



FOCUS GROUP DISCUSSION ON PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013”



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Chanakyapuri

Report Prepared in collaboration
with WPC (WomenPowerConnect)

Gender Rights Gender Based Violence and Law Enforcement
National Resource Centre for Women, National Mission for Empowerment
Of Women, Ministry of Women and Child Development,
Government of India



FOREWORD

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights, enshrined in the Constitution of India. It is yet another form of violence against women reflecting patriarchal mindsets and gender based discrimination that women experience at work. It is also a manifestation of power relations, as women are much more likely to be the victims of sexual harassment because of their already existing vulnerability, insecurity, and social conditioning to accept discrimination in silence. Hence, there is a strong need to strengthen the Sexual Harassment Act and consider the recommendations provided below that would make its protection more comprehensive and effective.



Dr Rebecca Reichmann Tavares UN Women's Representative for India, Maldives, Bhutan and Sri Lanka, , Smt. Padmaja Mehta, Senior Economic Advisor, MoWCD, Ms. Rashmi Singh, Executive Director, NRCW, NMEW and present at the Focus Group Discussion on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by NMEW and UN Women, 3rd March, 2014.

In view of the above, The Focus Group Discussion (FGD) on Sexual Harassment at the Workplace was carried out as a joint effort of the Gender Rights, Gender based Violence and Law Enforcement Domain (GR Domain), National Resource Center for Women (NRCW), National Mission for Empowerment of Women (NMEW), Ministry of Women and Child Development, Government of India, in collaboration with the UN Women Office for India, Bhutan, Maldives & Sri Lanka. The aim of this FGD was to empower women and provide protection against sexual harassment and offer the right to work with dignity and non discrimination, based on the Human Rights treaties and the ratification of International

Conventions by the Indian Government. Hence, there is a strong need to strengthen the Sexual Harassment Act and consider the recommendations provided below that would make its protection more comprehensive and effective.

We deeply acknowledge the role played by UN Women and WPC (WomenPowerConnect), for co-organizing the event and helping us collate this Report. The comments Partners in Law Development (PLD) Lawyer's Collective Women's Rights Initiative, Saad Aangan has been very crucial for final collation of these recommendations. I would thank Ms Anju Pandey from UN Women, Ms Radhika and Ms Lucia from WPC and Dr Poulomi Pal and the interns Shivika, Nimrit Ahluwalia and Anshika from the National Resource Centre for Women to have taken this initiative forward. The enormous support of our support staff Mr Anil Kumar and Mr Aadesh Kumar has also been invaluable.

Rashmi Singh
(Executive Director)

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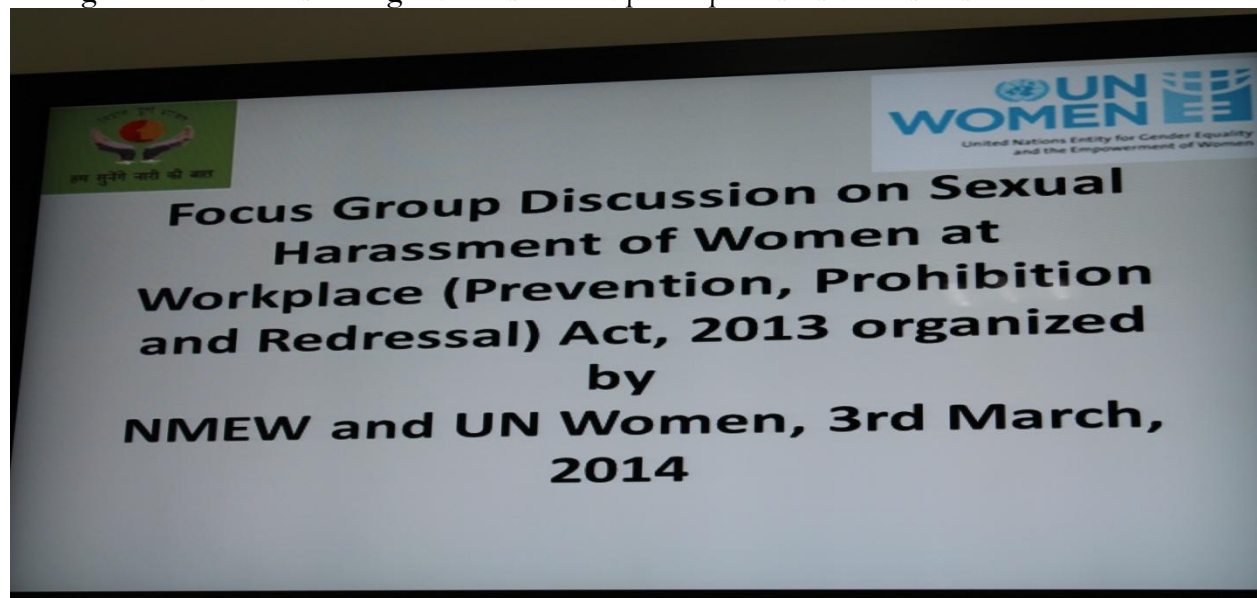
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The National Mission for Empowerment of Women (NMEW) is an initiative of the Government of India (GOI) with a view to empower women socially, economically and educationally. The Mission aims to achieve empowerment of women on all these fronts by securing convergence of schemes/ programmes of different Ministries/Department of Government of India as well as State Governments.

UN Women is the United Nations Entity for Gender Equality and the Empowerment of Women. It was created in 2010 as a single global organization to champion the rights of women and girls. The UN Women Office for India, Bhutan, Maldives and Sri Lanka works with and for women and girls who remain excluded from socio-economic and political opportunities in urban and rural areas of these countries. Using technical and financial support, UN Women helps promote women's human rights. It works with governments, women's organizations and civil societies, assisting to create national strategies to advance gender equality in line with national priorities, and international norms and policies.

The Gender Rights, Gender based Violence and Law Enforcement Domain (GR Domain), within the National Resource Centre for Women (NRCW), National Mission for Empowerment of Women (NMEW), Ministry of Women and Child Development, in collaboration with UN Women office for India, Bhutan, Maldives and Sri Lanka is organizing a Focus Group Discussion (FGD) on the 3rd March 2014 on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, for further policy directives.

This FGD is a part of a series of FGDs that form part of the GR Domain, NMEW's in-house study on critical assessment of existing laws, policies, practices and implementation regimes impacting women and their participation in the labour work force to develop convergence strategies/models to encourage their increased participation and retention.



As a part of the above stated initiative the first FGD was conducted on the 27th February, 2013 on 'shift rationalization' from the perspective of security of working women. A National Consultation on Maternity Benefit Act, 1961 was held on 2nd July, 2013 and a follow up

meeting to strategize the action plan for Maternity Benefit Act was held on 3rd October, 2013. Taking this forward, a second FGD was conducted on all laws impacting Work Force Participation for women on the 22nd October, 2013.

BACKGROUND

Work undertaken by women is grossly underestimated, under-valued and subject to gender based discriminated in terms of disparities in wages, access to and control over resources, lack of infrastructural support and, above all, non-recognition of unpaid care work. Despite a plethora of legislations that attempt to remove inequalities in the workplace, India is witnessing a steady decline in the participation rate of women in the labour workforce.

The relevance of establishing dignity of human labour and the need for protecting and safeguarding the interest of labour has been enshrined in Chapter-III (Articles 14,15, 15(3)¹ 16, 19, 23 & 24) and Chapter IV (Articles 39, 41, 42, 43, 43A & 54)² of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The wide ambit of labour legislations captures various factors, which in some ways address pertinent issues relating to: conditions of work and regulation of employment amongst other things. For instance, provision regarding benefits for women during pregnancy (Maternity Benefit Act, 1961); equal pay for equal hours of work for men and women (Equal Remuneration Act, 1976); provision ensuring minimum wages (The Minimum Wages Act 1948); separate provision of utilities for women and fixed working hours [The Contract Labour (Abolition and Regulation) Act and Rules 1970]; prescribing weight limit to be carried by women (The Factories Act, 1948); social security provisions pertaining to the unorganized sector (Unorganized Sector Worker's Social Security Act, 2008); and lastly ensuring a safe and secure environment free from sexual harassment [The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013].

Protection against sexual harassment and the right to work with dignity and non discrimination as per treaties on Human Rights of women and ratification of international conventions by the Indian Government (e.g. United Nations Convention on the Elimination of all Forms of discrimination against Women, International Covenant on Economic, Social and Cultural Rights, Universal Declaration of Human Rights, Beijing Platform for Action, ILO Conventions etc).

Sexual harassment is a serious manifestation of sex discrimination at the workplace and a violation of human rights as well as fundamental rights enshrined in the Constitution of India (e.g. Article 14- Equal rights and opportunities for men and women in the political, economic and social sphere among others). It is yet another form of violence against women reflecting patriarchal mindsets and gender based discrimination at work. It is also a manifestation of

¹The following Fundamental Rights are to be noted: Article 14- Equal rights and opportunities for men and women in the political, economic and social sphere; Article 15- Prohibition of Discrimination on the grounds of sex; Article 15(3) Empowers the State to take affirmative measures for women; Article 16- Provides for equality of opportunities in the matter of public appointments; Article 19(1) (g) to practice any profession.

²The following Directive Principles are to be noted: Article 39-Enjoins the state to provide an adequate means of livelihood to men and women and equal pay for equal work; Article 42-State to ensure the provision for just and humane condition of work and maternity relief.

power relations as women are much more likely to be victims of sexual harassment because of their vulnerability, insecurity, and social conditioning to accept discrimination in silence.

1997 was a turning point in this regard. It was a watershed moment in how we respond to sexual harassment of women when we understand it through a constitutional equality lens. The Vishaka Guidelines (Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384) provided us with a blue print for where we needed to go for developing a rights-based understanding of and response to an issue historically dismissed as “no way to treat a lady.” It gave us the equality yardstick to measure sexual harassment of women and provided a means to enable systems, such as workplaces, to respond effectively to the elimination of such violation, for the benefit and health of all workplaces. It was a step towards creating responsible mind sets. It was user friendly and accessible.

Today, we have the Sexual Harassment of Women at Workplace, (Prevention, Prohibition and Redressal) Act, 2013. Given that it's early days, every effort to refine and fine tune such legislation can make it a user friendly constitutional tool in the hands of employers and employees to create healthy and safe workplaces and safeguard the vision of Vishaka, one reaffirmed by the Justice Verma Committee (2013).

A. VISHAKA GUIDELINES

Vishaka and Others Vs. State of Rajasthan and Others (JT 1997 (7) SC 384

In India the Vishaka Guidelines (which came into force after the Vishaka and Others vs. State of Rajasthan),³ was a landmark legislative mechanism in 1997 to ensure prevention and redressal of sexual harassment at workplace and ensure gender equality and non discrimination at workplace.

In response to the sexual harassment of a rural change agent, resulting in her gang rape, a Public Interest Litigation brought before the Supreme Court of India sought to address the pandemic of sexual harassment women experience at all workplaces. Specifically the petition sought legally binding directions from the Court which would specifically address prohibition, prevention and redress of sexual harassment at all workplaces.

Key outcomes of the judgement included

- a. Setting a precedent for direct application of international law (the Convention on the Elimination of All forms of Discrimination against Women) within the domestic reality
- b. Defining unwelcome sexual harassment in compliance with contemporary International law
- c. A landmark recognition that all forms of sexual harassment amount to a violation of women's constitutional rights to equality and dignity at the workplace
- d. Shifting the onus of responsibility from individuals to Institutions (i.e. all workplaces) to prevent and redress workplace sexual harassment
- e. Prioritising prevention
- f. Mandating a unique complaints mechanism – 50% women, a woman chair and external 3rd party expert
- g. Non- intimidation of witnesses and complainants
- h. Upholding confidentiality in the complaint process

³Case of Bhanwari Devi, a village santhin who was gang raped by upper caste men.

Pursuant to the Vishaka Guidelines, the Government of India requested the National Commission for Women (NCW) to draft 'the sexual harassment at the workplace (prevention and redressal) Bill.' In 2001 there was a writ petition by the Supreme Court based on the Medha Kotwal Lele & Others vs. Union of India & Other Medha Kotwal⁴. It was in 2010, more than 10 years after Vishaka, that the Bill was introduced in the Lok Sabha on December 7, 2010. On 23rd April 2013 the President of India gave his assent to the bill thereby making it an Act.

B. THE ACT

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

Sixteen years post the landmark Vishaka Judgement the Government of India (GOI) brought about the Sexual harassment of Women at Workplace (Prohibition, Prevention and Redressal Act) and corresponding Rules.

Key elements of the Act include-

- a. Framed under the overall Constitutional Equality and Right to Life guarantees along with CEDAW (Convention on the Elimination of All Forms of Discrimination against Women)
- b. It not only defines sexual harassment at the work place but also creates a mechanism for redressal of complaints. The definition of "aggrieved woman", who will get protection under the Act covers all women, irrespective of their age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and/or domestic workers
- c. It mandates employer's to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. On the other hand, the District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level
- d. On a complaint, the Committee is required to complete the inquiry within a time period of 90 days.
- e. The Act also prescribes penalties for employers who violate the provisions of the Act. Non-compliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Also, repeated violations may lead to higher penalties to the extent of cancellation of licence or registration to conduct business.
- f. Prioritising Redress over Prevention.
- g. It Adopts an adversarial system it grants the Internal Complaints Committee selective powers of a civil court The Complaints Committees is vested with the powers of civil courts for

⁴ This petition sought the implementation of the Vishaka Guidelines by the central and state Governments of India. Despite the Vishaka Guidelines there were and continue to be numerous instances of harassment in various private workplaces such as educational institutions, Bar Associations, Medical Councils and all other professional and technical associations, where compliance to the Guidelines do not exist. This petition aimed to put pressure on the Government to enact comprehensive legislation to ensure a safe, harassment and violence free working environment for all women in India. In fact, after Medha Kotwal the Central Civil service rules were amended to ensure compliance with Vishaka Guidelines. The position now is that where States have amended the rules in accordance with Medha kotwal, the service rules will apply, else the 2013 Sexual Harassment of Women at Workplace Act t would apply. Similarly the Court directed that ID Standing orders be amended to include sexual harassment as misconduct. An aggrieved woman can thus choose to approach the ID machinery, if the misconduct amounts to a labour dispute, otherwise she can choose the mechanism contained in the 2013 Act.

gathering evidence and can also initiate a conciliation proceeding if requested by the complainant.

- h. It has processes which run contrary to the prohibition of intimidation of witnesses or complainants.
- i. Compliance by all workplaces.
- j. An elementary form of monitoring.
- k. With respect to a complaint redressal, confidentiality applies only to communication/publication or making information known to public, press and media.

Even at the Bill stage of the legislation, the Justice Verma Committee Report (JVC) 2013 provided detailed responses and recommendations regarding potential difficulties with regard to language and content of the Act as subsequently detailed in this note.

JVC RECOMMENDATIONS

The Act though framed under the equality umbrella, waters down the spirit of Vishaka as an equality ruling. The key roles of prevention and accountability are diminished. The discriminatory provision on “false charges” undermines the enabling goal of Equality under which the legislation has been expressly passed. The legalise adopted in the Act makes it challenging, not user friendly. Laws need to be “user friendly”, a perspective which Vishaka brought to the language of rights, to enable access to fair mechanisms and informed outcomes.

Against this background, the Justice Verma Committee Report (2013) [JVC] rightly questioned some of these drawbacks arising in the legislation. Reiterating a common minimum requirement that “has received global acceptance” the JVC stressed that “Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right.” Building on the recognised freedom to choose religious and private beliefs in the private sphere, and the right to assert equality in the public sphere, the JVC recognized that equality is an indivisible right- one which perseveres irrespective of whether it is asserted vis-a-vis her own family or at any other point of time.

According to the JVC

“...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women”. “This,” concludes the JVC, “is sexual autonomy in the fullest degree”

After reviewing relevant case law, available literature and discussions with Indian and International Experts, the JVC specifically stated –

“ While the Sexual Harassment Bill purports to be in effectuation of the Hon’ble Supreme Court’s dictum in Vishaka v. State of Rajasthan..., it is clear from a reading of the said Bill that the spirit of the judgment in Vishaka is not adequately reflected. It is our aim that the applicable law relating to sexual harassment at the workplace ought to ensure that not even an imperceptible influence of any gender bias is felt against the

female workforce either in the performance of their duties or in their career progression.”

Upholding an Equality perspective, the JVC made specific recommendations in its review of the then Bill (Current Act). For the purposes of this consultation, the following extracts from JVC report of specific recommendations are highlighted below.

These are critical to building our understanding of women’s right to safe work spaces.

1. Extract 1: Definition of Sexual Harassment

“We are of the view that the present definition of “sexual harassment” contained in Section 2(n) and the consequential provision relating to the prevention of sexual harassment contained in Section 3satisfactory and should be retained in any future bill.

However, it is important to note that the definition requires some clarification in as much as any interpretation of the word “unwelcome” as contained in the said definition must give due weight to both objective as well as subjective criteria in order to ensure that women of differing perceptions and comfort levels are given appropriate protection. Therefore, we suggest that after the definition of “sexual harassment”, the following explanation may be inserted:

“Explanation: 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.”

(129)130

2. Extract 2: Establishments to which the proposed Act shall apply

“Since each and every act of sexual harassment at the workplace is a form of sex discrimination which in effect denies a woman her fundamental rights guaranteed under the Constitution, it is proposed that any legislation dealing with the said issue should have the widest possible application so as to take within its scope every female member of the national workforce. Therefore, any legislation must apply to all government institutions, all public bodies, all panchayats, all establishments covered under the Factories Act and the Industrial Disputes Act and all employers in the private sector who are not otherwise covered by the categories listed above.

The present definition of “workplace” contained in Section 2(o) is of wide amplitude and in that sense is acceptable. However, it bears mentioning that a clarification may be inserted in the said definition that the “unorganized sector” is not exempt from the ambit of the proposed legislation. To this end we suggest that the proposed legislation should also cover women in the armed forces and police, agricultural workers and women students and staff of all schools and educational institutions.”

3. Extract 3: Mode of Enforcement

“The intendment of the proposed legislation ought to be the widest possible dissemination of the rules relating to sexual harassment so that all persons at the workplace are aware of what is expected. We therefore suggest that the sexual harassment policy of each establishment ought to be prominently displayed within the premises with complete details on the procedure for making a

Complaint. Further, it is suggested that the policy should form part and parcel of the letter of appointment to ensure every person joining the establishment is made aware of their rights

against sexual harassment. Any dereliction in the duty of the employer to prominently disseminate the sexual harassment policy in the work place and the mode for making a complaint ought to be met with a fine in the first instance, and imprisonment of the concerned officer for a repeat offence.”

4. Extract 4: Requirement of Complaint to be made only in writing

“This Committee is of the view that ground realities and the fact that the proposed legislation shall be applicable to the widest possible amplitude of workplaces; it would be too onerous a burden to expect a complaint to be made only in writing. Often the more underprivileged members of the female workforce are not in a position to make a complaint in writing for various reasons, such as, illiteracy, lack of education to permit them to put down on paper that which they have experienced and which may otherwise be clear in their minds. We propose that complainants may be free to approach the Tribunal directly to state a complaint orally, which may then be transcribed into the written form in the manner prescribed by the Tribunal.”

5. Extract 5: Limitation

“We are of the view that period of limitation of 3 months for the making of a complaint contained in Section 9(1) of the Sexual Harassment Bill may be misused to defeat the ends sought to be achieved. It may often transpire that a woman may fail to make a complaint on the occurrence of the first instance of sexual harassment and may only do so upon a repetition of such instances. It would in those circumstances be unfair for only the last of such incidents (those that fall within the three month limitation) to form the basis of her complaint when evidence of prior instances may reveal a systemic flaw at the workplace which is promotive of gender-based discrimination. It is therefore suggested that no fixed time period of limitation be prescribed and that the only expectation be that a complaint shall be made within a reasonable period of time with regard to the facts and circumstances surrounding the making of such a complaint and the personal circumstances of the complainant...”

6. Extract 6: Conciliation

“We note that Section 10(1) of the Sexual Harassment Bill, 2012 stipulates that on receipt of complaint of sexual harassment, conciliation must be attempted between the complainant and respondent. This is in violation of the mandate prescribed by the Supreme Court in Vishaka, which was a direction to the State ‘to ensure a safe workplace / educational institution for women’. In this context, we think that the attempts to get justice cannot be muscled by attempts at conciliation.

There are certain areas, such as contractual matters where there could be conciliation, but in matters of harassment and humiliation of women an attempt to compromise the same is indeed yet another way in which the dignity of women is undermined. We are in agreement with the objections raised by many women’s organisations that the said provision actually shows very little regard for the dignity of women. We think that Section 10(1) of the Bill, in so far as it proposes conciliation as a first step, must be deleted.”

7. Extract 7: Powers of Internal Complaints Committee (ICC)

“As far as Section 11(ii) [now section 11(3) of the Act] is concerned, which has enabled the internal complaints committee to be given powers of a civil court for summoning discovery and production of documents is concerned, this amounts to colourable legislation because powers of courts cannot be simply conferred upon domestic committees, particularly when the composition of the internal committee does not have any legal background. We are also of the

opinion that the Bill does not specify any training to the committee for fulfilling these duties. This is in distinction to the composition of the local complaints committee in which at least one member has to preferably have a background in law or legal knowledge.”

8. Extract 8: Action during Pendency of the Enquiry/Case

“The proposed Section 12 of the Sexual Harassment Bill empowers the Internal Complaints Committee or the Local Complaints Committee to direct the employer to either transfer the aggrieved woman or the respondent or to grant leave to the aggrieved woman if it deems fit. In the event that the aggrieved woman is not amenable to either transfer or grant of leave then no such action ought to be taken against her will so as to ensure that she does not foster either a sense of bias or alienation merely on account of the fact that she exercised her rights under the proposed legislation to file a complaint of sexual harassment. However, to facilitate a feasible working environment, both the aggrieved woman and the respondent should not be compelled to work together on any project. They should be separated at the workplace such that they do not need to come into contact with one another pending the adjudication of the complaint. Additionally, it is suggested that leave may be granted to the respondent pending adjudication in the event that the aggrieved woman is neither amenable to transfer or leave or that given the structure of the workplace or the nature of the work it is infeasible or impossible for the aggrieved woman and the respondent to be separated in the discharge of their duties. The present act seems to regard the granting of leave as a beneficial provision for the aggrieved woman without taking into account her wishes. This, to our mind, is contrary to the ends sought to be achieved by the proposed legislation in as much as there should not be any provision that enhances a sense of victimhood in the aggrieved woman.”

9. Extract 9: False Complaints

“We now wish to look at Section 14 of the Sexual Harassment Bill, 2012. We notice from the provisions of the Bill that Section 14 appears to penalise a woman for filing a false complaint. We think that such a provision is a completely abusive provision and is intended to nullify the objective of the law. We think that this ‘red-rag’ provision sought not to be permitted to be introduced and they show very little thought.”

10. Extract 10: Liability of the Employer

“We are of the view that it would be inequitable to visit the employer with liability in all cases of sexual harassment though the primary responsibility for avoiding situations of sexual harassment lies with the employer. We therefore propose that the liability of the employer will be limited to case where the employer has (a) by an act or omission facilitated the specific act of sexual harassment complained of; (b) permitted the creation of an environment at the workplace where acts of sexual harassment have become widespread and systemic; or (c) been found in breach of any other obligation under the Act, including but not limited to, the proper disclosure of the sexual harassment policy and the mode of filing of a complaint or the forwarding of any complaint received by either the employer, or by any person appointed by the employer on its behalf, at the instance of the complainant.”

C. OBJECTIVES OF THE FOCUS GROUP DISCUSSION (FGD)

Since 1997, workplaces have been informed of their responsibility towards the issue of workplace sexual harassment, both through the Vishaka judgement as well as the Act.

Following the passage of the Act, it has already become evident through informal accounts that compliance with and implementation of the Act, read with Vishaka, present numerous challenges. This FGD provides for a window of opportunity to raise some of the issues posed by the Act and give possible recommendations on bridging the gaps. This is an opportunity to gain an understanding on the perspective on what workplaces are required to do to meet the equality standard of prohibition, prevention and redress for sexual harassment. Additionally it would help to reconcile the application of the Act with its own statement of objectives as well as the equality vision of Vishaka.

In light of the above, the intended purpose of this FGD is to draw from experts/practitioners who have actively worked on compliance since Vishaka and as per the Act. Specifically, this consultation seeks to do the following-

- a. Share experiences from the perspective of implementation and compliance with the law.
- b. Identify specific gaps that need to be addressed as per your understanding and experience in implementing or complying with the language/ content/processes as detailed in the Act and any contradictions arising there from.
- c. Invite concrete and doable recommendations which can contribute towards making the law more user friendly and accessible i.e. Specific recommendations to clarify language and processes vis-a-vis prevention, prohibition and redress.

Given the limitation of time and the specific focus of this FGD, it is important that participants ensure a constructive discussion takes place and leads to practical outcomes. This consultation is intended to ensure inclusive and equal sharing of knowledge and experience of workplace sexual harassment in order to arrive at concrete recommendations..

**Minutes of the Focus Group Discussion on Sexual Harassment of Women at Workplace
(Prevention, Prohibition and Redressal) Act, 2013,
Venue: UN women Multi Country Office, New Delhi**

1. **Ms. Anne F. Stenhammer**, Regional Programme Director, UN Women, thanked all for the collaborative project partners and requested the participants to introduce themselves. Regarding the Act she said its a huge accomplishment and victory. Yet this Focus Group Discussion (FGD) would provide for inputs on the Act as a blue print to address challenges in implementation. She mentioned that this issue is a global issue and we have different frameworks for addressing the issue. She also highlighted that there is worldwide prevalence of gender based violence and harassment at workplace and different frameworks to address this issue.
2. **Ms. Padmaja Mehta** welcomed all and introduced the National Resource Centre for Women (NRCW), National Mission of Empowerment of Women (NMEW), Ministry of Women and Child Development, Government of India. She mentioned that there are many schemes being implemented by the Government of India but the NRCW, NMEW is steering the process of inter ministerial convergence with different ministries and departments on one hand and providing information regarding government schemes and policies to women at the grass roots on the other hand. She also mentioned that there are many legislations for women's safety and security by the Government of India. She informed all about the single window structures such as Poorna Shakti Kendras for awareness generation and for access and utilization of schemes and programmes, initiated by the NRCW, NMEW. The NRCW, NMEW is aimed at holistic empowerment of women. She spoke about the various domains within the NRCW, NMEW especially the domain of Gender Rights and Gender Based Violence (GR) particularly which tries to encourage the women to be aware such Acts for the legal empowerment of women. She mentioned all about the earlier FGDs that were organized by the domain such as on night shift change and the issue of safety and security of women and impact of labour laws on women workers and that this FGD is the third in the series. She expressed that the Prevention of Sexual Harassment of Women at Workplace Act is a new legislature and that she has participated actively in the drafting with the overall research grounding the debates in the Parliament regarding this Act. She mentioned the benefits of the Act and also explained the genesis of the Vishaka case and its consequent Judgment which was the initial catalyst for the framing of this Act. Thereafter, she encouraged the participants to identify the gaps and provide the recommendations and how the gaps can be plugged such that the recommendations would feed into the Amendments and can be presented to the Ministry of Women and Child Development for effective implementation of these throughout India.
3. **Ms. Rashmi Singh**, ED, NRCW, NMEW in her introductory remarks thanked UN Women, Padmaja Mehta and GR team to invite different stakeholder for co-organizing this event. She emphasized that there are a lot of concerns, myths, and fear apprehensions about this Act as a whole which can be identified in a twofold manner. One is that we can resolve the complaints regarding labour issues but there is also an apprehension that this Act may lead to lesser women's participation in the workplace. She mentioned that the objective of this Act is not only addressing safety and security but also encourages the increase in work participation rate. She highlighted the sensationalism of the media over this Act particularly with the Tarun Tejpal case, and the retired Judge of Calcutta High Court case regarding the law intern. She

mentioned that while people are talking about the punitive measures however, people are not talking about the training and capacity building regarding how to use this Act as well as the onus on the Employer that they have a conducive environment at workplace. She further mentioned about mechanisms of gender score card, audit and awareness and provisions should be made to use this Act to create an enabling environment. She stressed that building awareness about using this Act and using the kind of awareness responsibly such that the issues can be instantly addressed have to start immediately. She urged that creation of compendium of case studies be encouraged for finer details of cases to be dealt by the Committee looking into sexual harassment cases. She also suggested that given the legislative mandate the Act should be used as a tool for the socio-economic empowerment of women.

4. **Ms. Anju Pandey** from UN Women thanked all for participating in the event and reiterated that the participants should focus on the preventative aspects of the Act and list out the gaps/ challenges in implementation. She shared that on 10th of February, 2014, a similar consultation was organized from representation from Corporate houses, Private Sector and Banks, organized by UN Women. She suggested all to discuss on the implementing principles rather than the amendments and then propose recommendations.
5. **Ms. Smita** from Stakshi informed all briefly about the prior consultation on the said subject and identified many gaps and accountability issues such as where to report, whom to report to, why should there be a report, the aspect of non-compliance etc. False complaints, conciliation, scope of misuse of the Act, Interim Measures, the expertise of the Committee, Confidentiality of the cases, provision of 6 copies of the case including the name of the victim and witnesses jeopardizes the case, hostile work environment etc were other issues mentioned by her.
6. **Advocate Gayatri** from Mumbai highlighted the gaps of the Vishaka Case and highlighted victimization of women who came forward to make the complaint. She emphasized about the issue of women who are terminated before she eventually files a complaint also cases of interns the issues of addressal where the company takes no responsibility. She mentioned about the procedure of enquiry and complaints committee procedure being cumbersome regarding the documents and paperwork. She also highlighted other issues such as lack of witness protection mechanism in the Act and its drawback since witnesses are not willing to come forward to support the women concerned. She pointed out the role of the state especially the state government is negligible in terms of ensuring the enforceability of the Act. She highlighted the issue of publication of the proceedings in this regard especially in relation to media trials of cases. She suggested that the confidentiality of the proceedings and findings of the enquiry committee to be maintained even if they are publicized.
7. **Adv Albertina** from Goa mentioned that jurisprudence of the judgment is not reflecting in the Act. She narrated the citations such as Medha Kotwal judgment and details of the Committee of the Vishaka Judgement proceedings. She expressed that often women are not aware regarding physical and sexual harassment hence a preliminary process of registering the case might help to clarify that distinction. She highlighted about Tarun Tejpal citation regarding the difficulty in identifying the head in the media house and stressed that there has to be onus on the respondent also regarding the maintaining of the confidentiality and the ambiguity about what sections need to be published. She mentioned section 19G and 19 H of the Act which is ambiguous and hoped that some of the confusions would gain clarity in the meeting.

8. **Ms. Shoma Sengupta** from Calcutta added to the Section 19G regarding the clarity of the role and enquiry of the Complaint Committee and whether the complainant chooses to go to police on her own. The service rule clause also needs to be investigated regarding the proceedings of the domestic enquiry.
9. **Prof. Ayesha Kidwai** from JNU raised a number of issues of the Act. Firstly, regarding the nature of the workplace especially the University environment students are considered complainants and not considered as perpetrators but that of outsiders hence students should also be included as possible perpetrators in the ambit of the university environment. She indicated that the law is very general and is not sensitive to different nature of the workplaces such the agricultural sector and residential areas for domestic helps as it's not sensitive to LCC (Local Complaints Committee) and its proceedings.

She mentioned that the composition of the LCC and ICC (Internal Complaints Committee) is very important and who constitutes the Committee should be outlined. She shared the best practices of Jawaharlal Nehru University such as inducting students in the complaint committee of the GS Cash.

She further suggested that employers should bring out office orders for complaint addressal and the committee should have a pool of members Clause 3 No. 2 (1 to 5) i.e. Quid pro quo harassment clause in which is all interns of employment where students are not threatened and where one complainant and followed by the rest can approach the Committee. Conciliation has to be clarified in terms of a window where a request could be made in terms of the complainant. She identified that there is no procedure to verify a false complaint in the Act. She also suggested that a preliminary investigation needs to be made. Clause 19 A mentions about the perpetrator.

10. **Ms. Prerna Kumari** from SCWLA mentioned that the Act should be gender neutral and include workers from the unorganized sector such as domestic workers in the ambit. The committee should be advertised on a large scale.
11. **Ekalavya from Lawyers Collective** mentioned that there should be a mechanism of identifying false complaint and that of a complaint which is not proved. He suggested that aspects in the Act need to be fine tuned such as role of ICC under the criminal investigation, whether the civil and criminal trial can go simultaneously, Section 33 and labor laws, unorganized sector being left out etc.
12. **Dr Poulomi Pal** addressed the need for both civil and criminal case go together and suggested 3 working groups in order to participate in discussions which would lead to drafting the recommendations.
13. **Ms. Amrita** highlighted about the role of internal committee, the credibility and expertise within the team. She mentioned about aspects such as the work environment about violence should be perceived on a larger scale, the policies and code of conduct since as many organizations have work types where employee behavior needs to be defined. She highlighted the dichotomy where it's difficult for women to complaint when their career is at stake.

14. **Ms. Smriti** from PLD pointed about the definition of Sexual Harassment Section 2 & 1 of the Act which is irrespective of nature and does not mention about the intent and there is no such rule for lawyers itself as perpetrators. She mentioned that there is an option of women who can ask for ICC but in the organized sector such as there is no relief for domestic sector.
15. **Dr Shashibala** from NLI (V.V Giri National Labour Institute) mentioned that the Act is about a labor issue and shared the findings of the study on this topic conducted by NLI such as training, awareness and capacity building of the committee members, hostile working environment, the submission of annual report and the formats in which. She suggested that certain audit of the amount kept aside for sexual harassment must also be undertaken.
16. **Mr. Akshat Pandey** from SCWLA (Supreme Court Women Lawyers Association) pointed the gap of compensation about Section 15 and about the assessment of the trauma.
17. **Ms. Radhika** from WPC (WomenPowerConnect) raised some of the issues such as capacity building the aspect about gender sensitization and who needs to be sensitized about the Act such as the front line workers and informal sector, budgetary allocations for the infrastructure and mechanisms of actualizing the committee and publicity of the Act etc.
18. **Mr. Saumya Bhowmik** mentioned the role of labor inspectors and stressed it's very important since this aspect has not been mentioned in the Act. He shared the best practice of Gujarat where all the senior officials had laid down about the enforcement of the Act. He suggested that the role of Ministry of Women and Child Development should be supra since judges are excluded from the Supreme Court Rules.
19. **Ms. Martha** from PRIA mentioned about the sensitization programmes and the demand for capacity building from private sector which is a positive response of the Act. She suggested that the role of complaint committee should also be to raise awareness about the Act. She indicated that since the Act is new, focus should be more on the cases to come up rather than prevention.

Thereafter the participants were divided into 3 Working Groups for framing Recommendations.

The working groups were namely:

1. Clarity/Gaps/Recommendations/Guidelines/SOPs on ICC & LCC the Act and Rules
2. Clarity/Gaps/Recommendations/Guidelines/SOPs on State/ Employer responsibility
3. Clarity/Gaps/Recommendations/Guidelines/ SOPs on Capacity building /awareness / training

RECOMMENDATIONS

CHAPTER I

Section 2- Definitions

Clause 2a

Students should be included as under employee criteria in Section 2 (a)(i)

Clause 2m

Definition of Respondent: Does this mean the perpetrator can also be a woman or transgender?
Since the word person is used?

Clause 2n

- The definition of Sexual Harassment under Section 2(n) (i) is ambiguous. According to the subsection, any unwelcome physical contact and advances would fall within the ambit of Sexual Harassment, irrespective of the nature/intent of the contact or advance. The definition as provided in the Vishaka Guidelines should be incorporated in the Act. As per the guidelines, ‘... sexual harassment includes such unwelcome sexually determined behavior...’
- The definition just mentions ‘advances’ but it should also include ‘intention’
- The Definition of sexual harassment (n)(v) does not define (n)(i) to restrict it to physical contact and advances only to those of sexual nature⁵

Clause 2o

The Act does not provide any clarity on whether educational institutions form a ‘workplace’. There are a few higher education institutions that have a working Sexual Harassment Committee in place and would prefer to continue with the system they have established and is successfully working, particularly as the Act limits who may be members on the Committee (and appears to exclude students).

Definitions Missing: The act should define the terms ‘*acceptable behavior*’; ‘*confidentiality*’

Section 3- Prevention of Sexual Harassment

“Hostile working environment” under **Clause 3(2) (iv)** need to be defined

CHAPTER II

Section 4- Constitution of Internal Complain Committee

‘Social work’ under **Clause 4(2)(b)** need to be specified

CHAPTER III

Section 6- Constitution and Jurisdiction of Local Complaints Committee

Rule under **Clause 6 (iii)** is not very clear. It says where the woman is unable to file a complaint, what conditions will be considered as being unable to file a complaint and what conditions will be considered as able to have to be listed.

CHAPTER IV

Section 9- Complaint of Sexual Harassment

⁵ This point was indicated by Albertina Almeida from Saad Aangan

Clause 9(1), stating the limitation of three months for the complaint to be made might be difficult in some cases. Section 9 provides that the period of 3 months can be extended by another 3 months at the discretion of the Complaints Committee.

Section 10-Conciliation

- Clause 10(1) on conciliation is contrary to the nature and spirit of the Vishaka Guidelines.
- Conciliation and false complaint should be removed or deleted. The Ministry of Women and Child Development should come out with an advisory on this.
- The possibility false complaint as result of intimidation needs also to be taken into consideration in the Act.

Section 11- Inquiry into complaint

Clause 11(ii), that enables the internal complaints committee to be given powers of a civil court for summoning discovery and production of documents whereas the composition, is without any legal background and no requirement of trainings thereafter is there in the provisions

CHAPTER V

Section 12- Action during pendency of inquiry

- It is a common feature in most sexual harassment cases that the employer or the person complaint against retaliates against the complainant through counter- complaints, dismissing the services of complainant, is creating a hostile work environment etc. There is no provision in the Act or the Rules which deals with this aspect, making it a tough call for women to approach the mechanism under the Act.

However there are citations pursuant to the Vishaka Judgment that: prohibited the transfer of the complainant except at her request; upheld the transfer of the employee found guilty of sexual harassment; prescribed that inquiry proceeding into any case against an aggrieved woman be deferred pending the case filed by the complainant. These can be stated to bolster the case for incorporating relevant changes/ additions in **section 12** of the Act

Clause 12 (i)

- Grant relief as 'Prescribed' is missing. The conditions of services cannot be altered while an inquiry is on.
- Relief for women who is or was in employment or in unorganized sector should be included

Section 13- Inquiry Report

Clause 13 (1)

The Confidentiality of the reports must be specified.

Clause 13(2)

- A clarification should be made that this clause does not in any way preclude affirmative recommendations of the ICC to the employer regarding the prevention of sexual harassment in the workplace and non-discriminatory conditions.
- Does not automatically entail the initiation of a proceeding against the complainant for false complaint

Clause 13 (3) (i)

- Rules are supposed to be prescribed. More suggestions for Rule 9 are required as there are very limited prescriptions.

- The section need to specify which action has to be taken in case the respondent is not an employee but a third party.

Section 16- Prohibition of publication or making know contents of complaint and inquiry proceedings

The section should be better defined so to ensure confidentiality but not penalize the publication

CHAPTER VI

Section 19 –Duties of Employer

- ‘Duties of Employer’ need to be better defined
- It is mandatory for all employers to constitute ICC and for the State Govt. to constitute LCC to address the issues of sexual harassment of women at workplace. It is also responsibility of the employees to make sure that any person can approach to ICC & LCC.
- State Government, in collaboration with the State Women’s Commission or other women’s groups, shall come out with training modules on issues of Sexual Harassment
- IEC material to be used as training for the members of ICC and LCC should be developed.
- Section 10 provides options of a settlement between the aggrieved woman and the respondent, if the aggrieved woman so wishes; and Section 13 (3) lays down the civil action to be taken by the employer or District Officer upon the complaint being proved. The above two redress options are under the civil process. In addition, since criminal remedy is simultaneously available to the complainant, she is entitled to pursue it under the IPC - with the assistance of the employer under section 19 (g). We assume, even before the employer is convinced of the veracity of the complaint s/he must assist with criminal option - if the complainant so requests. However, it appears that the spirit of giving complainants the civil - criminal or both option is undermined by Section 19 (h) which makes it mandatory for the employer to initiate action against the ‘perpetrator’ under the IPC of any other law – (i.e. upon complaint being proved correct) irrespective of whether the aggrieved woman so desires. The law needs to clearly stress that the complainant exercises the option - and her choice is the final choice - otherwise she is put to a double burden of pursuing two remedies - consecutively, and this will deter many women from complaining as it forces them into the criminal justice system. This may be the result of bad drafting, because she may opt for criminal redress subsequent to her complaint being proved correct - but it can’t be mandatory. As the law allows women to even 'settle' the matter, surely there it was made with the spirit of providing her a quiet redress, rather than forcing her into two mechanisms of redress. In view of Section 19 (g), Section 19 (h) seems irrelevant. Further, the aggrieved woman should have the option of either settling the matter; or filing a complaint with the ICC/LCC; or of opting for simultaneous proceedings under IPC and ICC/ LCC. Criminal action should not be mandatory

CHAPTER VII

Section 20-Duties and Powers of District Officers

Section 20 ‘Duties’ need to be clarified

CHAPTER VIII

Section 21- Committee to submit annual report

Clause 21 (1) form and manner in which the ICC/LCC shall submit

- No. of complaints of Sexual Harassment cases received in the following year
- No. of complaints disposed during the year
- No. of complaints disposed within time frame
- Nature of interim relief sought
- No. of cases where the accusation was upheld
- No. of false complains received
- No. of training or awareness campaign against Sexual Harassment undertaken in organizations
- No. of action taken by employer/ district officials
- No. of complaints where conciliation was sought

Section 23- Appropriate Government to monitor implementation and maintain data.

The State Government shall constitute high power vigilance and monitoring committee of not more than 7 members consisting of the following:

- Minister of Women and Child Development in the State/ Administrator- Chairman
 - Home Minister, Finance Minister, Social Welfare, Minister of Labour and Employment (in case of a State under the President's Rule Advisors Members) in the State;
 - Members of State Women Commission/ State Resource Centre for Women (SRCW)
 - The Principal Secretary in-charge of the Women and Child Development
 - The two members of civil society groups specifically women's groups will be part of this
- The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act and other matters connected therewith, prosecution of cases under the Act, role of different officers/agencies responsible for implementing the provisions of the Act.

Section 26 - Penalty for noncompliance with provisions of Act

There is a need to clearly spell out the following in the act under this section;

- To whom does one complain about the employer's failure to constitute committee etc.
- Who has to initiate action? Not indicated.
- Would the ICC be construed as an Inquiry authority under the service rules as held in the Medha Kotwal Lele vs. Union of India and others case?

Overall Recommendations on the Act

- The Act is biased against urban- office conditions
It does not provide the same civil remedy to domestic workers as it does to other women. Complaints from domestic workers have to be mandatorily forwarded to the Police Station, regardless of whether they want to use the criminal justice system or not. The civil remedy of compensation etc. is absent in this case.
In addition to this the Act also has certain class bias. The appeal provision does not also take care of where should a woman appeal against an unfavorable finding/ order where the perpetrator is not an employee and not a person covered under the ID Act.
- Room for preliminary verification should be included
- The act should be gender neutral
- The legislation should specify what it is the rule in case of an aggrieved woman terminated before the inquiry

- v. The Act should not invoke arbitration in the structural redressal issue.
- vi. The act should have the crucial components that were recommended by the Justice Verma Committee whereby it was mentioned the formation of a Tribunal⁶ to determinate the compensation to be given to the aggrieved; consider oral complaints in situations where the complaint could not be written; power to direct the employer to either transfer the aggrieved woman or the respondent or to grant leave to the aggrieved woman (subject to her consent); reprimanding the aggrieved woman/witness in cases of falsification; inspections of establishments amongst other things. These recommendations have to incorporated in the act.

Recommendations for effective implementation of the Act

Internal Complain Committee and Local Complaints Committee:

- i. More specific criteria for selecting the members of Complain Committee should be added⁷
- ii. The roles of the Internal Complaints Committee (ICC) and Local Complaints Committee (LCC) and who to address in case of an inquiry need to be specified to facilitate aggrieved women to come forward
- iii. The jurisdiction and functions of Local Complaints Committee at District and Block level has to be specified
- iv. ICC and LCC have to make sure that complaining procedures are clear, well specified and easy to understand
- v. A standardize form for complaining should be developed
- vi. A pool of experts should be created so to facilitate the constitution of the LCC
- vii. The monitoring body would be approached for non-compliance⁸
- viii. Directives about the guiding principles for selection of LCC should be made such as:
 - Employee Participation of all levels from workplace
 - The designating authority must specify in writing the indicators that are used to signify commitment to the cause of women
- ix. It is necessary to provide training sessions for the members of ICC and LCC
- x. Face to face cross examination between the aggrieved woman and the respondent should not be allowed

Role of the State/ Government

1. The role of the States and the central Government need to be better specified

⁶ Tribunal would be termed as the Employment Tribunal to receive and adjudicate all complaints.

Constitution and jurisdiction of an Employment Tribunal: would comprise of two retired judges (of which one must be a woman), two eminent sociologists and one social activist, who has sufficient experience in the field of gender-based discrimination. The members of the Tribunal should be appointed by a collegiums consisting of the Chief Justice of the High Court (or his nominee judge) of the concerned state or a District Judge, if the appointment is to be made in a Taluka, as the case may be, along with no less than one eminent female sociologist and one female advocate of the local High Court or District Court, as the case may be. The Employment Tribunal's operation should not be trammled by the application of complex procedures found in civil suits under the CPC or allied legislation. The Tribunal ought to follow a summary procedure for the disposal of complaints so as to expedite the resolution of disputes. The Tribunal ought to be free to choose its own procedure for each complaint. Specifically parties shall not as a matter of right be free to call upon witnesses, unless permitted by the Tribunal in the facts of the case

⁷ Regarding LCC: Women working in social work with at least 10 years of experience and at least 50% of the members should be women, 1 Advocate, 1 Academician, Principal Secretary of Women and Child Development

⁸ Members of the monitoring unit should comprise of State Women's Commission, State Human Rights Commission, 2 NGOs Representatives, 1 Labour Inspector

2. The implementation of this Act should include government institutions, all public bodies, all panchayats, all establishments covered under the Factories Act 1948 and the Industrial Disputes Act, 1947 and all employers in the private sector, armed forces, police, agricultural workers and students/ staff of the schools and educational institutes.
3. Central Government should create Standard Operative Procedures (SOP) to align State procedures on Sexual Harassment at the Workplace Act
4. Common rules or guidelines are needed to specify 'safe working environment'⁹, taking into consideration also infrastructure, soft components, employers and employees obligations and regulations
5. Guidelines should be issued on: documentation of data maintenance, monitoring State level and National level vigilance and monitoring committee, allocation of Financial, Human and other resources, developing IEC material (for publicizing the Act as many people are still not aware about it), training of members (Reference group), awareness Programmes at Public level, labor officers and trade unions and allocation for creating safe work environment.
6. Standardized modules, translated in multiple languages if possible, need to be developed. The trainings should be made mandatory and the duration should also be specified. Inter-Ministerial teams should be present and validate the modules. Online trainings can also be used. Training of trainers for wider coverage will in turn make the training process more effective. AV component needs to be included for making it a better source of edutainment.
7. Ministry of Women and Child Development should start an intensive, rigorous campaign to advertise the Act and raise awareness, using also mass media tools (E.g.- Community Radio, Print and Electronic Media, Toll free Numbers, SMS's etc.)

Duties of the employers

- Discrimination or victimization of the aggrieved woman need to be addressed and prevented
- It is the Employers duty to devise a sexual harassment policy and that should be prominently displayed within the premises with complete details on the procedures for making a complain Regarding the formal workplace, periodic trainings for all the employees and staff members should be provided.
- All the staff should sign a Declaration on 'zero tolerance' for Sexual Harassment on joining.
- Employers should have a dedicated budget by employer for preventive activities, support to ICC or third party and IEC material should be there.
- The option of removing the respondent out of the working environment during the inquiry should be taken into consideration by the employer

Recommendations for Budgetary Allocation

Central government

1. Budgets for organized and unorganized sector extending to domestic workers should be separated
2. Parliament should make due appropriation of funds for LCC
3. Government Funding should be core and also exploring the models used for Corporate Social Responsibility and Public Private Partnership for raising resources and funds
4. ICC/ LCC members' fee should be increased and they should have a travelling allowance and a cap of maximum-minimum amount per half day sitting should be there

⁹Chapter VI, Section 19 (a)

5. Budget allocation for training of LCC, awareness Public Campaign in every quarter at district and block level and infrastructure¹⁰

State government

1. There should be a budget allocation per State
2. There should be a Centre-State shared scheme for funding.
3. The state government should either appoint an agency of sums as required for payment and allowances for the committee to District Officer or designates any government officer with responsibility to affect payment.

Other Recommendations

- A disclosure policy on consensual relationships should be added in the Act
- The procedure for cross-examination should follow the pertinent Supreme Court Judgments.
- An Inquiry Model specifically for domestic workers should be implemented
- Domestic Workers and their employers should be targeted through specific awareness raising initiatives
- Maharashtra Domestic Workers Law can be taken as an example to improve the Act in regard to protection of domestic workers
- Domestic Workers associations, Resident Welfare Associations, Child Welfare Committee should be involved in the implementation of the Act
- Duties of District officer has only 2 duties and should be more holistic
- More duties should be set up for LCC
- The students in a college atmosphere and the shopkeeper-clients scenario
- A complaints committee needs to be skill built
- To social context needs to be looked
- A rigorous awareness campaign should be looked into
- SOP for the operationalization of the Act regarding the implementation for public and private employers especially in regard to informal and unorganized sector.
- Home Ministry should take the lead
- The complaints committee should be as a subset as a larger set of intervention of the employer. Larger structure should take care of other mechanisms
- A series of online courses for awareness generation of the Act for basic level of awareness in a form of a module.
- Clarification is needed. Rules and time frame needs to be framed to address practical implementation of the Action.
- Administrative directives regarding the constitution of the committee.
- When we appoint a gender sensitive head when we appoint a person in the committee
- More labor enforcement officers are needed. Vacancies are not filled regarding the labor inspectors.

¹⁰For example, hearing rooms for counselling where privacy and confidentiality is maintained

- Best practices should be emulated such as that of Gujarat and gaps should be identified in already operational rules (such as Punjab and Haryana state has got its own Sexual Harassment Rules)
- Following are select recommendations made by the Women's' groups and the Justice Verma Committee Report on the Sexual Harassment of Women at Work (Prevention, Prohibition and Redressal) Place Act 2013:
- Section 10(1) on conciliation is contrary to the nature and spirit of the Vishaka Guidelines
- Section 11(ii), that enables the internal complaints committee to be given powers of a civil court for summoning discovery and production of documents whereas the composition is without any legal background and no requirement of trainings thereafter is there in the provisions
- The jurisdiction and functions of Local Complaints Committee at District and Block level has to be specified
- The implementation of this Act should be including government institutions, all public bodies, all panchayats, all establishments covered under the Factories Act and the Industrial Disputes Act and all employers in the private sector, armed forces, police, agricultural workers and women students/ staff of all schools and educational institutions.
- It is the Employers duty to devise a sexual harassment policy and that should be prominently displayed within the premises with complete details on the procedure for making a complaint.
- Section 9(1) stating the limitation of three months for the complaint to be made might be difficult in some cases. Section 9 provides that the period of 3 months can be extended by another 3 months at the discretion of the Complaints Committee.
- The Justice Verma Committee mentioned the formation of a Tribunal¹¹ to determine the compensation to be given to the aggrieved; consider oral complaints in situations where the complaint could not be written; power to direct the employer to either transfer the aggrieved woman or the respondent or to grant leave to the aggrieved woman (subject to her consent); reprimanding the aggrieved woman/ witness in cases of falsification; inspections of establishments amongst other things.

¹¹ Tribunal would be termed as the Employment Tribunal to receive and adjudicate all complaints.

Constitution and jurisdiction of an Employment Tribunal: would comprise of two retired judges (of which one must be a woman), two eminent sociologists and one social activist, who has sufficient experience in the field of gender-based discrimination. The members of the Tribunal should be appointed by a collegiums consisting of the Chief Justice of the High Court (or his nominee judge) of the concerned state or a District Judge, if the appointment is to be made in a Taluka, as the case may be, along with no less than one eminent female sociologist and one female advocate of the local High Court or District Court, as the case may be. The Employment Tribunal's operation should not be trammled by the application of complex procedures found in civil suits under the CPC or allied legislation. The Tribunal ought to follow a summary procedure for the disposal of complaints so as to expedite the resolution of disputes. The Tribunal ought to be free to choose its own procedure for each complaint. Specifically parties shall not as a matter of right be free to call upon witnesses, unless permitted by the Tribunal in the facts of the case.

SOME GENERAL RECOMMENDATIONS MADE BY LAWYERS COLLECTIVE WOMEN'S RIGHTS INITIATIVE¹²

Address the aspect of victimization

It is a common feature in most sexual harassment cases that the employer or the person complaint against retaliates against the complainant through counter-complaints, dismissing the services of complainant, creating a hostile work environment etc. There is no provision in the Act or the Rules which deals with this aspect, making it a tough call for women to approach the mechanism under the Act.

However there are citations pursuant to the Vishaka Judgement that: prohibited the transfer of the complainant except at her request; upheld the transfer of the employee found guilty of sexual harassment ; prescribed that inquiry proceedings into any case against an aggrieved woman be deferred pending the case filed by the complainant. These can be stated to bolster the case for incorporating relevant changes/ additions in section 12 of the Act. ¹³

The Act is biased against urban-office conditions

It does not provide the same civil remedy to domestic workers as it does to other women. Complaints from domestic workers have to be mandatorily forwarded to the Police Station, regardless of whether they want to use the criminal justice system or not. The civil remedy of compensation etc. is absent in their case.

In addition to this the Act also has certain class bias. The appeal provision does not also take care of where should a woman appeal against an unfavorable finding/order where the perpetrator is not an employee and not a person covered under the ID Act.¹⁴

The onus of implementation of the Act is simply been given to the Employers, what must be the responsibility of the State then

The Act places main responsibility on the employer for implementation and leaves the State largely out of the purview of responsibility. There is no set-time frame for the LCC's etc to be notified and no punishment for government officials for failing to do so.

¹² Provided by Mr. Ekalavya Vasudev from Lawyers Collective Women's Rights Initiative apart from other suggestions.

¹³ This point was indicated by Albertina Almeida from Saad Aangan

¹⁴ This point was indicated by Albertina Almeida from Saad Aangan

Recommendations Drafted For the Rules with Specific Focus on Accountability for the State Governments Provided By the National Resource Centre for Women, National Mission For Empowerment of Women, MoWCD, GOI¹⁵

Sec 19 Duties of Employer

- It is mandatory to all employers to constitute ICC and State Govt. to constitute LCC for addressing the issues of sexual harassment of women at workplace. It is also the responsibility of the employer to make aware or declare name and telephone no. of committee member to all employees so any person can approach to ICC & LCC.
- State Government in collaboration with the State Women's Commission or other women's group shall come out with training module on issues of Sexual harassment.
- Same IEC material for use for training for the member of ICC and LCC as per design as prescribed the module.

Sec 21(1) form and manner in which the ICC /LCC shall submit

- No. of complaint of Sexual Harassment cases received in the following year
- No. of complaint disposed during the year
- No. of complaint disposed within time frame
- Nature of interim relief sought
- No of cases where the accusation was upheld
- No. of false complaint received
- No. of training or awareness campaign against Sexual Harassment undertaken in organizations
- No. of action taken by employer / district official
- No. of complaint where conciliation was sought

Sec 23: Constitution of State-level Vigilance and Monitoring Committee.-

- The State Government shall constitute high power vigilance and monitoring committee of not more than 7 members consisting of the following:
 - Minister of Women and Child development in the State/Administrator-Chairman
 - Home Minister, Finance Minister, Social Welfare, Minister of Labour and Employment (in case of a State under the President's Rule Advisors-Members) in the State;
 - Members of State Women Commission / State Resource Centre for Women (SRCW)
 - The Principal Secretary in-charge of the Women and Child Development
 - The two members of civil society groups specifically women's groups will be part of this
- The high power vigilance and monitoring committee shall meet at least twice in a calendar year, in the month of January and July to review the implementation of the provisions of the Act and other matters connected therewith, prosecution of cases under the Act, rule of different officers/agencies responsible for implementing the provisions of the Act.

¹⁵ "There is a punishment to Government officials prescribed under section 17 but what has to be prescribed further for accountability under the rules as per section 17 of the Act has not been done", is also raised by Albertina Almeida from Saad Aangan.

Some Specific Recommendations Forwarded By PLD (Partners for Law in Development)

1. While Section 10 provides for options of a settlement between the aggrieved woman and the respondent, if the aggrieved woman so wishes; and Section 13 (3) lays down the civil action to be taken by the employer or District Officer upon the complaint being proved. The above two redress options are under the civil process. In addition, since criminal remedy is simultaneously available to the complainant, she is entitled to pursue it under the IPC - with the assistance of the employer under section 19 (g). We assume, even before the employer is convinced of the veracity of the complaint s/he must assist with criminal option - if the complainant so requests. However, it appears that the spirit of giving complainants the civil - criminal or both option is undermined by Section 19 (h) which makes it mandatory for the employer to initiate action against the 'perpetrator' under the IPC of any other law – (i.e. upon complaint being proved correct) irrespective of whether the aggrieved woman so desires. **The law needs to clearly stress that the complainant exercises the option - and her choice is the final choice - otherwise she is put to a double burden of pursuing two remedies - consecutively, and this will deter many women from complaining as it forces them into the criminal justice system.** This may be the result of bad drafting, because she may opt for criminal redress subsequent to her complaint being proved correct - but it can't be mandatory. As the law allows women to even 'settle' the matter, surely there it was made with the spirit of providing her a quiet redress, rather than forcing her into two mechanisms of redress. In view of Section 19 (g), Section 19 (h) seems irrelevant. Further, the aggrieved woman should have the option of either settling the matter; or filing a complaint with the ICC/LCC; or of opting for simultaneous proceedings under IPC and ICC/ LCC. Criminal action should not be mandatory.
2. **ICC may not be free of power dynamics if the respondent is a senior official or management. In such a situation, complainant should be given an option of approaching the LCC instead of having to file the complaint with the ICC.**
3. **The Act does not provide any clarity on whether educational institutions form a 'workplace'.** There are a few higher education institutions that have a working Sexual Harassment Committee in place and would prefer to continue with the system they have established and is successfully working, particularly as the Act limits who may be members on the Committee (and appears to exclude students).
4. **The definition of Sexual Harassment under Section 2 (n) (i) is ambiguous.** According to the sub-section, any unwelcome physical contact and advances would fall within the ambit of Sexual Harassment, irrespective of the nature/intent of the contact or advance. The definition as provided in the Vishaka Guidelines should be incorporated in the Act. As per the guidelines, '...sexual harassment includes such unwelcome sexually determined behavior...'
Also does the Definition of sexual harassment (n) (v) define (n) (i) to restrict it to physical contact and advances only to those of sexual nature?¹⁶
5. **The criteria for the members constituting the ICC/LCC make it extremely difficult for most workplaces to constitute such a committee.** The criteria that one of the members

¹⁶ This point was indicated by Albertina Almeida from Saad Aangan

should be a person nominated amongst the non-governmental organizations or associations committed to the cause of women puts unnecessary burden on women's organizations to be part of a sexual harassment committee. The other criteria, being that two members from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge, is not only obscure, but almost impossible to fill.

Recommendations from Saad Aangan

1. **With regard to Section 26:** To whom does one complaint about the employer's failure to constitute committee etc. Who has to initiate action? Not indicated. Would the ICC be construed as an Inquiry authority under the service rules as held in Medha Kotwal Lele? This needs to be specified now that there is a law.
2. **Definition of Respondent:** Does this mean the perpetrator can also be a woman or transgender? Since the word person is used?
3. **Rule under 6 (iii) is not very clear.** It says where the woman is unable to file a complaint, what conditions will be considered as being unable to file a complaint and what conditions will be considered as able to?

ANNEXURE 1

AGENDA

Focus Group Discussion on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 organized by NMEW and UN Women, 3rd March, 2014

UN Women Conference Room, 19 A Rajdoot Marg, Chanakyapuri

11:00 am	Welcome Remarks by Dr Rebecca Reichmann Tavares UN Women's Representative for India, Maldives, Bhutan and Sri Lanka
11:05 am	Setting the context, Padmaja Mehta, Senior Economic Advisor & Mission Director, National Mission for Empowerment of Women (NMEW), Ministry of Women and Child Development, Government of India
11:15 am	Introductory Remarks by Rashmi Singh, Executive Director, National Resource Centre for Women (NRCW), National Mission for Empowerment of Women (NMEW), Ministry of Women and Child Development, Government of India
11:30 am	Tea
11:45 am	Inviting thoughts on identifying the gaps in the act and the challenges in implementation- Round Table Discussion
1:30 pm	Lunch
2:00 pm	Recommendations to bridge the gaps
3:00 pm	Tea
3:15 pm	Inviting Action Points
3:55 pm	Closing Remarks by Anju Pandey

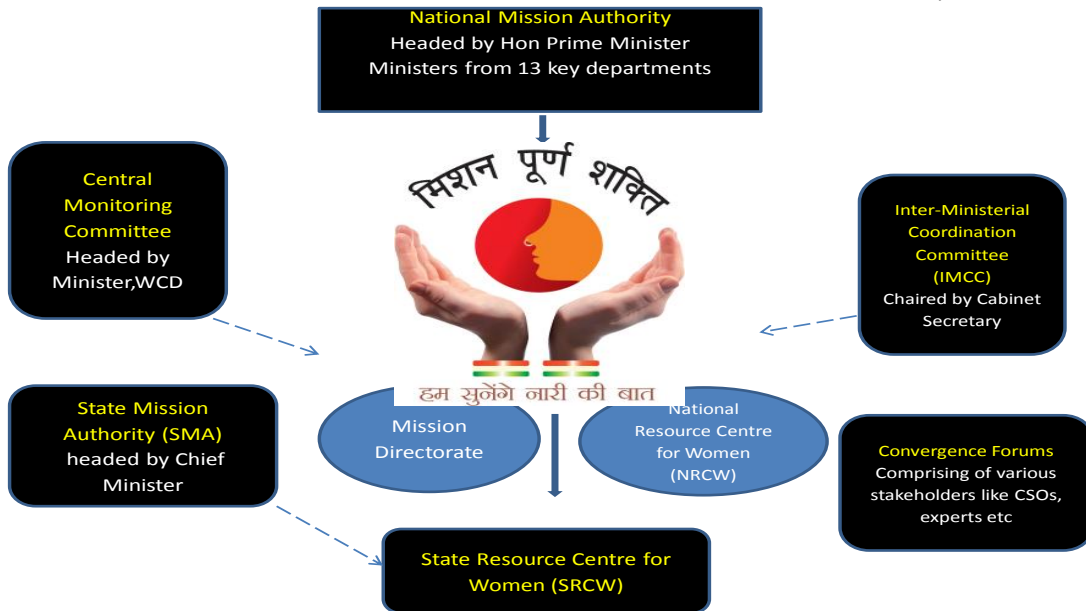


**PRESENTATION
ON
THE SEXUAL HARASSMENT OF WOMEN
AT WORKPLACE
(PREVENTION, PROHIBITION AND
REDRESSAL) ACT, 2013**

Dr Poulomi Pal,
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Contact: nmew.gr@gmail.com, 9811752627

National Mission for Empowerment of Women

Launched On March 8, 2010

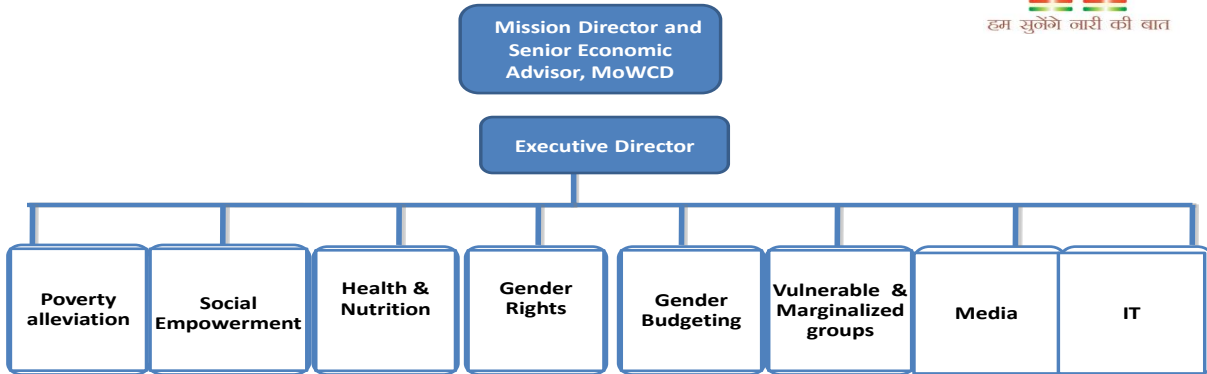


PARTNER MINISTRIES

- ✓ Ministry of Human Resource Development
- ✓ Ministry of Finance
- ✓ Ministry of Housing & Urban Poverty Alleviation
- ✓ Ministry of Rural Development
- ✓ Ministry of Panchayati Raj
- ✓ Department of Agriculture and Cooperation
- ✓ Ministry of Health & Family Welfare
- ✓ Ministry of Micro, Small & Medium Enterprises
- ✓ Ministry of Law & Justice
- ✓ Ministry of Environment & Forests
- ✓ Ministry of Labour & Employment
- ✓ Ministry of Social Justice & Empowerment
- ✓ Planning Commission



NATIONAL MISSION FOR EMPOWERMENT OF WOMEN: ORGANIZATIONAL STRUCTURE



GENDER BASED ISSUES AT THE WORKPLACE

- Working Hours
- Equal Remuneration
- Minimum Wages
- Maternity Benefits
- Social Security Benefits
- Health / Disability/ and Old Age Benefits
- Safety / Security/ and Compensation for Accidents
- Crèche Facilities
- Gender bias in Recruitment and Professional Policies
- Double Burden (as women and as women workers)
- 'Invisible' / Unpaid work for Women Workers
- Sexual Harassment at the Workplace



VISHAKA GUIDELINES



- In India, the issue of sexual harassment in the workplace gained precedence with the pivotal case of Vishaka and others vs. The State of Rajasthan, 1992. This was related to the case of the sexual harassment followed by gang-rape of a government social worker, Bhanwari Devi.
- A Writ Petition filed in the Supreme Court under the collective platform of Vishaka, a women's organization, along with four others, led to the Supreme Court directives.
- These directives, termed the Vishaka Guidelines were part of the historic judgment passed on 13 August 1997. **It recognized that sexual harassment of working women amounts to violation of the rights of gender equality, violation of the right to practice any profession, occupation, and trade. It included definition of sexual harassment, and stated that "such conduct can be humiliating and may constitute a health and safety problem", emphasizing preventive measures for sexual harassment.**

FROM VISHAKA TO THE ACT



- Pursuant to Vishaka the Government of India requested the National Commission for Women (**NCW**) to draft 'the sexual harassment at the workplace (prevention and redressal) **Bill**.'
- In 2001 there was a writ petition by the Supreme Court based on the Medha Kotwal Lele & Others vs. Union of India & Other Medha Kotwal. This **petition sought the implementation of the Vishaka Guidelines by the central and state Governments of India**. Despite the Vishaka Guidelines there were and continue to be numerous instances of harassment in various private workplaces such as **educational institutions, Bar Associations, Medical Councils** and all other professional and technical associations, where compliance to the Guidelines do not exist. This petition aimed to put pressure on the Government to enact comprehensive legislation to ensure a safe, harassment and violence free working environment for all women in India.
- It was in 2010, more than 10 years after Vishaka, that **the Bill was introduced in the Lok Sabha on December 7**.
- **On 23rd April 2013 the President of India gave his assent** to the bill thereby making it an Act.

WHAT IS SEXUAL HARASSMENT?



The Sexual Harassment of Women (*Prevention, Prohibition and Redressal*) Act 2013 defines sexual harassment to include any one or more of the following unwelcome acts for behaviour :

- Physical contact and advances
- A demand or request for sexual favours
- Making sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

WHAT IS SEXUAL HARASSMENT AT WORKPLACE?



The sexual harassment of Women (Prevention, Prohibition and Redressal) Act 2013 states that if the following circumstances occur or are present in relation to, or connected with any act or behaviour of sexual harassment, it may amount to sexual harassment at the workplace.

- *Implied or explicit promise of preferential treatment in her employment; or*
- *Implied or explicit threat of detrimental treatment in her employment; or*
- *Implied or explicit threat about her present or future employment status; or*
- *Interference with her work or creating an intimidating or offensive or hostile work environment for her; or*
- *Humiliating treatment likely to affect her health or safety.*

EXAMPLES OF SEXUAL HARASSMENT IN DIFFERENT FORMS



VERBAL FORM

- Sexual or gender-based jokes or teasing
- Unwelcome sexual overtone in any manner such as over telephone
- Requesting sexual favours
- Telling lies or spreading rumors about a person's personal or sex life
- Pressure for meeting/dates
- Comments about clothing, personal behaviour, or a person's body
- Graphic descriptions of pornography

NON-VERBAL FORM

- Staring
- Sizing up a person's body (looking up and down)
- Derogatory gestures of a sexual nature
- Facial expressions of a sexual nature; winking, licking lips
- Stalking

CONT



VISUAL FORM

- Presence of sexual visual material such as posters, cartoons, drawings, calendars, pinups, pictures, computer programs of sexual nature
- Written material that is sexual in nature, such as notes, SMS, E-mail containing sexual comments
- Objects of a sexual nature.
- Unwelcome hugging, sexual touching or kissing

Physical form

- Forcible physical touch or molestation
- Standing too close to or brushing up against another person, leaning over, invading a person's space
- Patting, stroking, grabbing or pinching
- Blocking someone's path with the purpose of making a sexual advance
- Rape or attempted rape
- Actual or attempted sexual assault, or forced fondling.

DEFINITION OF WORKPLACE



- Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit in the public sector; either established/owned, controlled or wholly or partly financed by funds received directly or indirectly by the government or local authority or a government company or corporation or a co-operative society.
- Any private sector organisation or a private venture; undertaking, enterprise, institution, establishment, society, trust, non –governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or services.
- Hospitals or nursing homes.
- Any sports institutes, stadium, sports complex or competition or games venue, even the residence if used for training, sports or other related activities.
- 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 house.
- Workplace of unorganized sector.

WHAT IS THE WORKPLACE IN THE UNORGANIZED SECTOR?



An enterprise owned by individuals or self-employed workers:

- engaged in the production of goods
- engaged in the sale of goods
- providing service of any kind whatsoever
- Where the enterprise employs workers and the number of such workers is less than 10.

PREVENTING SEXUAL HARASSMENT



The duties of an employer and/or the appropriate Government towards the prevention of sexual harassment in the workplace have been explicitly laid down in the Acts as follows:

- Provide a safe working environment at the workplace which shall include safety from third party (outsiders) coming into the contact at the workplace.
- Display penal consequences of sexual harassment.
- Display information about the grievance handling mechanisms including about the Internal Complaint Committee/ Local Complaints Committee.
- Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provision of the Act.
- Organize orientation programmes for the members of the Internal Committee.
- Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

CONT



The Act mentions that Government offices will also be responsible for the following:

- Advance the understanding of the public of the provisions of the Act.
- The Central and State Governments are mandate to develop relevant IEC and training materials and organise awareness programmes to advance the understanding of the public on the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.
- Formulate orientation and training programmes for the member of the Local Complaints Committee.

COMPOSITION OF THE INTERNAL COMPLAINTS COMMITTEE



Presiding Officer (Senior Female)

- Must be a woman employed at a senior level at workplace form amongst the employees.
- *"If there no senior level women employed at a senior level; the presiding officer shall be nominated form other offices or administrative units of the workplace. If other offices do not have a senior level employee, the presiding officer shall be nominated form any other workplace of the same employer or other department or organization"*

Member (Female)

- Employees with commitment to the cause of women, experience in social work, or legal knowledge

Member (Male)

Member (Female)

- Must be form a third party (e.g. NGO or association) and must have expertise and familiarity with gender issues and sexual harassment. Member appointed from amongst non-government organizations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less

COMPOSITION OF THE LOCAL COMPLAINTS COMMITTEE



Chairperson (Eminent female)

- To be nominated form amongst the eminent women in the field of social work and committed to the cause of women. The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceeding of the said Committee.

Member (Female)

- To be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district

Member (Female)

- To be nominated from amongst such non-governmental organizations or associations committed to the cause of women or familiar with the issues relating to sexual harassment:
- *At least one must be a woman.*
- *At least one of the members must have a background of law or legal knowledge*
- *One of the nominees shall be a woman belonging to the scheduled caste, scheduled tribes or the other backward classes or minority community notified by the Central Government"*

Member (Male)

Ex Officio member

- The concerned officer dealing with the social welfare or women and child development in the district

The members are entitled Rs two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition of air conditioned bus and auto rickshaw or taxi or actuals

POINTS TO REMEMBER FOR THE COMPLAINTS COMMITTEE MEMBERS



- Once a complaint of sexual harassment is brought to the Committee, it must be registered immediately and a **written complaint filed**.
- The Chairperson of the Internal Complaints Committee should convene a meeting of the Committee **within 48** hours of the receipt of complaint.
- A quorum should be maintained for the Complaints Committee meeting, which stipulates **50 per cent attendance of the members**. The presence of Chairperson is mandatory.
- According to the principles of natural justice

FILLING A COMPLAINT AT THE LOCAL POLICE STATION UNDER THE INDIAN PENAL CODE



Assistance must be provided to the aggrieved should she choose to file a complaint in relation to the offense under the Indian Penal code or any other law. Or, when an instance of sexual harassment amounts to specific offence under the Indian Penal Code, or under any other law, the employer shall initiate appropriate action in accordance with the law by lodging a complaint with the appropriate authority.



TIMELINES AND STEP BY STEP APPROACH IN THE IMPLEMENTATION OF THE ACT

- **Constitution of Internal Complaints Committee and Local Complaints Committee**
- **Notification of the District Officer** (District Magistrate/ Collector/ Deputy Collector)
- **Complaint of Sexual Harassment**- 6 copies along with documentation and name of witnesses
 - sent to respondent to respond within a period of seven days
 - the respondent has to respond within 10 days
- **Conciliation**-The conciliation can only happen at the request of the aggrieved woman and money cannot be the basis of this settlement.
- **Inquiry into the complaint** within 90 days
- **Action during pendency of enquiry**- temporary restraint for the aggrieved and respondent work together on assignments/ supervision positions
- **Inquiry report** within 10 days of completion of the enquiry
- **Punishment** of the guilty / false and malicious complainant/false evidence-written apology, warning, reprimand or censure, withholding of promotion, withholding to pay rise or increment, terminating the respondent, undergo counseling, community service etc
- **Determination of compensation** based on trauma caused, medical expense, financial status of respondent, feasibility of payment, loss of employment
- **Prohibition and penalty for publication** or making known contents of complaint and enquiry proceedings
- **Appeal**
- **Submission of annual report**
- Appropriate Government to **publicize the Act**
- **Penalty for non compliance**



CHALLENGES

- Section 10(1) which speaks of **conciliation** which is contrary to the nature and spirit of the Vishakha Guidelines
- **Penalizing a women for filing a false complaint** which is contrary to the objective of the law
- Section 11(ii), which enables **the Internal Complaints Committee to be given powers of a civil court for summoning discovery and production of documents whereas the composition is without any legal background** and no requirement of trainings thereafter is there in the provisions
- The Justice Verma Committee mentioned the **formation of a Tribunal** to determine the compensation to be given to the aggrieved; consider oral complaints in situations where the complaint could not be written; power to direct the employer to either transfer the aggrieved woman or the respondent or to grant leave to the aggrieved woman (subject to her consent); reprimanding the aggrieved woman/ witness in cases of falsification; inspections of establishments amongst other things.
- The implementation of this Act should be including government institutions, all public bodies, all panchayats, all establishments covered under the Factories Act and the Industrial Disputes Act and all employers in the private sector, **armed forces, police, agricultural workers and women students/ staff of all schools and educational institutions.**
- Section 9(1) stating the **limitation of three months** for the complaint to be made might be difficult in some cases.

Photographs



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