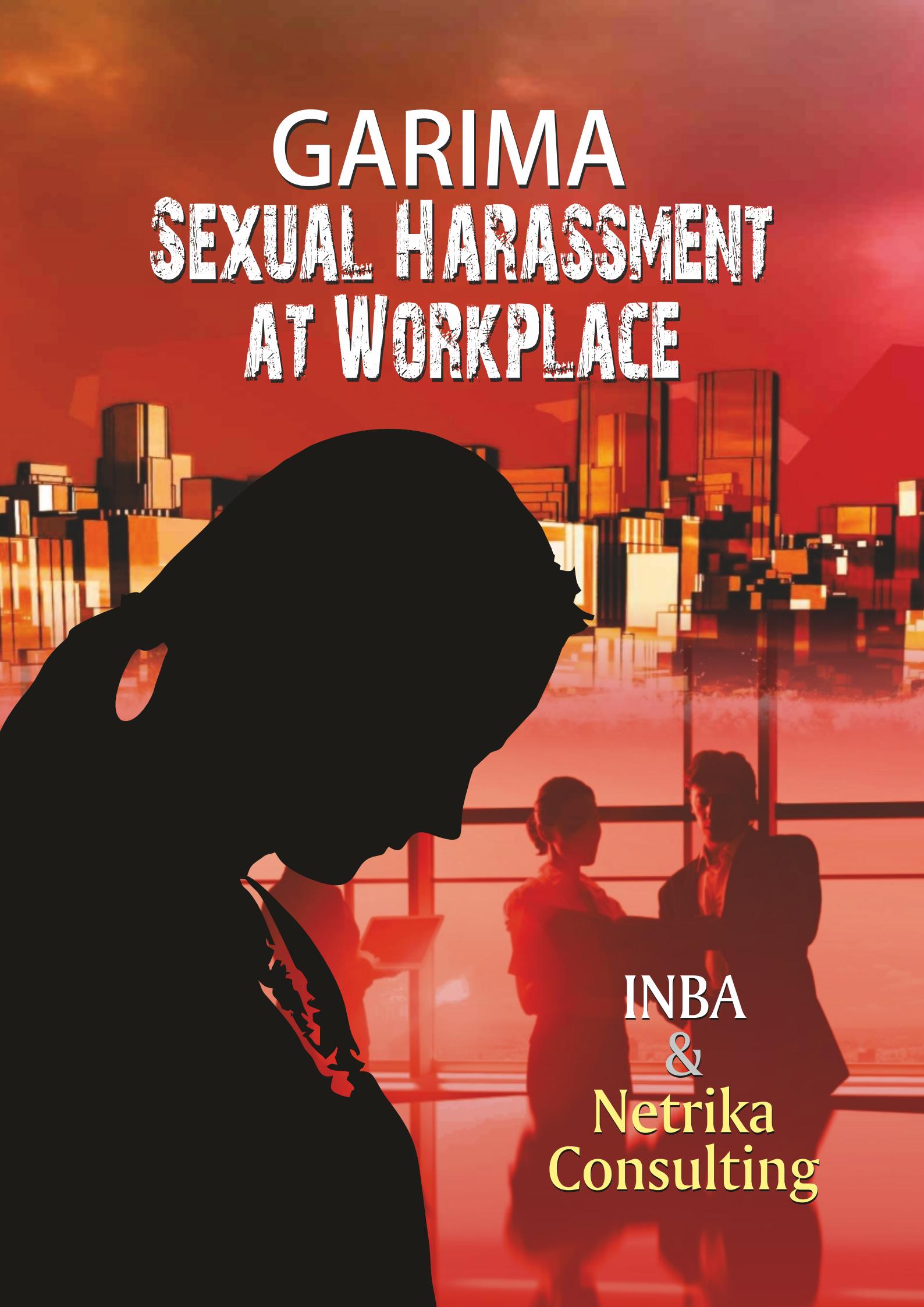


GARIMA SEXUAL HARASSMENT AT WORKPLACE



INBA
&
Netrika
Consulting

GARIMA

Sexual Harassment at Workplace



PRABHAT BOOKS

A Division of Prabhat Prakashan

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GARIMA:

Sexual Harassment at Workplace

Edition

First, 2017

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Key Note

Organizations across sectors have recognized the need and importance of diversity at workplace. Employers are spending huge amount of time and energy on attracting and retaining a diverse workforce. If the atmosphere provided to diverse workforce is not congenial, all efforts go waste.

Providing a safe and dependable atmosphere to its employees not only increases the reputation and productivity of an organization; it also protects it from any unforeseen future liability.

Over decades via various studies, it is noted that those while fulfilling their duties and trusted roles as partners and as leaders, providers of guidance, support and protection, commit such an offence believing that there will be no repercussion on them.

Despite the enactment of various laws and increase in level of awareness among workforce; majority of the victims are still reluctant in reporting such incidents due to fear. The companies do not follow the process prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Finally, in most of the cases, the victims have to leave the organizations.

With the increase in number of instances of sexual harassment cases at workplace; the liability of the organizations to address them effectively increases. This book guides corporate on where are they lacking; the applicable laws and acts in India; how to take preventive and corrective measures; sexual harassment committees and their roles and recommendations based on the best industry practices.

To sum up, I would like to mention a famous quote from 'Manusmriti'

यत्रनार्यस्तुपूज्यन्तेरमन्तेतत्रदेवता: ।
यत्रैतास्तुनपूज्यन्तेसर्वास्तत्राफला क्रिया: ॥

Meaning – Women are honored where, divinity blossoms there, and where women are dishonored, all action no matter how noble remain unfruitful.



Mr. Sanjay Kaushik

*Managing Director
Netrika Consulting &
Investigation*

Key Note

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...." Chief Justice J.S. Verma, Supreme Court of India, *Vishaka v. State of Rajasthan* (1997) 6 SCC 241

With improvement in education and employment scenario, millions of Indian Women are joining Country's workforce today. Many working women face sexual harassment at workplace on a daily basis. As per Article 14 and 15 read with Article 20 of the Constitution of India, sexual harassment at the work place results in violation of their fundamental right of their equality as well as right to live with dignity. The sexual harassment at work place is an extension of violence in everyday life and is discriminatory and exploitative. It seriously prejudices women's right to life and livelihood.

The Supreme Court of India for the first time in the year 1997, enforced the fundamental rights of the Indian Working Women in the case reported as *Bhawari Devi Vs. State of Rajasthan*. As an outcome of the landmark judgment of *Vishakha and Ors. Vs. State of Rajasthan*, the sexual harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted. For the first time this act made it mandatory for every employer to provide a mechanism to redress grievances pertaining to sexual harassment at workplace. With the enactment of the act, India is now part of select group of countries to have prohibited sexual harassment at workplace through National Legislation. By enacting this act, Government of India strengthened its commitment to the ratification of the Convention on the elimination of all forms of Discrimination against Women (CEDAW).

I am pleased to see that the survey conducted by a dedicated team of INBA has been put into this Book and same would provide a handy reference to all concerned. If this book could serve its aim to ensure that the citizen of India is aware of their right and obligations in terms of creating safe workplace environment for women, it would be a great success.



Shri Kaviraj Singh

*Secretary General
Indian National Bar
Association*

Contents

1.	What is Sexual Harassment?	9
	Defining "Sexual Harassment"	9
2.	Sexual Harassment at Workplace	11
	Corrective Measures against SH at Workplace	11
	Examples of SH at Workplace	11
3.	Survey Results	14
	What Does the Act Say?	24
	A. Workplace	24
	B. Internal Complaint Committee:	25
	C. What is Considered to be Sexual Harassment	25
	D. Consequences on Failure to Constitute Internal Complaint Committee (ICC)	25
	E. Interim Measures During Inquiries	25
	F. Sensitization by Organisation	25
	G. Redressal and Complain Mechanism	26
4.	Posh-Prevention Of Sexual Harassment	33
	Forming Posh Policies	33
	Prevention Under the Act	33
	Forming of Complaints Committees	34
	Composition of the Internal Complaints Committee	34
	Composition of the Local Complaints Committee	34
5.	Existing Laws In India	36
	The Vishaka Guidelines	36
	Sexual Harassment of Women at Workplace Act, 2013	36
	Other Laws Pertaining to Workplace Sexual Harassment	36
	Industrial Employment (Standing Orders) Act, 1946 Indian Penal Code, 1860	36
	The Supreme Court Decisions	38
6.	Conclusion	40
7.	Recommendations for Corporate	41
	Preventive Measures	41
	Corrective Measures	41
	<i>A Critical Analysis of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013</i>	42
	<i>About This Survey</i>	45
	<i>Endnotes</i>	46

1

What is Sexual Harassment?

Sexual harassment is an unwanted or unwelcome attention either by touch, speech or posture to a person in a manner making him/her uncomfortable. Surprisingly, there is no single definition for such prohibited conduct that amounts to sexual harassment despite numerous efforts to reduce such a behaviour.

Internationally, sexual harassment is described broadly as a form of violence against women including discriminatory treatment, whereas national laws focus more on the illegal conduct. However, all the definitions deduce that the prohibited behaviour is unsolicited, uninvited and causes emotional, social, psychological and physical discomfort and harm to the victim.

According to a UNICEF publication, violence against women and girls is a widespread and systematic violation of fundamental human rights and gender discrimination regardless of their age and socio-economic status. In addition, this violence is not just limited to physical and/or mental ferocity but incorporates sexual harassment.

The women and girls, worldwide, are facing emotional degradation, psychological trauma, various chronic health issues leading even to deaths because of the harassments they face on daily basis at homes, workplaces, institutions, communities, in social groups and all sorts of media circles.

Not even a fraction of our society, be it educational institutions, religious bodies, social groups, civil circles, business fraternity or government federations, is immune from violence especially sexual harassment against women within their own constructs and regimes.

The belief that only the uneducated, unoccupied or poor men commit such felonies is a myth. Well-read and well-fed communities comprising of engineers, doctors, lawyers, judges, parliamentarians, policemen, artists, security guards, senior public servants, chiefs, priests, teachers and educationists etc. are no exceptions when it comes to harassment of women.

"Additionally, such unacceptable actions are committed by them while fulfilling their duties and trusted roles as partners and as providers of services intended to lead, guide, comfort, support and protect" candidly narrated by a UNICEF report.

Sexual harassment is a clear violation of women's rights. It is crippling reality in the work and social environment.

DEFINING "SEXUAL HARASSMENT"

Term Sexual Harassment, by default, is considered as the sexual abuse or harassment of women.

Sex/ual Har/ass/ment (Noun)

"Harassment (typically of a woman) in a workplace or other professional or social situation involving the making of unwanted sexual advances or obscene remarks"-defined by oxford dictionary.

The Supreme Court of India defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct.

Examples included:

- Sexually suggestive remarks about women
- Demands for sexual favours, and
- Sexually offensive visuals at workplace

"I am not your dog that you whistle for; I'm not a stray animal you call over, and I am not, I never have been, nor will I ever be, your "baby"!"

—Joy Jennings, I'm Not Your "Baby": An Australian woman's tortured life of sexual harassment and assault

"Self-respect by definition is a confidence and pride in knowing that your behaviour is both honourable and dignified. When you harass or vilify someone, you not only disrespect them, but yourself also.

Street harassment, sexual violence, sexual harassment, gender-based violence and racism, are all acts committed by a person who in fact has no self-respect. - Respect yourself by respecting others."

—Miya Yamanouchi, Embrace Your Sexual Self: A Practical Guide for Women harassment and assault

2

Sexual Harassment at Workplace

Sexual harassment (aka SH) at workplace is continuously increasing and such actions of assault or harassment are mostly carried out by someone who is in a position of power.

It is mostly feared that if sex discrimination compels the women to go for less paid jobs; sexual harassment forces them to stay there. This may not be the intention of a harasser; such fears and forces co-exist.

The harasser at work-place acts beyond trying a woman which makes her feel vulnerable and make her also believe that her job is extremely difficult. This unwanted tension further makes her hesitant in reporting the matter to the authorities.

Sexual harassment creates the environment of intimidation and repression, further throwing the victim into self-blame and doubting her own worth. The victim of sexual harassment at workplace starts enduring hostility and degradation, pressure which her male colleagues don't have to face, making it harder for her to compete for the job and/or career growth.

CORRECTIVE MEASURES AGAINST SH AT WORKPLACE

The Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013.

The act is in consistence with the Vishaka guidelines ensuring women's right to equality and harassment free workplaces. The act, as its name suggests, focusses on effective prevention, prohibition and redressal of sexual harassment incidents at workplace and its strict compliance.

EXAMPLES OF SH AT WORKPLACE

According to the Act, "Sexual Harassment" includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

1. Physical contact or advances
2. A demand or request for sexual favours
3. Making sexually coloured remarks
4. Showing pornography
5. Any other unwelcome physical, verbal or nonverbal conduct of a sexual nature

Examples of behaviours and scenarios that demonstrate sexual harassment under the Act are:

- Making sexually suggestive remarks or innuendos
- Serious or repeated offensive remarks, such as teasing related to a person's body or appearance
- Offensive comments or jokes
- Inappropriate questions, suggestions or remarks about a person's sex life
- Displaying sexist or other offensive pictures, posters, mms, sms, WhatsApp, or e-mails
- Intimidation, threats, blackmail around sexual favours
- Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones
- Unwelcome social invitations, with sexual overtones commonly understood as flirting
- Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit

- Physical contact such as touching or pinching
- Caressing, kissing or fondling someone against her will (could be considered assault)
- Invasion of personal space (getting too close for no reason, brushing against or cornering someone)
- Persistently asking someone out, despite being turned down
- Stalking an individual
- Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours
- Falsely accusing and undermining a person behind closed doors for sexual favours
- Controlling a person's reputation by rumourmongering about her private life

Some examples of behaviour that may indicate underlying workplace sexual harassment and merit inquiry:

- Criticizing, insulting, blaming, reprimanding or condemning an employee in public
- Exclusion from group activities or assignments without a valid reason
- Statements damaging a person's reputation or career
- Removing areas of responsibility, unjustifiably
- Inappropriately giving too little or too much work
- Constantly overruling authority without just cause
- Unjustifiably monitoring everything that is done
- Blaming an individual constantly for errors without just cause
- Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties
- Insults or humiliations, repeated attempts to exclude or isolate a person
- Systematically interfering with normal work conditions, sabotaging places or instruments of work
- Humiliating a person in front of colleagues, engaging in smear campaigns
- Arbitrarily taking disciplinary action against an employee
- Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed

To sum up sexual harassment covers situations of gender biasness at workplace towards a woman placing her in a disadvantageous position via threats to her employment or career progression.

Dossier

A woman employee accused TERI Chief RK Pachauri of sexual harassment. She had to quit the organisation after 8 months of unpaid and forced leave. Furthermore, to worsen, TERI Chief made the mistake of revealing her identity which confirms the fact that even the established names of the Industry needs urgent training to deal with sexual harassment cases.

The very sad outcome of such cases is that complainants' department profile is changed (mostly demoted) and is eventually terminated due to nonperformance/underperformance. The junior level employees find it difficult to report to the seniors because of the hierarchy and authority of the superiors. Most of the organisations refuse to accept or identify such issues because of their controversial nature and they want to safeguard themselves.

"If your flirting strategy is indistinguishable from harassment, it's not everyone else that's the problem."
—John Scalzi

*"You know... You're still my boss... Which means... This is sexual harassment...
Oh really? I guess I'll have to fire you then."*

—Lexi Cubbins

"Sexual harassment at work place is silent and torturous intimidation to the opposite sex and blocks the productive energy in the work place and is a self-destructive model. Please mend your behaviour. Self-respect by definition is a confidence and pride in knowing that your behaviour is both honorable and dignified. When you harass or vilify someone, you not only disrespect them, but yourself also.

Street harassment, sexual violence, sexual harassment, gender-based violence and racism, are all acts committed by a person who in fact has no selfrespect."

-Respect yourself by respecting others.

"लम्हों की गलतियों से सदियों को भुगतना पड़ा"

Mukesh Tyagi, Renowned TV and Film Actor

"We spend a considerable time of each day at the workplace, and, I believe that every employee has the right to a safe and secure environment. In the past, Sexual Harassment in the workplace was brushed under the carpet, as regulations in this area were quite weak. Over the past decade or so, however there has been rapid increase in both media attention and awareness around this topic, which has led to organization putting in various mechanism to address this challenge, in my experience, what most people forget to notice are the early warnings of harassment, leading to challenges later on, not just physical sexual harassment-verbal or mental harassment are just as important, as they play havoc with a person's overall motivation and well-being. If the trifecta of policies and regulations (with whistle-blower protection), reporting and redressal mechanism, and employee awareness is well implemented, it will always lead to a successful implementation of a Prevention of Sexual Harassment (POSH) program. I'm happy to see this survey, which will shed more light on the state of organizations with regards to this critical aspect of every workplace."

*John Robert-Global Head
VFS Global, Dubai*

"This is a very sensitive and a critical issue that has been prevailing in our country for a very long time. Culturally as a nation, the male sex has always been dominant and the female sex has been subservient. This attitude manifests itself in all spheres of our lives where men and women interact, especially in the work place. Rather than suffering silently it is time for women to find their voice and strongly oppose sexual harassment in all its varied forms whether they are victims or colleagues to the victims. It is time to put a full stop to the primitive belief that women are themselves to be blamed."

Komal Bhatia, Warner Bros

Indian civilization and culture has since many centuries given utmost respect to our women folk. For us every woman is either like our daughter, sister or mother. The one who joins us as our life partner also performs all these roles in our society. My simple view is look upon other women as you would like others to look at and behave with your own daughter, sister, mother. Same goes for the women they too may look at all as their brothers or elders. I have come across many situations but each time my heart and conscience have helped me to remain pure. I cannot allow any thought to affect my purity and pride and I am confident all our friends will keep themselves strong and happy. I would urge you to follow my motto "Nation First Character Must"

Best wishes, Jai Hind

Retd. Maj General Dilwar Singh

3 Survey Results

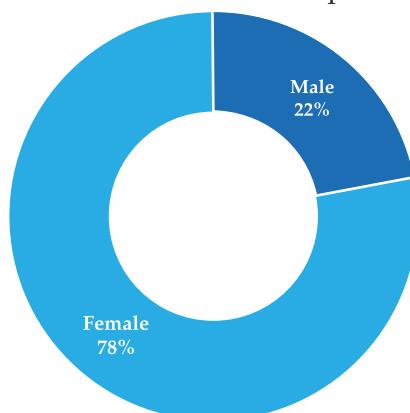
India has a diverse workforce as any other Country. In recent years, corporate culture has evolved in India and the women workforce over the years has grown appreciatively in all the work domains. Thus, leaving companies / organisations/ workplaces with no choice but to ensure secure working environment. The employers must ensure that their organisation has discrimination and harassment free working environment.

However, this comes with challenges if proper policies of sexual harassment are not in place. There is still unawareness and stigma among masses about sexual harassment and the laws and policies meant to report and redress sexual harassment cases. With many cases coming into light of sexual abuse and unfortunate incidents in different sections of our society, exposing the dark corners of workplace abuse, women protection has become a core issue, leading to the enactment of the **Sexual harassment of women at workplace (prevention, prohibition and redressal) Act 2013**.

These various factors steered INBA to conduct a survey to understand the severity and present status of sexual harassment at workplace in India.

India's largest Survey on Sexual Harassment at Workplace was conducted by **INBA during the period April 2016 to October 2016**. The hardcopies and online links of the questionnaire were given to the participants and victims at various places including but not limited to Assam, Kolkata, Noida, Gurgaon, Delhi, Mumbai etc. by INBA. 6047 participants both male and female and 45 victims both male and female responded. It is to note that not all the questions in the survey were answered by all the participants and victims.

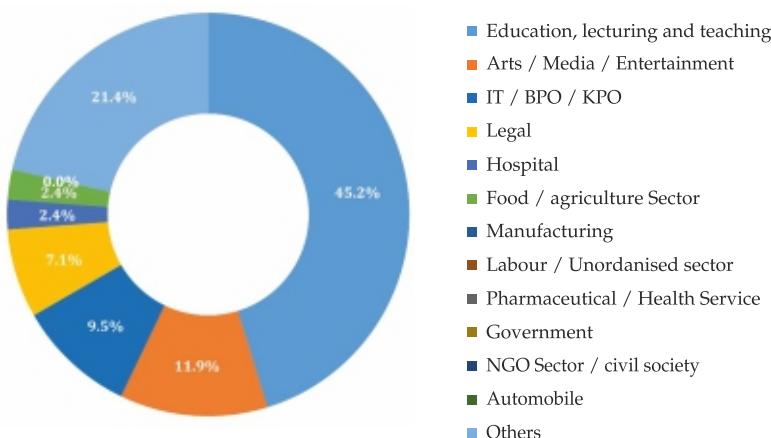
Sex ratio of victims is depicted below:



RESULTS

Results of the survey conducted on victims are:

1. Most of the respondents were from various work domains starting from IT, media, education, legal, medical, agriculture and to others.

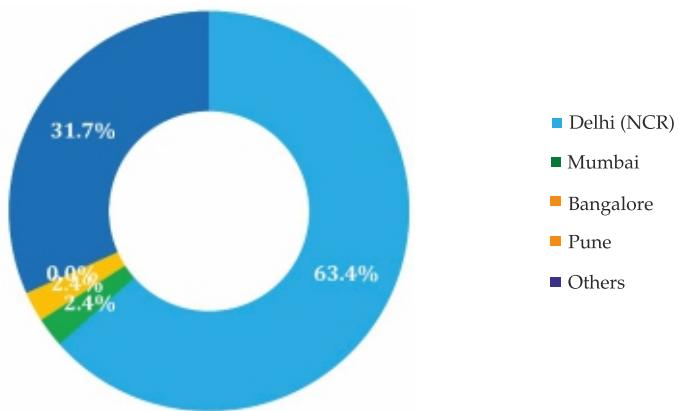


Response received: 91.11%

Survey Results

2. The respondent victims were employed mainly at Delhi, Mumbai, Bangalore and other regions like Assam, Jalandhar, Kolkata, Ahmedabad, Hyderabad and Lucknow with **age groups between 23-50 years.**

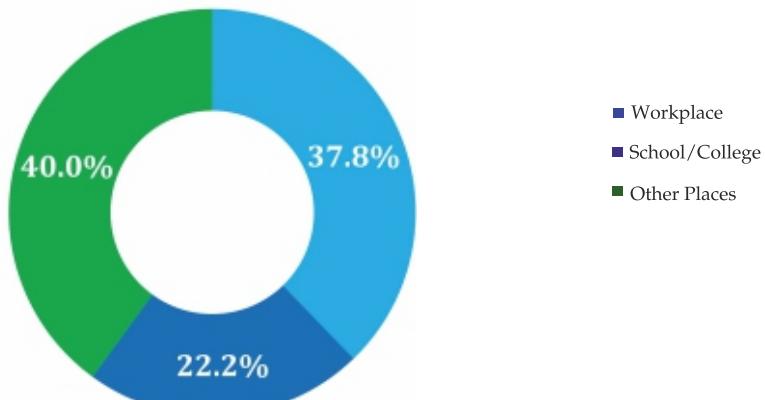
Current city of your workplace



Responses Received: 100%

3. There is no thing called as typical harassed woman, a victim can be from all ages, backgrounds, religion and experience sexual harassment in every work environment, and in various other areas of existence like: public transport, at home by some relative, neighbourhood, at school etc.

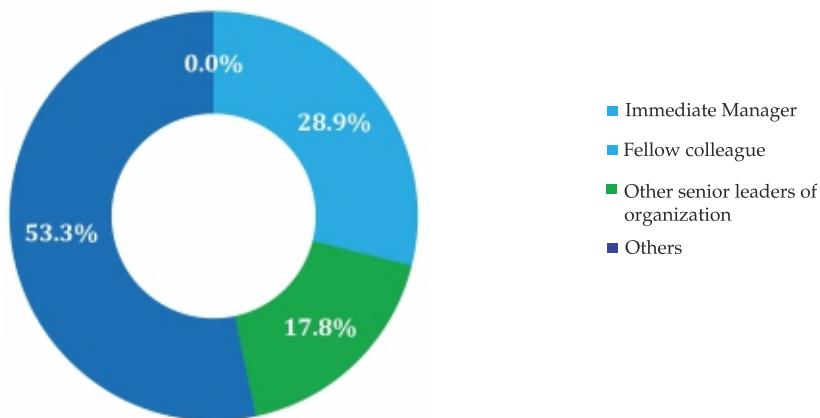
Where did you experience sexual harassment at workplace



Responses Received: 100%

4. It is a common perception that workplace sexual harassment is limited to interactions between the male bosses and female employees. Which is not true, the reality is sexual harassment can occur between any co-workers. The offender can be a customer, vendors, suppliers, supervisors, managers, it can include peer to peer harassment, same sex harassment, men being harassed by women, and vice versa.

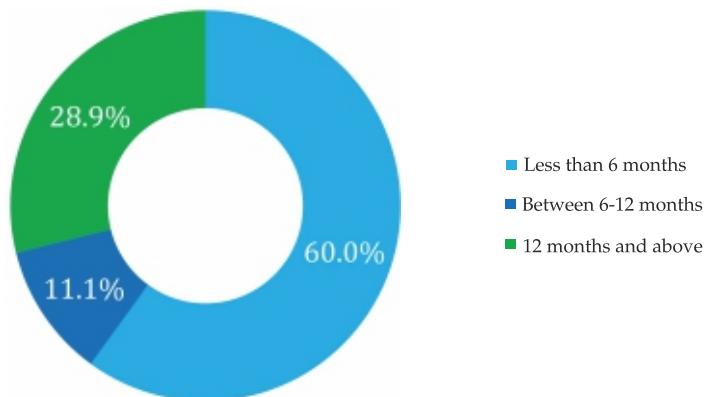
Who sexually harassed you?



Responses Received: 100%

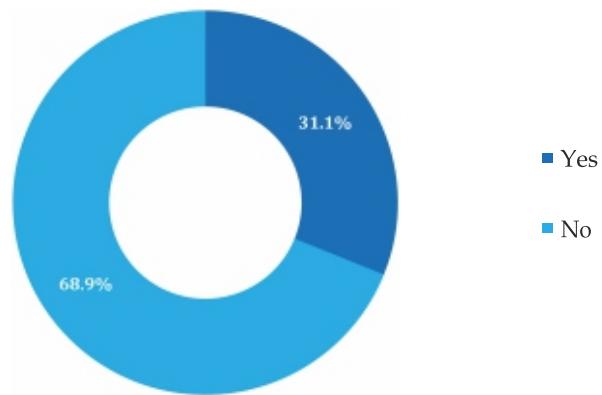
5. The survey revealed most of the women respondent victims, of not reporting to the management about their experience of sexual harassment at work and dealt with it on their own, reasons mostly due to fear, embarrassment, lack of confidence in the complaints mechanism, unawareness and due to stigma attached with sexual harassment

How long did the harassment go on before you reported it?



Responses Received: 100%

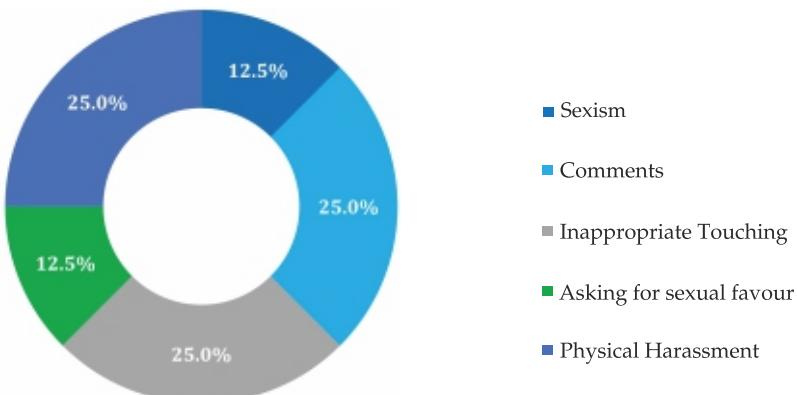
6. **Did you complain to the Internal Complaints Committee / management about the incident of sexual harassment? If No, what were your fears because of which you did not complain to Internal Complaints Committee/ Management?**



Responses Received: 100%

Results of survey indicate that at times victims are also reluctant to approach their superiors or SH committee due to fear of retaliation, subsequent repercussions and none the less sympathy with offender due to past mutual understanding.

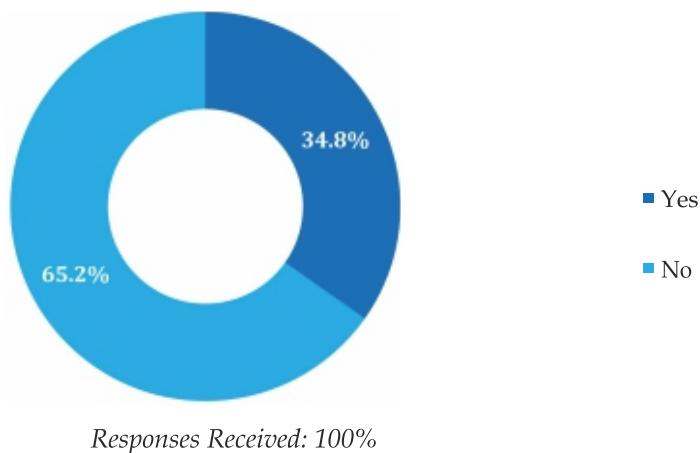
7. **What did the sexual harassment involve?**



Responses Received: 100%

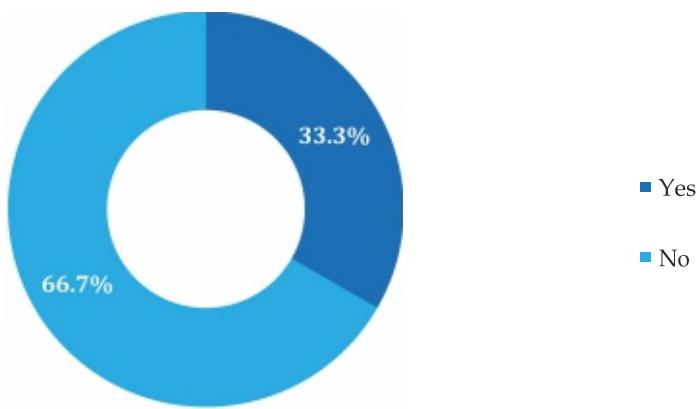
Survey Results

8. Did the company follow the process prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013? If no, share what provisions were contravened.



The victim respondents again confirming unawareness in regard with the policies for reporting sexual harassment as well as of the organisations not following the process, clearly defined by the **Sexual harassment of women at workplace (prevention, prohibition and redressal) Act 2013**.

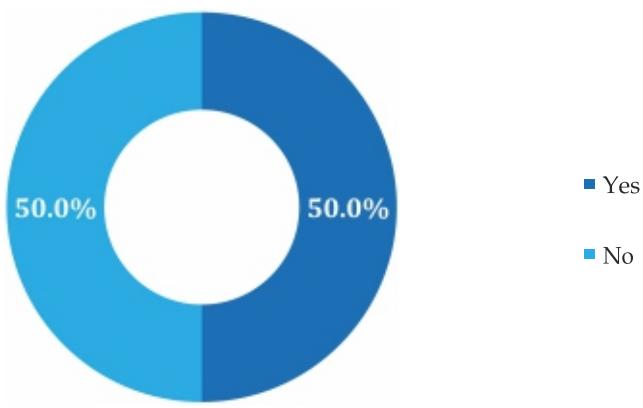
9. Do you think the Internal Complaints Committee dealt fairly with the compliant?



Responses Received: 100%

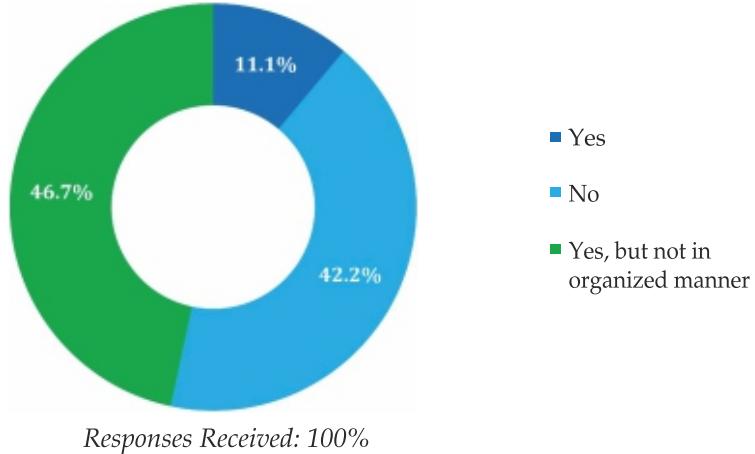
The survey revealed that still most of the organisations turn a blind eye at sexual harassment cases. **The consequences of non-compliance in forming a IC in the organisation have been clearly elaborated in The Sexual harassment of women at the workplace (prevention, prohibition and redressal) Act 2013.**

10. Post the case was closed by Internal Complaints Committee, did the victim continue with organization? If No, explain the reasons:

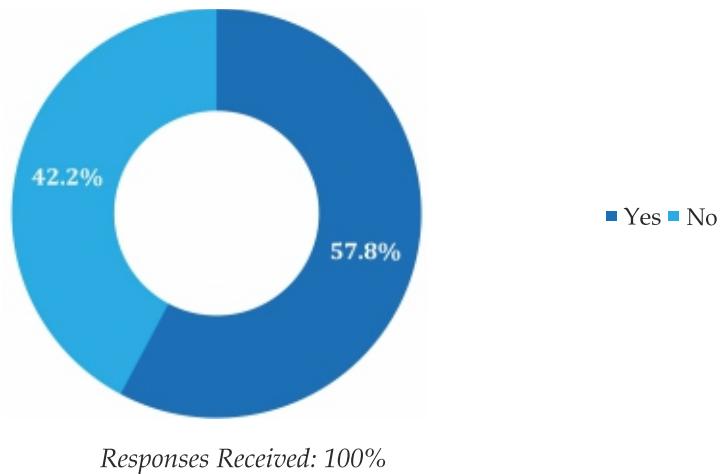


Responses Received: 100%

11. Do you think there are enough legal protection for workers who have been sexually Harassed?

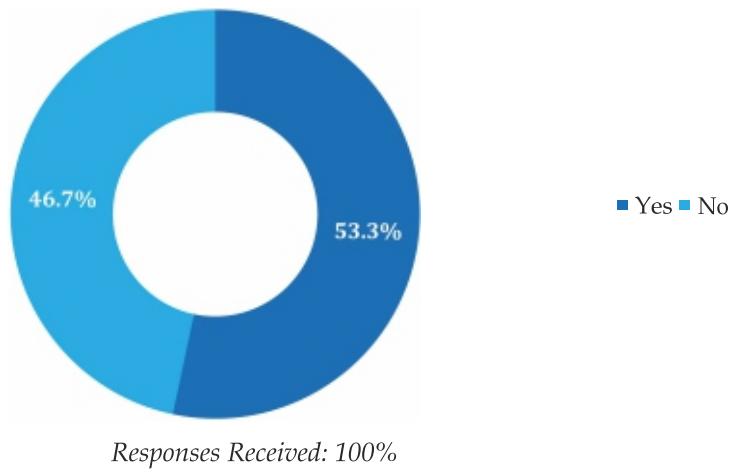


12. Were you treated fairly and supported by your peers during the period of inquiry?



It is clear from the above graph that the most of the victims who report of sexual harassment have to undergo stigma attached with the abuse and treated foster by the colleagues at the time of inquiry. One of the main reasons of the victims for not reporting the incident.

13. Do you think the members of Internal Complaints Committee were aware of the provisions under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?



Despite of the clear provisions in regard with the complaints process given in the Sexual harassment of women at the workplace (prevention, prohibition and redressal) Act 2013, the survey revealed that the complaints committees in most of the organisations is still not adhering and having knowledge of the process.

Dossier

A woman lodged a complaint with the Commission alleging sexual harassment by her boss who was also her academic mentor. The woman alleged that the sexual harassment occurred over a period of two years. The alleged harasser was in a position of authority over her in that she was his student and he was her boss. She claimed towards the end of the sexual harassment he 'stalked' her by following her and waiting outside her house.

The respondents denied the allegations stating that the relationship was mutual and that there was no sexual harassment.

In conciliation, the matter settled for the payment of \$60,000 for pain and suffering and the individual respondent provided a written apology. One of the two respondents settled the matter with the payment of \$5,000. Both parties were extremely pleased with the resolution of the matter.

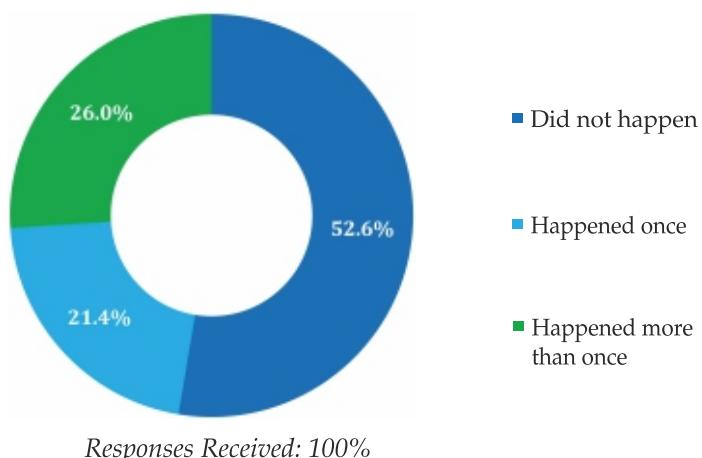
<https://www.adcq.qld.gov.au/resources/case-studies/sexual-harassment-case-studies>

The other participants (other than victims) in the survey revealed such facts, which are an eye opener that despite the policies, procedures against sexual harassment, the Vishaka guidelines, Sexual Harassment of Women at Workplace (Prevention, prohibition and Redressal) Act, 2013; sexual harassment still prevails in all sectors/domains of our society. The participants belonged to both genders. They belonged from different states, cities, districts of India.

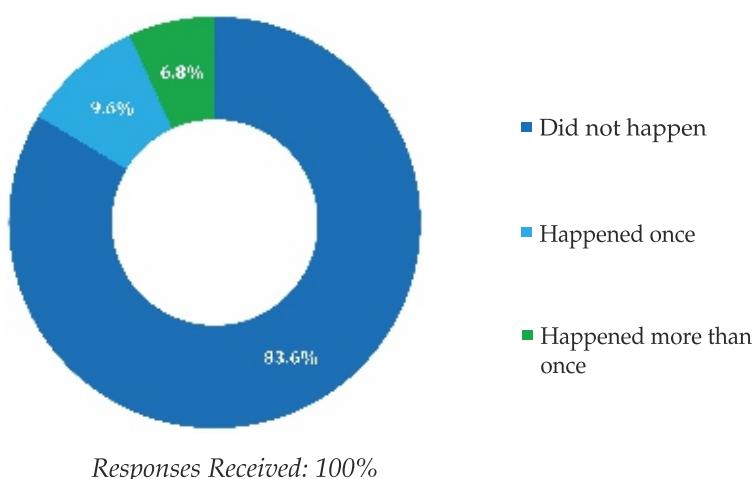
Results of survey of other participants are:

Part I

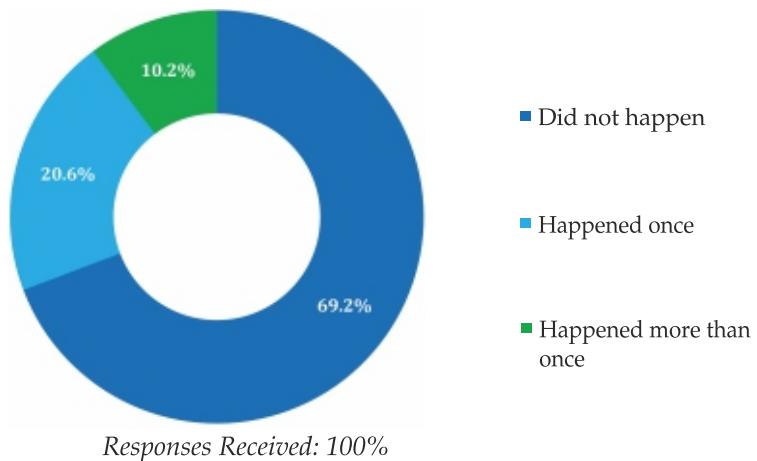
1. Having someone make unwelcome sexual comments, jokes or gestures to or about you:



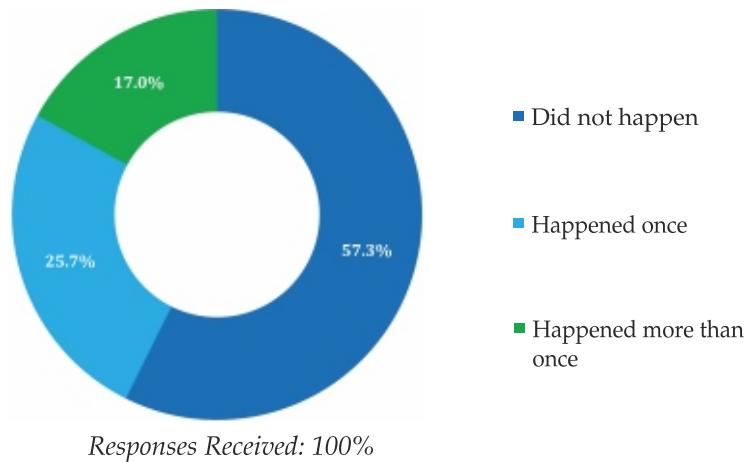
2. Being called gay or lesbian in a negative way:



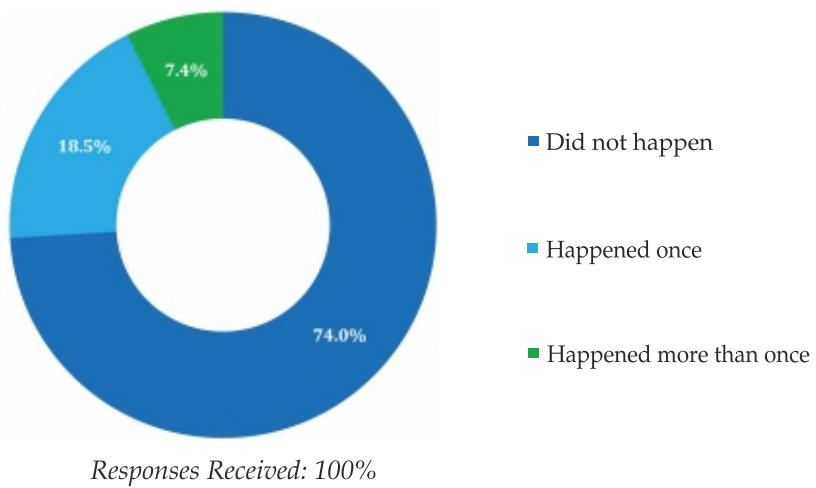
3. Being shown sexy or sexual pictures that you did not want to see:



4. Being touched in an unwelcome sexual way:

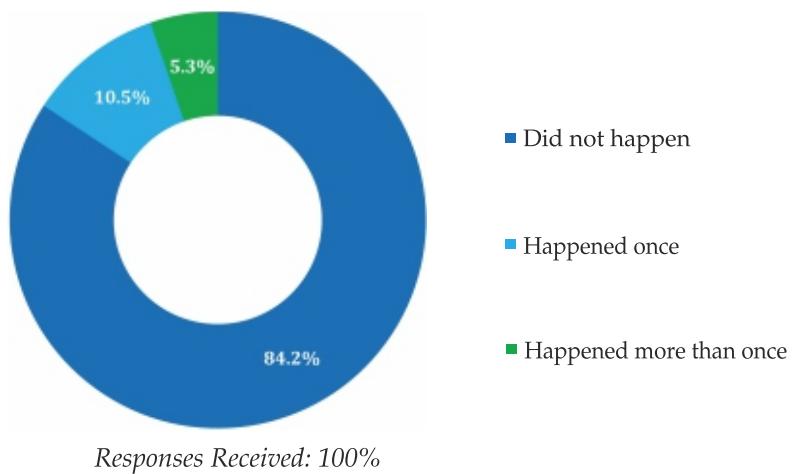


5. Having someone flash or expose themselves to you:



Survey Results

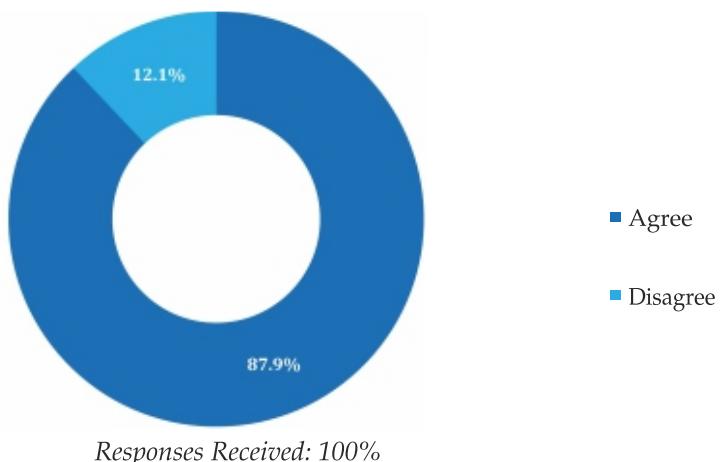
6. Being forced to do something sexual:



"He told me he was used to getting what he wanted."
—Celia Conrad, *A Model Murder*

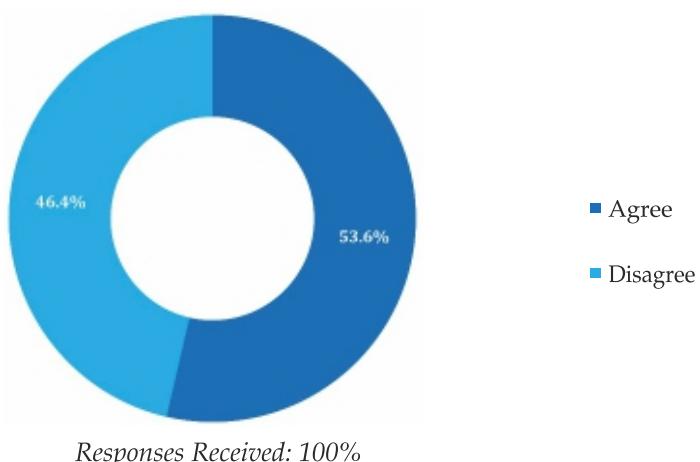
Part II

7. Sexual harassment occurs within our community.

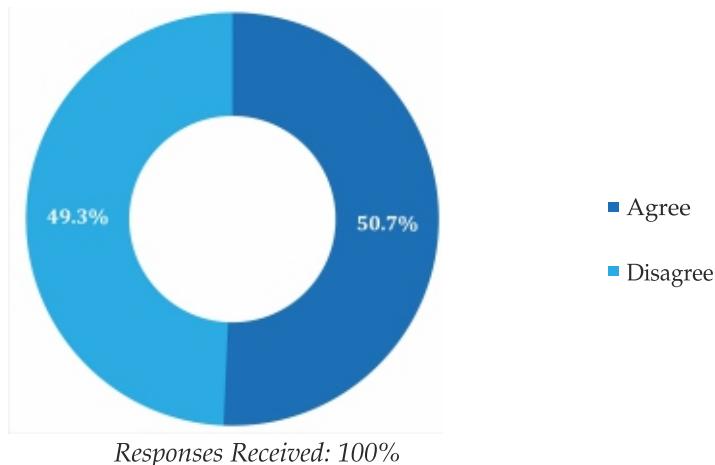


"Be an active bystander because sooner or later you or someone you love could be a victim too."
—Shahla Khan, *Friends With Benefits: Rethinking Friendship, Dating & Violence*

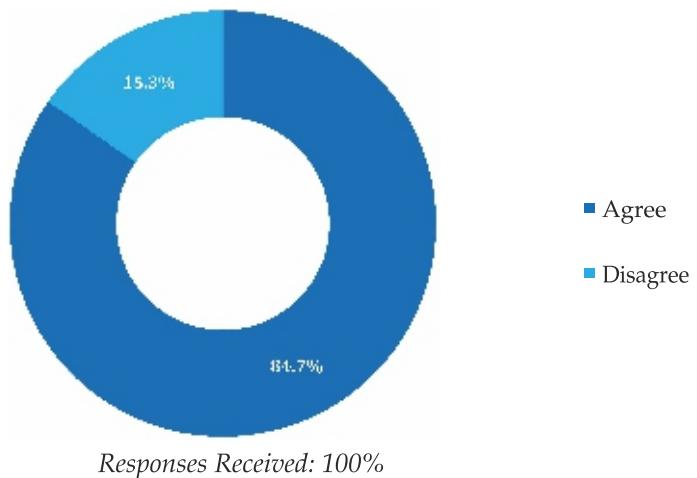
8. Have you personally witnessed, perpetrated or been a target of sexual harassment involving members of our community?



9. Have you personally witnessed, perpetrated or been a target of sexual harassment online or via social media?



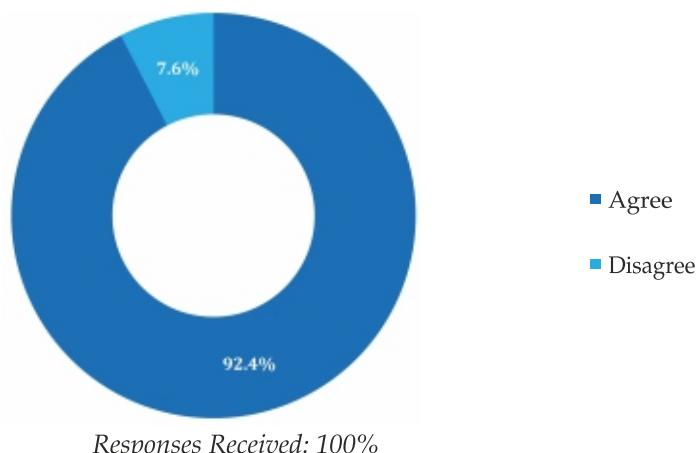
10. I believe that the student body at the school or college has the power to do something about sexual harassment.



The educational institutes should make all endeavours in designing a separate program in their curriculum on Sexual Harassment. The students at their stage should be made to understand about their sexuality and seriousness of Sexual harassment. They should be very firmly conveyed that sexual harassment has nothing to do with entertainment or something as "having a great time". Student years are also about building about value system.

It is during this fragile period they must learn how to achieve balance between themselves and others in the society and to identify what is justice, respectfulness, and empathy to inculcate good beliefs and behaviour in themselves.

11. I believe that adults, including parents, teachers, societies, counsellors and administrators, have the power to do something about sexual harassment.

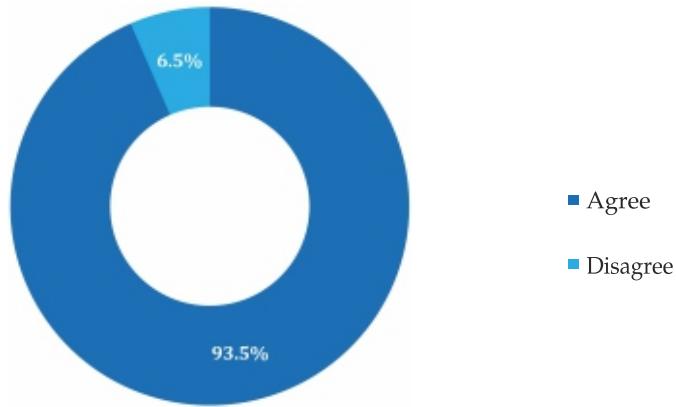


Survey Results

Parents, teachers, societies, counsellors and administrators play very important role in every person's life. The Head of the institutions should ensure that they have legally designed policies and procedures for dealing with sexual harassment, racial, sexual, discrimination cases, and should keep parents and students informed about the same. Schooling is the foundation of every person's life; it makes all the sense that at the early years of every one's life they should be educated and sensitized about moral behaviours. Why not to think of transforming from a root stage?

Part III

12. Do you agree that sexual harassment occurs at schools or colleges, society, workplace etc.



Responses Received: 100%

"your enjoyment is not another's suffering. The melody of your ears must not be the cries of a powerless."

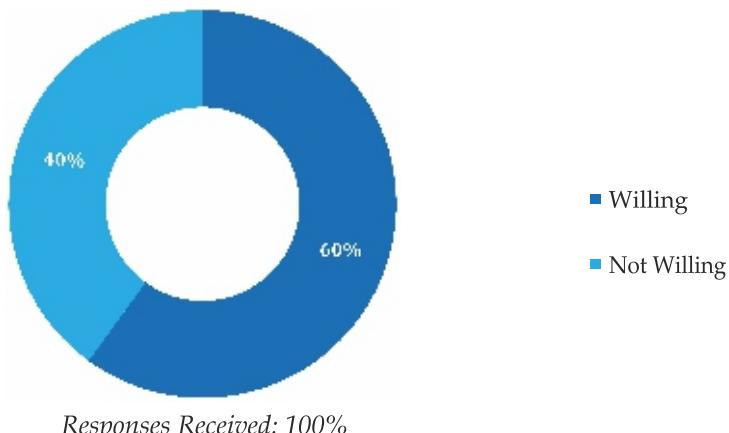
—Shahla Khan, *Friends With Benefits: Rethinking Friendship, Dating & Violence*

13. What do you think teachers and administrators need to know? What do you think your fellow classmates/colleagues need to know?

Responses of participant are:

- They need to act on these situations quickly
- There should be a proper system to check the occurrence of sexual harassment and ensure that repetitive actions do not occur
- They should be more sensitive towards the victim and try and remove a solution as soon as possible
- I think they should know about any potential threats in our social circles who could engage in harassment
- They need to be more aware of these situations

14. What questions do you have? Would you be willing to have what you wrote shared with the people through media?

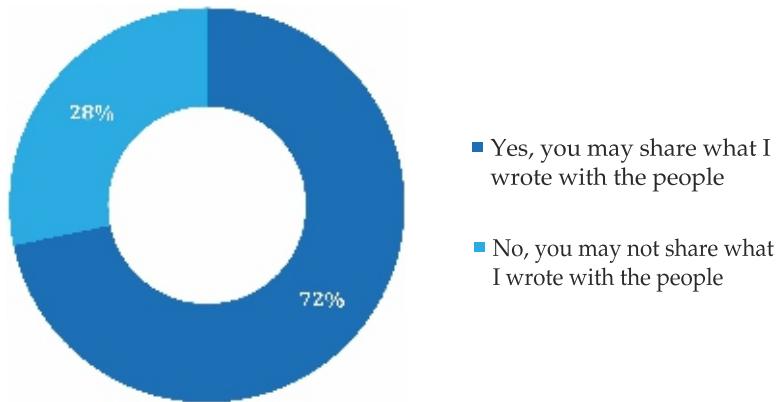


Responses Received: 100%

Responses of participant are:

- Why does a person even think he has authority and dominance over the other sex?
- Why don't women raise their voices immediately? Why is there such a little voice on this issue?
- Why is there such a little voice on this issue?

15. No names or identifying details will be associated with anything that is shared, and nothing will be shared with the people without your consent.



Responses Received: 100%

During the survey, a sad truth also came into light that, yes the sexual harassment still prevails, but along with it the worst part is still in our society speaking about it is typically considered to be a huge taboo.

But yes, to keep the spirits high, in fighting sexual harassment huge number of masses are coming forward, which is the first step in eradicating this degrading sickness from our society.

WHAT DOES THE ACT SAY?

The Act on prevention of sexual harassment of women at workplace, provides various provisions related to prevention of sexual harassment at work place. The Act provides detailed definition of sexual harassment. It also provides detailed procedure to file a complaint and guidance on settlement of complaint in effective manner.

The Act has addressed various concerns noticed in the survey. Concerns wise provisions of the Act are as follow:

A. Workplace

According to Sexual harassment of women at workplace (prevention, prohibition and redressal) Act 2013, a workplace is defined as "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey." As per this definition, a workplace covers both the organised and un-organised sectors. It also includes all workplaces whether owned by Indian or foreign company having a place of work in India.

As per the Act, workplace includes:

- Government organizations, including Government company, corporations and cooperative societies;
- Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;
- Hospitals/Nursing Homes;
- Sports Institutes/Facilities
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

B. Internal Complaint Committee

Survey results indicate that 68% of victims did not report to management/committee about their sexual harassment due to fear of retaliation and discrimination. Mostly cases were dealt with past mutual understanding.

As per the Sexual harassment of women at workplace (prevention, prohibition and redressal) Act 2013, Internal Complaints Committee (ICC), every employer is obliged to constitute an ICC through a written order. Refer '*Composition of the internal complaints committee*' detailed at page 46.

C. What is Considered to be Sexual Harassment

During survey, some of the victims confirmed of degrading sexual abuses they faced as: asking for sexual favour, touching private parts, mental harassment, stalking, spreading rumours, sexual bullying, eve teasing.

The Sexual Harassment of women at workplace (prevention, prohibition and redressal) Act 2013 clearly defines the above actions to be considered as Sexual harassment.

D. Consequences on Failure to Constitute Internal Complaint Committee (IC)

As per the Sexual harassment of women at workplace (prevention, prohibition and redressal) Act 2013, following are the Consequences of failure to comply with obligations:

Non-compliance with the provision to constitute an ICC has significant consequences. An employer who fails to constitute an ICC as per the Sexual Harassment Act, will be liable for a monetary penalty of up to INR 50,000 if a complaint is made to the magistrate.

Any woman who has faced sexual harassment at the workplace, or any person authorized by the Internal or Local Complaints Committee, can file a complaint with the Magistrate.

Repeated non-compliance of this provision can result in the punishment being doubled or even cancellation of the license by the government or local authority to carry on business.

Similarly, failure to implement the recommendations of the ICC or the Local Committee, or failure to include appropriate details pertaining to filing and disposal of sexual harassment cases carries the same penalty.

E. Interim Measures During Inquiries

On the question 'post the case was closed by Internal Complaints Committee, did the victim continue with organization?' victims responded affirmative and negative equally. The Act provide interim measures to protect victims from discrimination during inquiries.

According to The Sexual harassment of women at the workplace (prevention, prohibition and redressal) Act 2013, while a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (up to 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or

writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment*.

F. Sensitization by Organisation

The Act on sexual harassment at workplace provides various measures to sensitize employee about sexual harassment at workplace.

According to the Act, the following measures must be adopted by an organization:

- 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

G. Redressal and Complain Mechanism

During the survey majority of victims agreed that members of ICC are not aware about provisions of the Act. The Act provides role of complaint committee and complain process in detail.

Introduction of Redressal and Complaint Mechanism with Details on Complaint Process and Role of Complaint Committee

This section provides helpful information on who can complain, to whom, and the contents of the complaint. It also gives information and lays out the steps involved when a complaint has reached the Complaints Committee, in terms of the process, findings and recommendations.

Who can Complain and Where?

In case of physical incapacity of the complainant, the following can complain to the complaints committee:

- Complainant's relative
- Complainant's friend
- Co worker
- Officer of NCW or SCW (National commission for women or State commission for women)
- Any person who has knowledge of the incident with the written consent of the complainant

In case of mental incapacity:

- Complainant's relative
- Complainant's friends
- Special educator
- Qualified psychiatrist/psychologist
- Guardian/authority under whose care the complainant is receiving treatment/ care
- Any person with knowledge of the incident, jointly with any person mentioned above

In case of complainant's death:

Any person with knowledge of the incident with the written consent of her legal heir

In case complainant is unable to file the complaint for any other reason:

By any person who has knowledge of the incident with her written consent.

What should be the Contents of the Complaint?

The written complaint should contain:

- Description of each incident(s).
- It should include relevant dates, timings and locations;
- Name of the respondent(s);
- And the working relationship between the parties.

A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.

Rights of the Complainant

- An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment
- A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent
- Keeping her identity confidential throughout the process
- Support, in lodging FIR in case she chooses to lodge criminal proceedings

Survey Results

- In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent
- Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee.

Rights of the Respondent

- A patient hearing to present his case in a non-biased manner
- A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- Keeping his identity confidential throughout the process
- Right to appeal in case not satisfied with the recommendations/findings of the Complaints Committee

Key Responsibilities of the Complaints Committee

Complaints Committee/s must possess critical skills/capacity to effectively carry out their role. That includes a sound grasp of the Act, Vishaka Guidelines, applicable Service Rules, relevant laws and an understanding of workplace sexual harassment and related issues. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews. They should be able to identify sexual harassment and its impact.

They should be competent at showing empathy, being impartial and being thorough.

To effectively address workplace sexual harassment complaints, a Complaints Committees must first be aware of their key responsibilities, some of which are highlighted below:

- Be thoroughly prepared
- Know the Act, Policy and / or relevant Service Rules
- Gather and record all relevant information
- Determine the main issues in the complaint
- Prepare relevant interview questions
- Conduct necessary interviews
- Ensure parties are made aware of the process and their rights/responsibilities within it
- Analyse information gathered
- Prepare the report with findings/recommendations

Do's and Don'ts for Complaints Committee

DO'S

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

DON'TS

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

During a redress process the Complaints Committee/s are required to assure

- Confidentiality,
- Non-retaliation and;
- Recommend interim measures as needed to conduct a fair inquiry.

The Sexual Harassment Complaint Process

The Complaints Committee/s needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment. These stages and steps are depicted in a flow chart below:



STAGE ONE: RECEIPT OF THE COMPLAINT

A fair, prompt, and impartial inquiry process starts with a Complaints Committee capable of creating an environment of trust and confidence throughout the inquiry.

Step 1: Receive and Acknowledge Receipt of the Complaint

The complainant submits a sexual harassment complaint in writing within three months of the last alleged incident to the Complaints Committee or any other person designated by the organization/District Officer (i.e. Nodal Officer) to receive and manage complaints of sexual harassment.

Upon receipt, the complaint should be reviewed for:

- In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
- Clarity in the complaint.
- Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

Elements of the Behaviour

The complaint needs to satisfy the following elements:

- The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment.

Survey Results

- The behaviour was directed at the complainant.
- The complainant experienced harm.
- The behaviour occurred in the workplace or at any location/any event related to work.

Step 2: Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can

include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

However, before recommending conciliation, the Committee must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the Complaints Committee will advise the complainant to resolve the matter directly

with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICC/LCC who in turn will forward the same to the employer/District Officer for further action based on the resolution. Employers/District

Officers are responsible for taking steps to ensure that the complainant is not subject to any backlash.

The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

Step 4: Formal Mechanism

- If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.
- Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
- Ensure that the independent third party member has sound knowledge, skill, and experience in dealing with workplace sexual harassment complaints.

Step 5: Respondent and Response

- As per the procedure provided in the Service Rule; or in absence of the same
- Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.
- The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

STAGE TWO: PLANNING CAREFULLY

Step 6: Prepare the File

A sound inquiry relies on sound preparation. This includes taking into account the following steps:

1. Documentation

Create an independent confidential file of the complaint and all subsequent related documentation.

2. Review Law and Policy

Have a clear knowledge and understanding of the Act/ Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.

3. Make a List

Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable.

Relevant Witnesses

The complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. In addition, the Complaints Committee also has the discretion to call any person as a witness, who it believes has something to contribute to the inquiry process.

4. Supporting Documents

Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.

5. Act Quickly

Create a plan. This can be used as an initial checklist to ensure that all the critical elements are covered. It includes:

- The names of the parties and witnesses to be interviewed
- Any documentary support that needs to be examined
- Timeline

Preparing the Plan – Key Elements to Consider

1. Defining the Issues

What is the complaint?

Questions or points that require clarification

2. Determining a violation of the Policy/Act

What information is needed to determine that there has been a violation?

3. Logistics

Venue for conducting the interviews. A special logistics required Creating timelines for each

4. Critical Information

What documents need to be looked at?

Witness to be questioned and in what order

5. Areas of questioning

- Questions for each specific incident and party / witness
- Questions for each particular issue
- Issues likely to require follow-up

Step 7: Consideration

1. Interim Measures

While a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (upto 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment*.

2. Support

Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health related concerns or sanctioning of leave.

STAGE THRE: INTERVIEWS

Step 8: Prepare an Interview Plan for the Hearing: Complainant, Witnesses, Respondent

- Based on the results of the previous steps and before conducting interviews, the Complaints Committee should decide which issues need to be pursued for questioning.
- Interviews are meant to obtain information that is relevant to the complaint from individuals.
- Interviews should be conducted with each person separately and in confidence. *The complainant and the respondent should not be brought face to face with each other.*

INTERVIEWING TIPS

1. Introduction

Questioning the parties and witnesses in a situation of workplace sexual harassment is a sensitive task. The complaints committee must therefore proceed with empathy, while appreciating at times, a different version of the facts.

2. Questioning

Determine beforehand the following:

- Date, time, place and order of interviews
- Questions and their order
- Time for each interview
- Generally, rely on questions related to who, what, where, when and how.

Remember:

- Questions ought to be clear and focused.
- Obtain as much information as possible through the interview.
- Do not share information gathered from other sources.

3. Choose an Appropriate Location

To create trust, comfort and openness

4. Explain the Interview process

Do explain how the interview will be conducted and what is expected

5. Records of the Interview

Take notes and explain the need for a proper record

6. Manage the Interview

It is responsibility of the Chairperson to ensure that the interviews are correctly carried out and due process is followed.

7. Sign Statements

At the conclusion of the interview, have those interviewed, sign and date statements made and recorded before the Complaints Committee.

Step 9: Assess the Completeness of the Information Collected

At this stage, the Complaints Committee should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

STAGE FOUR: REASONING

Step 10: Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:

- Identify the substance of each aspect of the complaint.
- Determine, whether or not, on a **balance of probability**, the unwelcome sexual harassment took place.
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.
- Comment on any underlying factor(s) that may have contributed to the incident.

Step 11: Create a timeline to help establish the sequence of events related to the complaint.

Step 12: Compare similarities and differences within each of the statements made by the interviewees.

STAGE FIVE: FINDINGS AND RECOMMENDATIONS

Step 13: Finding

Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive. Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

Step 14: Recommendations

Based on its findings, the Complaints Committee shall then make appropriate recommendations which may include:

1. Where the Complaints Committee is unable to uphold the complaint, it shall recommend no action.
2. Where the Complaints Committee upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules, which may include a warning to terminate
In case service rules do not exist, recommended action may include:
 - Disciplinary action, including a written apology, reprimand, warning, censure;
 - Withholding promotion/ pay raise/ increment;
 - Termination;
 - Counselling;
 - Community service.
3. The Complaints Committee may also recommend financial damages to the complainant, while deciding the amount they shall take into consideration:
 - Mental trauma, pain, suffering and emotional distress caused;
 - Medical expenses incurred;
 - Loss of career opportunity;
 - Income and financial status of the respondent.
If the amount is not paid it can be recovered as an arrear of land revenue.
4. The Complaints Committee can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

STAGE SIX: REPORT

Step 15: Writing the Report

The Complaints Committee will prepare a final report that contains the following elements:

- A description of the different aspects of the complaint;
- A description of the process followed;
- A description of the background information and documents that support or refute each aspect of the complaint;
- An analysis of the information obtained;
- Findings as stated above;
- Recommendations.

Any person not satisfied with the findings or recommendations of the Complaints Committee or nonimplementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.

Given that most workspaces today are gender unequal and male-dominated,

It is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant.

However, making a false or malicious complaint or producing a forged or misleading document is an offence.

4

POSH – Prevention of Sexual Harassment

As identified via various studies – ‘The most potent weapon against sexual harassment is its prevention.’ Harassment should be prevented till it is fully eradicated, it does not disappear on its own. The reality is that any problem, if not addressed timely, is more likely to worsen and become more difficult to solve with time.

The main ingredient for prevention of sexual harassment in the workplace are the training programs for both employers and employees, to adopt a clear sexual harassment policy, train employees, train supervisors and those who are at managing positions.

The fact remains that the burden of preventing sexual harassment rests on the employer. It is responsibility and legal obligation of every employer to maintain a workplace free of sexual harassment.

FORMING POSH POLICIES

Anti-harassment policies contain information on what harassment is. It is very important to educate and train the employees that harassment is not acceptable and will not be tolerated. Policies should also focus on how employers and employees should respond to incidents of sexual harassment.

Anti-harassment policies should consist of concretedetailed mechanism with help of which the employees can report and make complaints when sexual harassment occurs.

Having an anti-harassment policy in no way conveys that the sexual harassment will disappear. However, having an effective policy and procedures, coupled with anti-harassment training for the staff, will strengthen the prevention of sexual harassment and will support the employees, who are being harassed, to come forward and ensure that the problem is addressed quickly and effectively.

PREVENTION UNDER THE ACT

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
- Taking all necessary steps to prevent or deter the commission of acts of sexual harassment or the acts outraging/insulting the modesty of a woman employee
- Display information about the grievance handling mechanisms including about the Internal Complaint Committee/ Local Complaints Committee
- Augment appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with employment
- 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
- Ensure suitable arrangements for prevention of sexual harassment as an act or omission by any third party or outsider and provide necessary and reasonable assistant to the affected person in terms of support and preventive actions

"To comply with the provisions of the Act, Companies have constituted ICC committees however, unfortunately most of the ICC members of such committees are not trained adequately to handle such matters, which may at times result in mishandling of these sensitive issues."

Nidhi Mathur, Partner, Integrity Law Offices.

FORMING OF COMPLAINTS COMMITTEES

- **The Central/Internal Complaints Committee (ICC)**-every employer is obliged to constitute an ICC through a written order.
- **District Level/Local Complaints Committee (LCC)**- every District Officer is obliged to constitute a LCC in their Districts.

Composition of the Internal Complaints Committee

Presiding Officer/Chairperson (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 from other offices or administrative units of the workplace. If other offices do not have a senior level employee, the presiding officer shall be nominated from 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 from a third party (e.g. NGO or association) and must have expertise and familiarity with gender issues and sexual harassment.

Composition of the Local Complaints Committee

The district officer will constitute an LCC in every district so as to enable women in the unorganised sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

- *From women working in an organisation having less than 10 workers*
- *When the complaint is against the employer himself*
- *From domestic workers*

Chairperson (Eminent female)

To be nominated form amongst the eminent women in the field of social work and committed to the cause of women.

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.

"Must be a woman; Must have a background of law or legal knowledge; and 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 Prevention of Workplace Sexual Harassment Act stipulates that the ICC and LCC shall, while inquiring into a complaint of workplace sexual harassment, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of:

- *summoning and enforcing the attendance of any person and examining him on oath;*
- *requiring the discovery and production of documents; and*
- *any other matter which may be prescribe*

Dossier

In a case a junior female employee (appointed as purchase manager) who was reporting to Senior VP, was requested and later demanded sexual favours by reporting manager. On denying manager took away the relevant jobs done by employee as a purchase officer and gave her filing and photocopy work. The manager also telephoned her at residence number late in the night asking her to accompany him to a nearby hill station or else threatening her with termination.

The employee registered a police complaint and put in a verbal complaint of harassment to one of the Directors of the company. The Director along with the Human Resource (HR) department investigated the complaint after giving a verbal warning to manager, reporting of employee was changed.

The sexual harassment was resumed when that particular Director resigned from the company and reporting manager became the senior most in the company. The employee complained to the HR manager about severe harassment. However, no action was taken being involvement of senior person in the company. Moreover, colleagues and vendors were instructed by manager not to talk to employee. After complaining in head office, the employee was terminated from the job on the basis of findings of the department enquiry against her.

“Women who are harassed, at work, on the street, or even online, are subject to the same rigid purity standards as women who are sexually assaulted, just by virtue of being out in public, we’re overstepping certain boundaries.”

—Jessica Valenti

5

Existing Laws in India

THE VISHAKA GUIDELINES

In 1992, Bhanwari Devi, a woman, a rural level change agent employed with the rural development programme of the Government of Rajasthan as "Sathin" was brutally gang raped because her efforts to curb the practice of child marriage. She prevented the marriage of a one-year old girl in the community. This incident brought into light the hazards and sexually offensive behaviour that working women were exposed to on a day to day basis and highlighted the urgency for concrete measures to be implemented in this regard. Based on the facts of Bhanwari Devi's case, a Public

Interest Litigation (PIL) was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India.

The Supreme Court of India, for the first time, accepted the blazing legislative inadequacy, and acknowledged workplace sexual harassment as a human rights violation. In a landmark judgment, *Vishaka vs. State of Rajasthan* (1997), the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors

It included:

- A definition of sexual harassment
- Shifting accountability from individuals to institutions
- Prioritizing prevention
- Provision of an innovative redress mechanism Raising the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility to be accountable, to uphold working women's fundamental right to equality and dignity at the workplace.

Three key obligations were imposed on institutions to meet that standard, namely:

- Prohibition
- Prevention
- Redress

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE ACT, 2013

In 2013, Consistent with the Vishaka judgment, the Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

This Act is in addition to other laws that are in force currently and it also provides a civil remedy to women. Consequently, any woman, who reports instance of sexual harassment at the workplace, has the right to take recourse of both civil and criminal proceedings.

OTHER LAWS PERTAINING TO WORKPLACE SEXUAL HARASSMENT

Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 ("Standing Orders Act") has adopted guidelines and definitions on sexual harassment in line with the Vishaka Judgment and talks about redressal process.

Indian Penal Code, 1860

The felony of sexual harassment has not been defined or dealt specifically under the Indian Penal Code. However, the definition of sexual harassment under the 2013 Act, make the offence falling under section 294, section 354, section 376 and section 509 of the IPC.

Section	Offence	Punishment
294	Obscene acts and songs Whoever, to the annoyance of others: (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place	Imprisonment of either description for a term which may extend to three months, or with fine, or with both. Classification of offence- Punishment: Imprisonment for 3 months, or fine, or both. Cognizable. Bailable. Triable by any Magistrate. Non compoundable.
354	Assault or criminal force to woman with intent to outrage her modesty Assault or use of criminal force to any woman, intending to outrage her modesty	Imprisonment of either description for a term which may extend to two years, or with fine, or with both. Classification of offence- Punishment: Imprisonment for 2 years, or fine, or both. Cognizable. Bailable. Triable by any Magistrate. Non-compoundable.
376	Punishment for rape Whoever, except in the cases provided for by sub-section (2), commits rape Sub-section (2) Whoever: (a) Being a police officer commits rape (i) Within the limits of the police station to which he is appointed; or (ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or (iii) On a woman is his custody or in the custody of a police officer subordinate to him; or (b) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or (c) Being on the management or on the staff of a jail, remand home or (d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or (e) Commits rape on a woman knowing her to be pregnant; or (f) Commits rape when she is under twelve years of age; or (g) Commits gang rape	which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. Classification of offence <i>Para I</i> P u n i s h m e n t : Imprisonment for life or imprisonment for ten years and fine. Cognizable. Nonbailable. Triable by Court of Session. Non-compoundable
509	Word, gesture or act intended to insult the modesty of a woman Whoever, intending to	Simple imprisonment for a term which may extend to one year, or with fine, or with both.

	insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, of that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman	Classification of offence Punishment: Simple imprisonment for 1 year, or fine, or both. Cognizable. Bailable. Triable by any Magistrate. Compoundable by the woman whom it was intended to insult or whose privacy was intruded upon with the permission of the court.
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The sexual abuse/harassment/assault laws in our Country have been also designed in such a way that they are exclusively for protecting women. The sections 354, 509 and 376 of the Indian Penal Code pertaining to sexual assault, outraging the modesty of a woman, rape, eve teasing all presuppose that the victim can only be a woman not a man.

The Vishaka guidelines which aims to prevent sexual harassment in workplace are also exclusive for women. It is only under Indian Penal Code, Section 377, the wrong sexual advancement on a man (sodomy) is recognized as an offence, other than this section, there are no laws to punish a person for molesting a man.

"It's a matter of honor and pride of every working woman in India that we have strong laws to protect every right of working women, these laws empower every woman to move freely in our society without any fear and loss. The police have to lodge FIR to concern with reference to law of sexual harassment at work places in India. We always advise to educate, inform and enrich every working woman in India. We always advocate for betterment of working women in India by all means."

*Kumar Rakesh
Editor-in-Chief
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*Chairman
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THE SUPREME COURT DECISIONS

In 1996, the Honourable Supreme Court of India created the first ever set of guidelines to deal with Sexual Harassment at workplace. The main aim of these guidelines was the establishment of an internal complaints committee headed by a woman in every organisation. These guidelines were given the legitimacy by Article 141 of the constitution. The fact was that the guidelines were absent from the statute books and had no sanctions on the defaulters, which clearly reflected that the guidelines were barely followed.

It came into light:

- When Tehelka magazine founder Tarun Tejpal was accused of sexually assaulting a woman employee. From the clear denial to accepting the fact that the committee was non-existent and the way the matter was handled by Tehelka, the entire issue came under fire.
- The Response of IL&FS, a Mumbai based infrastructure development and finance company to a prolonged sexual harassment complaint filed by a woman employee. IL&FS not only denied the charges out rightly but also prepared the list of movies which used "CUSS" words, in questions and tried to establish the same words a part of Mumbai slang.

The incident proved that:

- The corporates in India had no knowledge to deal with issues like sexual harassment and they were more concerned in safeguarding themselves, no matter the case is.

Existing Laws in India

- The organisations would rarely support the complainant in the face of such an event.
- It also confirmed that the hostile environment exists in the workplace, for a person who has faced sexual harassment and decides to speak up.

"Women who accuse men, particularly powerful men, of harassment are often confronted with the reality of the men's sense that they are more important than women, as a group."

—Anita Hill, Speaking Truth to Power

7

Conclusion

The fact cannot be denied that Sexual Harassment is still growing, and still is an unidentified threat to the employees constantly, especially the female employees. Ambiguity about the difference between sexual invitation and sexual harassment is very common. Most common believe existing is that Sexual harassment is considered as a normal sexual attraction of a male towards a female. Which is occasionally considered as vulgar but is mostly seen as a romantic game acceptable between the men and women. The reality which needs to be conveyed is that the difference between the invitation and sexual harassment is the use of power, and is nowhere close to courtship or romantic game. Sexual harassment is to coerce women; it never enchants or appeals them. Sexual harassment is that arena where the power is in the hands of the harasser full of aggression and is all set to intimidate, abuse, degrade the victim.

The stigma attached with sexual harassment, ignorance and misinformation altogether are the biggest obstacles in accepting the very truth of Sexual harassment at workplace. Sadly, the unawareness about the limits of sexual behaviour and the fear of the authority/power of the harasser, prevents women from gathering the courage to report the incidents and firmly reacting to the harasser with extremely organized and effective counter measures. The problem still exists in all the steps of the reporting process of identification, reporting and redressal.

The responsibility of preventing sexual harassment at workplace rests on the employer. He needs to ensure the environment free of discrimination and harassment. The most successful preventive measure on sexual harassment is realisation within every human being of having a clear intent and full inclination to their moral duties. It is in the best interest of the organisations/institutions/ workplaces to streamline and strengthen their strategies, plans and internal policies in line with the Guidelines and Acts for sexual harassment, inform their employees about the same and justify to the policies not only on paper but in spirit as well.

Sexual harassment at work place is a serious psychological disorder. It is a loss - loss situation and equivalent to self goal. Build healthy and caring environment. Pollution harms the polluter also. Self respect by definition is a confidence and pride in knowing that your behaviour is both honorable and dignified. Respect yourself by respecting others.

*Madhur Bhandarkar
Film Director & Producer*

8

Recommendations for Corporate

PREVENTIVE MEASURES

- An organisation should conduct sexual harassment training for everyone, especially all supervisors and managers, on periodic basis. Everyone in the organization should understand what is sexual harassment and what to do if it occurs supported by case studies.
- Ensure managers and supervisors understand their obligations to maintain zero tolerance for harassment in the workplace.
- An organisation can monitor emails and other electronic communications through official channel to scan for harassing content. Monitoring employees' behaviours will also be helpful to stop inappropriate behaviour at right time.
- In order to prevent sexual harassment by the internet and e-mail employers should:
 - Make it clear to employees, through an internet policy that is clearly communicated to all staff, that inappropriate use of internet and e-mail will not be tolerated;
 - Direct staff not to forward offensive e-mails from another source; by doing so they make themselves responsible for the material;
 - Warn employees that e-mail communications are not private: one way of doing this is to suggest to employees that they not send any e-mail that they would not be happy to see displayed on a company notice board;
 - Warn employees that evidence of e-mails sent and web sites accessed remains on a computer system even after they have been deleted by individual users; and
 - Explain that what is a joke to one person may well be offensive to another and that sexual or offensive material does not belong to the workplace.
- Process to submit a complaint should be clearly defined, including a process for situations where the direct supervisor can be bypassed, if necessary.
- Define clear consequences for such behaviour and consistently apply these when harassing behaviour is discovered.
- Encourage a culture where sexual harassment is not welcome or tolerated. This might include many things. Some of the examples are:
 - Ensure that work-sponsored activities after hours, are professional in nature.
 - Ensure that supervisors and managers know where to draw the line with employees in terms of tolerating off-colour jokes and other offensive material. The workplace is not a place for crude jokes.

CORRECTIVE MEASURES

- All complaints received should be considered critical and investigated seriously.
- If harassment is discovered, take immediate and appropriate action to ensure it doesn't happen again, including disciplining or even terminating the employee(s) responsible. Further organisation should identify circumstances/activities which could be controlled timely and ensure these situations will not be created in future.
- Do not tolerate retaliatory behaviour against someone who has filed a complaint.
- Regular review of policy should be conducted to evaluate effectiveness of POSH policy in organisation.
- Refer the flow chart under survey results for managing a complaint.

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

Women in our ancient Society occupied very high place. However, it is matter of regret that a country where women were respected so much in ancient times has become so unsafe of our Women that legal intervention in form of legislation after legislation were pressed in service in order to restore that glory.

The enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is one such step to arrest the upward trend of asexual harassment at workplace.

Sexual harassment has been recognized as a violation of human rights and it is considered as a crime which violates the dignity and respect of a women.

Sexual harassment which was otherwise invisible menace until quite recently, has now become a major social problem with the widespread entry of women as a work force. Sexual harassment is bullying or coercion of a sexual nature or the unwelcome or inappropriate promise of rewards in exchange of sexual favours.

The Sexual Harassment of Women at Workplace is a problem not only between the two individuals – the harasser and the harassed, but is also an organizational problem. Since it occurs within the groups, such as academic institutions, commercial organizations and government agencies, it is essential that multidimensional and intervention programmes both at individual and organizational levels, need to be emphasised.

Sexual Harassment of women at workplace has become such an evil which cannot be abolished only through the passing of Legislation on it. But it demands the cooperation of the society as well as the cooperation of employer for protecting the women from sexual harassment at workplace by providing safe and healthy working environment to her.

In the cases of Sexual Harassment at Workplace, sometimes women feel shy in facing of publicity, procedure and delay in criminal system, for them the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 is much effective, but it needs much alterations, so that women can easily go through the procedure provided by the Act for the disposal of their complaint.

Practical impediment(s) in implementing various provision of the Act:

A. Lack of clarity vis-à-vis the definition.

Section 2, (p) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: “unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

However, this definition, do not take in to its fold large number of Women employed elsewhere.

Justice Verma Committee report had recommended that the Act should also cover women in the armed forces and police, government institutions, all public bodies, all panchayats, all establishments covered under the Factories Act, 1948 and the Industrial Disputes Act, 1947 and all employed in the private sector, armed forces, police, agricultural workers and women students/ staff of all schools and educational institutions

However, due to this non-clarity the effect of the Act cannot be assessed fully.

B. The definition of “Respondent” Section-3 (m) under Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 uses the word “person”. The legislation is silent as to whether this “person” or perpetrator can be a woman or a transgender as well.

- C. There is an ambiguity about Section-26 as to whom complaint is made about the employer's failure to constitute an Internal Complaints Committee as per the requirements of the act under this section.
- D. The Act does not provide any answer as to who is to be held responsible if the internal Complaint committee (ICC) is not constituted within an organization. It also does not provide who must initiate action against the non-constitution of the committee?
- E. The act also does not cover the women who were employees of the institution at the time of harassment but were terminated due to one or the other reasons before they got a chance or an opportunity to file a complaint.
- F. The Act does not provide any mechanism for identifying false complaints and ensuring that such instances do not arise in the future. There should be a prevent misuse of the act must be prevented and those making false complaints too should be penalized. This would make the provision more effective and we may be able to persuade the Government to bring more employees under the purview of the Act.
- G. That Section-4(2) of the Act requires the establishment of an Internal Complaints Committee in all administrative units or offices for each workplace. The committee requires four members out of which three should be employees and one should be a non-employee. Half of the members of the committee are supposed to be women and it is also required for it to be headed by a senior level woman employee belonging to that workplace.
However, it may be that a particular organization may not have a senior level woman employee to head such a committee. Not only this, but it may not have the required number of women employees to constitute this committee. There is also no provision laying down the credibility and expertise of the members who would constitute the committee. The training and capacity building of these members has not been provided for. This is one of the weakest link in the Act.
- H. That Section-4(1) mandate also poses another concern. An establishment with different branches, offices or departments requires the formation of an ICC at each branch, office or department. This is a very unrealistic suggestion as a high-level establishment might have hundreds of offices spread across the country. It would not be possible to form such a committee at every level.
- I. There exist no budgetary allocations for the committee in the Act. The issues like what resources should be put into the constitution of this committee, where the committee would be funded from, how this money would be utilized etc. needs to be considered and resolved. The role of ICC under criminal investigations must be specified as to whether a civil and criminal trial can go on simultaneously.
- J. That Section-11(ii) of the Act clothed the internal complaints committee with powers of a civil court for summoning discovery and production of documents, whereas the Act is silent on the composition of the ICC, with or without any legal background and no requirement of trainings thereafter is there in the provisions. The procedure of enquiry and complaints committee procedure is very cumbersome and requires to be simplified.
- K. The Act does not address the issue of confidentiality victim and the witnesses. This jeopardize the case, as the victim and the witnesses are threatened by the defendant, etc. Thus, adequate changes must be made and the confidentiality of the case should be ensured. 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.
- L. There is a lot of ambiguity and confusion regarding the sections 19(g) and 19(h) of the Act, which requires clarity
 - 19 (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
 - 19 (h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- M. The Act is very general and is not sensitive to different natures of the workplaces. The agricultural sector and residential areas for domestic helps are not sensitive to LCC and its proceedings.
- N. That the Act is silent upon the issue that 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).

- O. There is no internal committee to look into the ICC at the state level and LCC. Provisions for the creation of the same must be incorporated and mentioned in the act. The committee should also be given publicity a large scale.
- P. The Time period of three months for making complaint under Section-9(1) is unrealistic. Though Section 9 provides that the period of 3 months can be extended by another 3 months at the discretion of the Complaints Committee.

LATEST TRENDS

The Supreme Court of India has promulgated Gender Sensitization and Sexual Harassment of Women at Supreme Court (Prevention, Prohibition and Redressal) guidelines 2015 published in the Official Gazette on 8th April, 2016. These Guidelines are a definitive step to curb the menace of Sexual Exploitation within the Court precincts.

The Delhi High Court, under its first woman Chief Justice G. Rohini has issued guidelines for dealing with complaints alleging sexual harassment at workplace. It negates the entertainment of any anonymous complaint(s) regarding sexual harassment at workplace. Additionally, all such complaints will be dealt with under a sheet of confidentiality. The guidelines endorsed by the chief justice were recommended by the court's committee against sexual harassment of women at workplace.

The University Grants Commission has notified India's first gender-neutral Regulations relating to Sexual harassment on 2nd May, 2016. New UGC regulations, has made sexual harassment a gender-neutral affair and now male students and students of the third gender in universities can also lodge complaints against sexual harassment faced by them. The Regulation categorically lays down that it is the responsibility of Higher Educational Institutions to "act decisively against all gender based violence perpetrated against employees and students of all sexes recognising that primarily women employees and students and some male students and students of the third gender are vulnerable to many forms of sexual harassment and humiliation and exploitation."

Kerala High Court in L.S. Shibu v Air India Limited and others has held that every Internal Complaints Committee constituted under the provisions of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 has to follow the principles of Natural

Justice in conducting their enquiry.

The Calcutta High Court in Jishu Sengupta and Others Vs State of West Bengal and Anr, has held that "sexually coloured remarks" will come within the ambit of "sexual harassment" enumerated in section 354A of the Indian Penal Code.

To Conclude, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 is a very positive step for the protection of women from such type of crimes in India. But even after the passing of this Act there are so many high-profile cases of sexual harassment happens in India. It is submitted that not just legislations are enough, an effective participation from the public side is also equally important.

—Mr. Suman Doval

A Practicing Supreme Court Advocate

About This Survey

This report is written by Netrika Consulting India Private Limited (Netrika) based on survey conducted by Indian National Bar Association (INBA) and prevalent acts and guidelines.

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Netrika is a professional risk and integrity Management, an ISO 9001: 2008 and 27001: 2005 certified company, established with a vision to help the clients to focus on their core competencies in a risk-free environment with our experience of more than 3 decades across all industries throughout the globe. It is a professional risk and integrity management company that operates in emerging and frontier markets to advise clients on operational or business risks. With experience of completing challenging projects in all parts of the world, with operating offices in India, Sri Lanka, Singapore and Dubai, specialised in Corporate Investigations, Safety and Security Audits/Assessments, Intelligence Gathering and Risk Consulting.

About Indian National Bar Association (INBA)

INBA is focused on taking the Indian legal industry and its members to newer heights. Representing the entire Legal ecosystem in India, INBA is dedicated to expand its members professional network and industry insight. When lawyers need to be heard, INBA is their voice. The association promotes member's through programs that focus on access to justice, human rights, anti-corruption, judicial reform and more. INBA provides resources to help its members become better lawyers. Each year the association hosts or participate in events around the world. Existing INBA members contribute valuable insights and knowledge through various modes and means of expressions facilitated by INBA. We help broaden our member's perspectives and help them exchange views through online forums and partnerships with the best organisation.

Endnotes

1. Source: UNICEF report – Ending Violence Against Women & Girls – https://www.unicef.org/pacific_islands/evaw.pdf
2. Source: The Gazette of India – <http://www.iitbbs.ac.in/notice/sexual-harrassment-of-women-act-andrules-2013.pdf>
3. Source: Ministry of Women & Child Development – http://wcd.nic.in/act/handbook-sexual-harassment-women-workplace& https://www.nitiie.edu/website_v2/files/Handbook%20on%20Sexual%20Harassment%20of%20Women%20at%20Workplace.pdf
4. Source: Ministry of Home Affairs – Circular#9/2014 – http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Prevention_of_Sexual_Harassment_at_Workplace.pdf
5. While privacy of employees at the workplace is to be maintained, the employer can put the surveillance of electronic communications and CCTV at work to run their business efficiently and protect themselves from any liability or harm an employee's actions may create.

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The map shows the outlines of the Indian subcontinent and surrounding regions. Red location pins are placed on the coastlines of the Indian peninsula, indicating the presence of Netrika offices in major cities like Delhi, Mumbai, Bangalore, Chennai, Hyderabad, and Kolkata, as well as in Singapore and Sri Lanka. The UAE office is indicated by a pin near the coast of the Persian Gulf.


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