be conscious of inappropriate behaviours
- Seek help as soon as possible
- Document every incident in detail and keep all evidence

## **Consequences of noncompliance**

If an employer fails to constitute an ICC or does not comply with the requirements prescribed under the Prevention of Workplace Sexual Harassment Act, a monetary penalty of up to INR 50,000 may be imposed. A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses. It is also pertinent to note that all offences under Prevention of Workplace Sexual Harassment Act are non-cognizable.