

Sexual Harassment of Women at Workplace Act, 2013 – An Overview

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Learning Objectives

- Upon completing this session, participants will be able to:
 - Specify the need for the Act
 - List the circumstances considered as Sexual Harassment
 - Explain the role and functioning of ICC and LCC
 - Describe the procedure for filing a complaint and steps in the complaint process
 - State the consequences for non compliance
 - Describe the duties and obligations of Employer

Sexual Harassment Act
Prevention, Prohibition & Redressal

Indian Law on Sexual Harassment

**The
Constitution
of India**

**1997:
Vishaka vs.
State of
Rajasthan**

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

**The Indian
Penal
Code, 1860**

The Vishaka Judgement

- Supreme Court acknowledged that:
 - Sexual harassment is a **human rights** violation
 - Sexual harassment is a violation of the constitutionally guaranteed **fundamental rights**:
 - Articles 14 and 15: Right to equality
 - Article 21: Right to life - to live with dignity
 - Article 19(1)(g) - Right to practice any profession/trade/occupation/business, i.e., a right to a safe environment free from harassment
 - There is a need for guidelines to fill the legislative vacuum

Vishaka Guidelines

- The guidelines to prevent Sexual Harassment at workplace were first laid down by the Supreme Court in **Vishaka & Others Vs. State of Rajasthan** AIR (1997) SC 311;
- Duties of the employer or other responsible persons in work place and other institutions were laid down;
- Sexual Harassment was defined;
- Preventive steps to be taken by the employers were provided;
- Mechanism for filing complaints and constitution of Complaints Committee were prescribed;
- Necessity of awareness program for the female employees was pointed out.

How other countries treat SH?

- **US:** Civil Rights Act of 1964 (Title VII) -
Equal Employment Opportunity
Commission.
- **UK:** The Sex Discrimination Act 1975 :
Amended in 2008.
- **Australia:** Sex Discrimination Act 1984 -
Australian Human Rights Commission.
- **Japan:** The Male-Female Equal
Opportunity law - Amended in 1999
- **China:** The Protection of Rights and
Interest of Women - law amended in 2005



Why an Act to safeguard against SH?

RELEASE BY PIB

- Sexual Harassment at workplace is a violation of women's right to gender equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their economic empowerment and the goal of inclusive growth. However, there is no domestic law to address this issue except a few provisions of the Indian Penal Code and the Supreme Court Guidelines in the case of *Vishaka vs. State of Rajasthan*. The increasing work participation rate of women has made it imperative that a comprehensive legislation focusing on prevention of sexual harassment as well as providing a redressal mechanism be enacted.

Timeline

- The Bill was first introduced by women and child development minister Krishna Tirath in 2007.
- Approved by the Union Cabinet in January 2010.
- Tabled in Lok Sabha in December 2010.
- Referred to the Parliamentary Standing Committee on Human Resources Development.
- The committee's report was published on 30 November 2011.
- In May 2012, the Union Cabinet approved an amendment to include domestic workers.
- The amended Bill was passed by the Lok Sabha on 3 September 2012.
- The Bill was passed by Rajya Sabha on 26 February 2013.
- President gave assent and the Act has been published in the Gazette of India, on 23rd April 2013 as Act No. 14 of 2013.



Overview of the provisions

Preamble

- An Act to provide protection against SH of women at workplace and for prevention and redressal of complaints of SH and for matters connected therewith;
- SH results in violation of fundamental rights of a woman under Articles 14, 15 and 21 and right to practice any profession or to carry any occupation, trade or business which includes a right to a safe environment free from SH;
- These rights are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women – ratified by the Govt. of India on June 25, 1993;
- To make provisions for giving effect to the said Convention for protection of women against SH at workplace.

Objectives of the Act

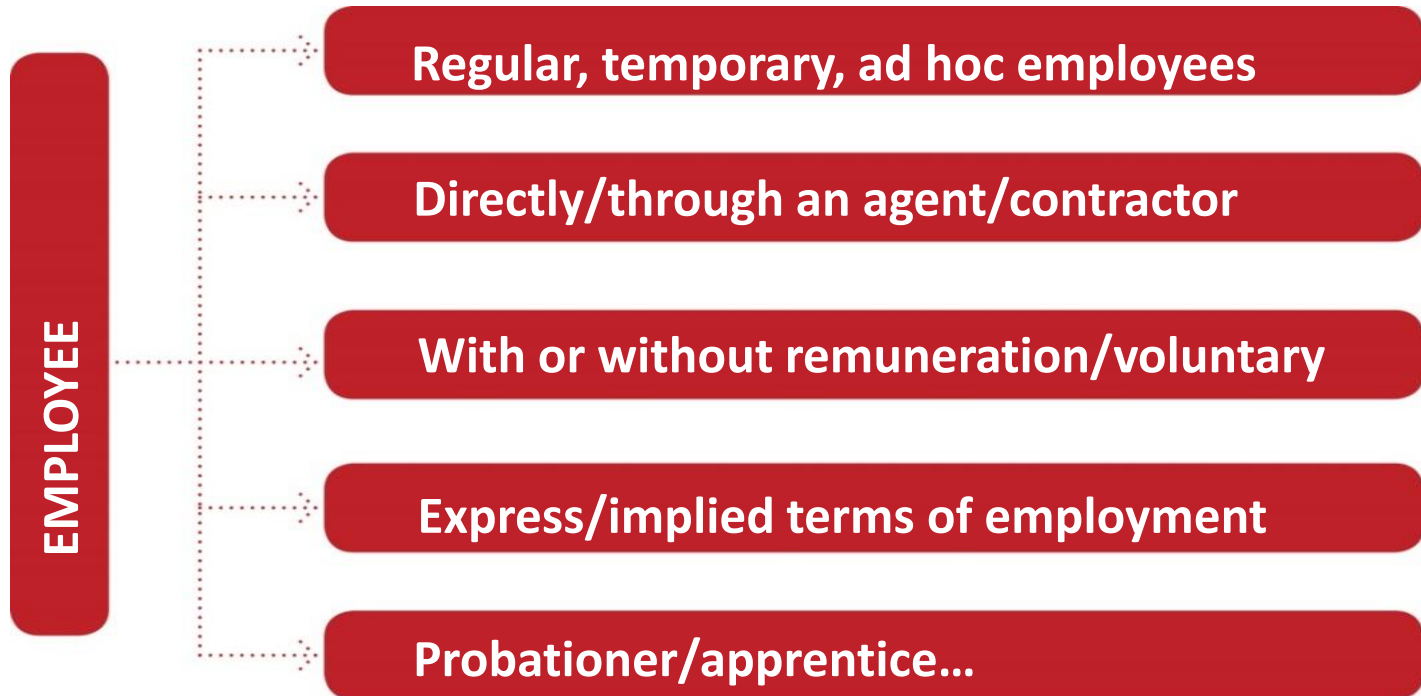
- This Act has been framed with a view to:
 - Promote a workplace based on equality & respect.
 - Provide a safe and congenial work environment.
 - Awareness & sensitization about sexual harassment at the workplace.
 - Prevent sexual harassment.
 - Provide formal and informal mechanism for redressal in case of complaint of sexual harassment at the workplace.
 - Define the implications and outcome of sexual harassment.
 - Ensure protection against retaliation to complainants, witnesses, committee members and
 - other employees involved in prevention and complaint resolution.

Scope of the Act

- The Act applies to all **women** in all workplaces.
- Section 2(f) defines an employee as a woman "employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name."

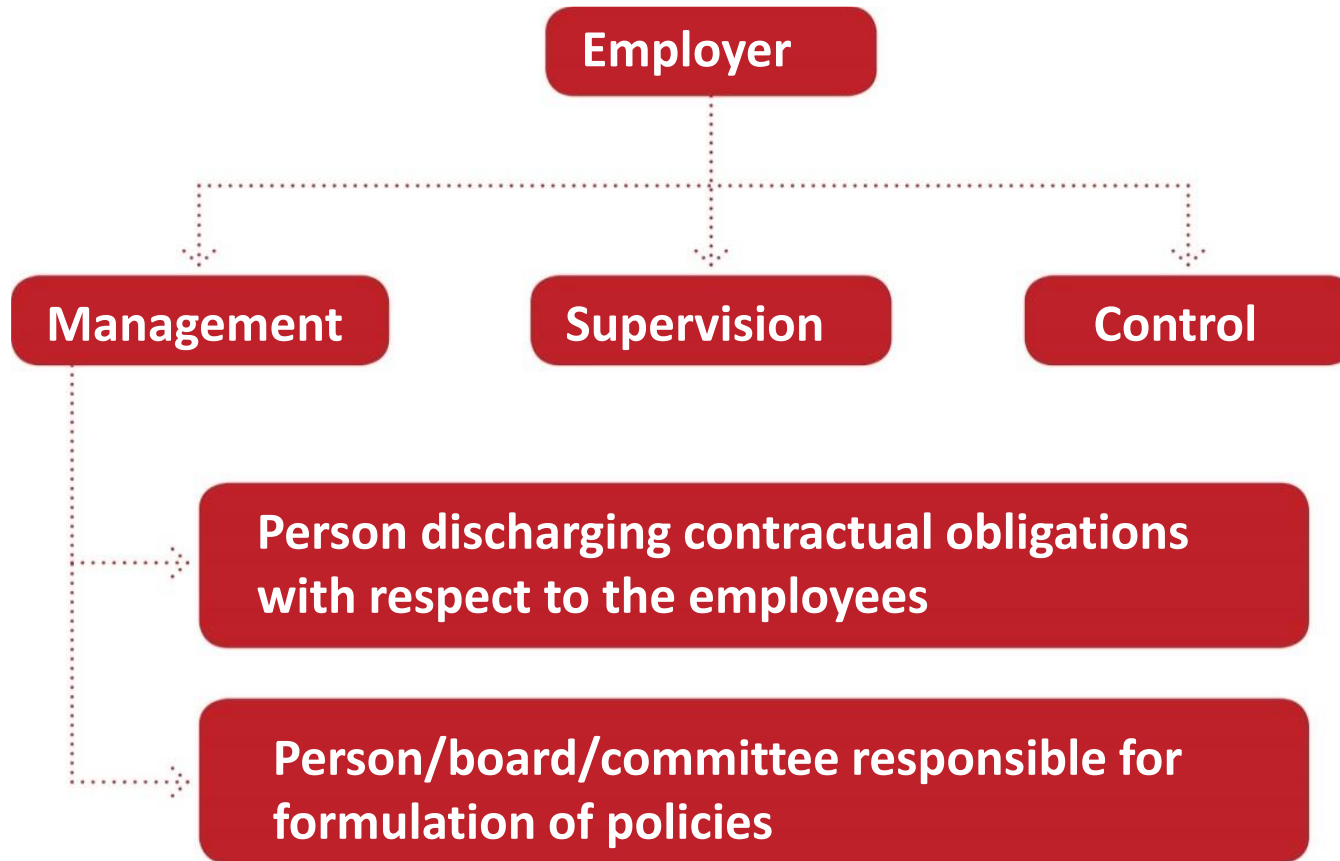
Relevant Definitions

Who is an “Employee”?



' A person employed at the workplace for any work on regular, temporary, ad-hoc, daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether or not for remuneration or working on the voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

Who is the “Employer”?



’ In relation to any department , organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority in the above ’ If not specified, any person responsible for management, supervision or control of the workplace.

The “workplace”



Any place where working relationship and/or employer-employee relationship between the company and the person exists. This includes our premises including transit houses & guest houses) and 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.

The extended “workplace” ...



Any place visited by the employee arising out of; or during course of; employment, including transportation provided by employer.



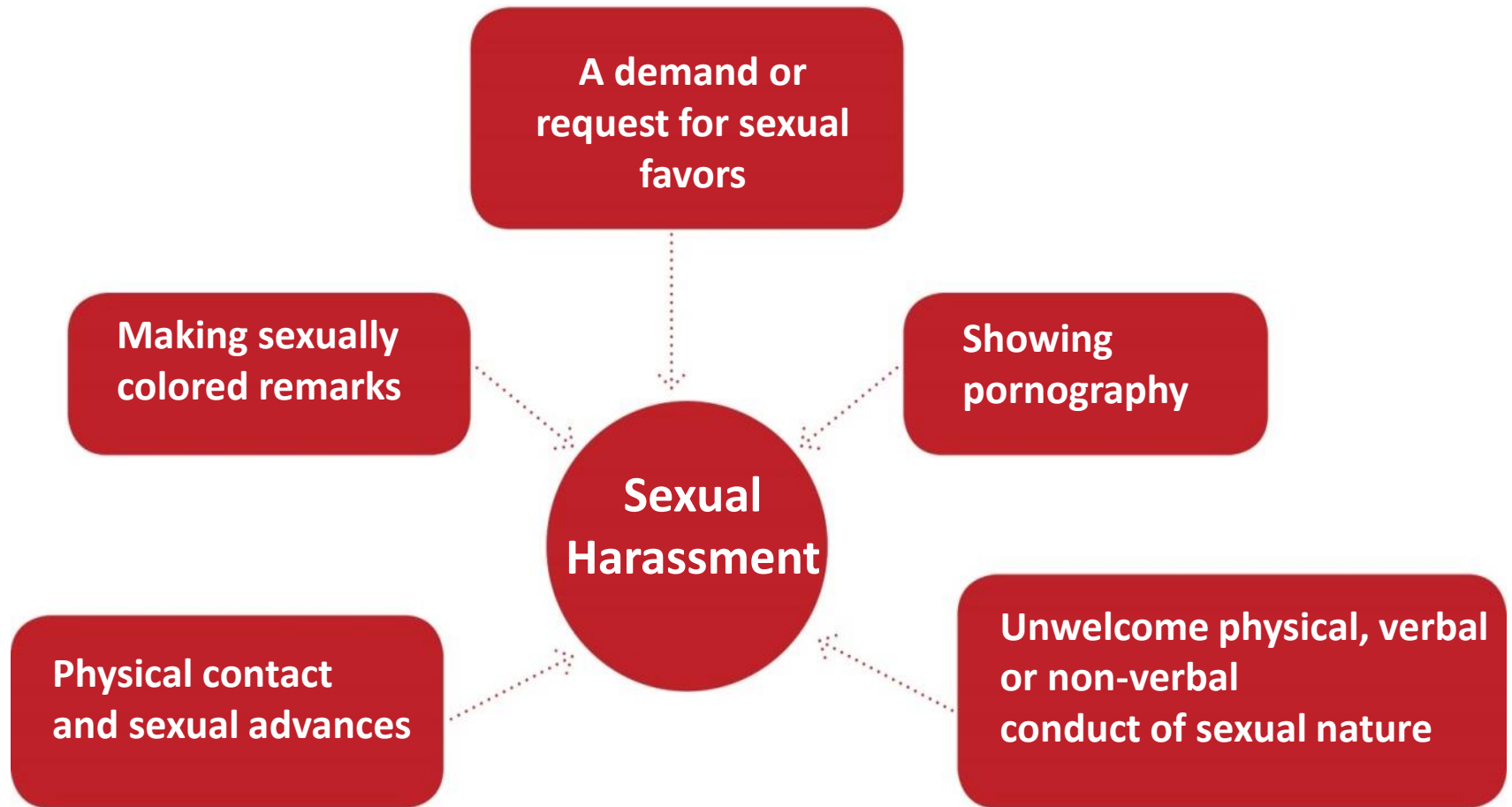
Aggrieved Woman:

In relation to workplace, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the Respondent.

Respondent:

Against whom the aggrieved woman has made a complaint

“Sexual Harassment” under the new law



Circumstances Considered as Sexual Harassment

' No woman shall be subjected to sexual harassment at workplace ' The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment

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

Constitution of Internal Complaints Committee

- Mandatory for establishments employing 10 or more employees
- ICC to be appointed by an order in writing
- At least $\frac{1}{2}$ of the membership of the ICC to be women
- ICC to prepare and submit an annual report to the employer and the District Officer

Membership of Internal Complaints Committee



Note: Provided that one-half of the total members must be women.

Internal Complaints Committee

- Presiding officer and every member shall hold office for a period not exceeding 3 years;
- Members appointed from NGOs or associations shall be paid such fees or allowances as may be prescribed
- The Presiding officer or the member shall be removed and replaced if there is any contravention of Section 16 or convicted for an offence or pending enquiry or found guilty in any disciplinary proceedings or pending disciplinary proceedings or abused the position as to render the continuance in office prejudicial to public interest.

Local Complaints Committee

- To be set up in every district
- LCC is the grievance redressal body with respect to:
 - organizations having less than 10 employees
 - organizations that have not set up an ICC

Local Complaints Committee

- Appropriate Government may notify a district or additional district magistrate or collector or deputy collector as a District Officer (D.O.) for every District.
- Every D.O. to constitute LCC if establishments have less than 10 workers or if the complaint is against the employer himself.
- D.O. to designate one nodal officer in every block, taluka, tehsil in rural or tribal area and ward or municipality in the urban area to receive complaints and forward the same to LCC within 7 days.

Local Complaints Committee

Local Complaints Committee

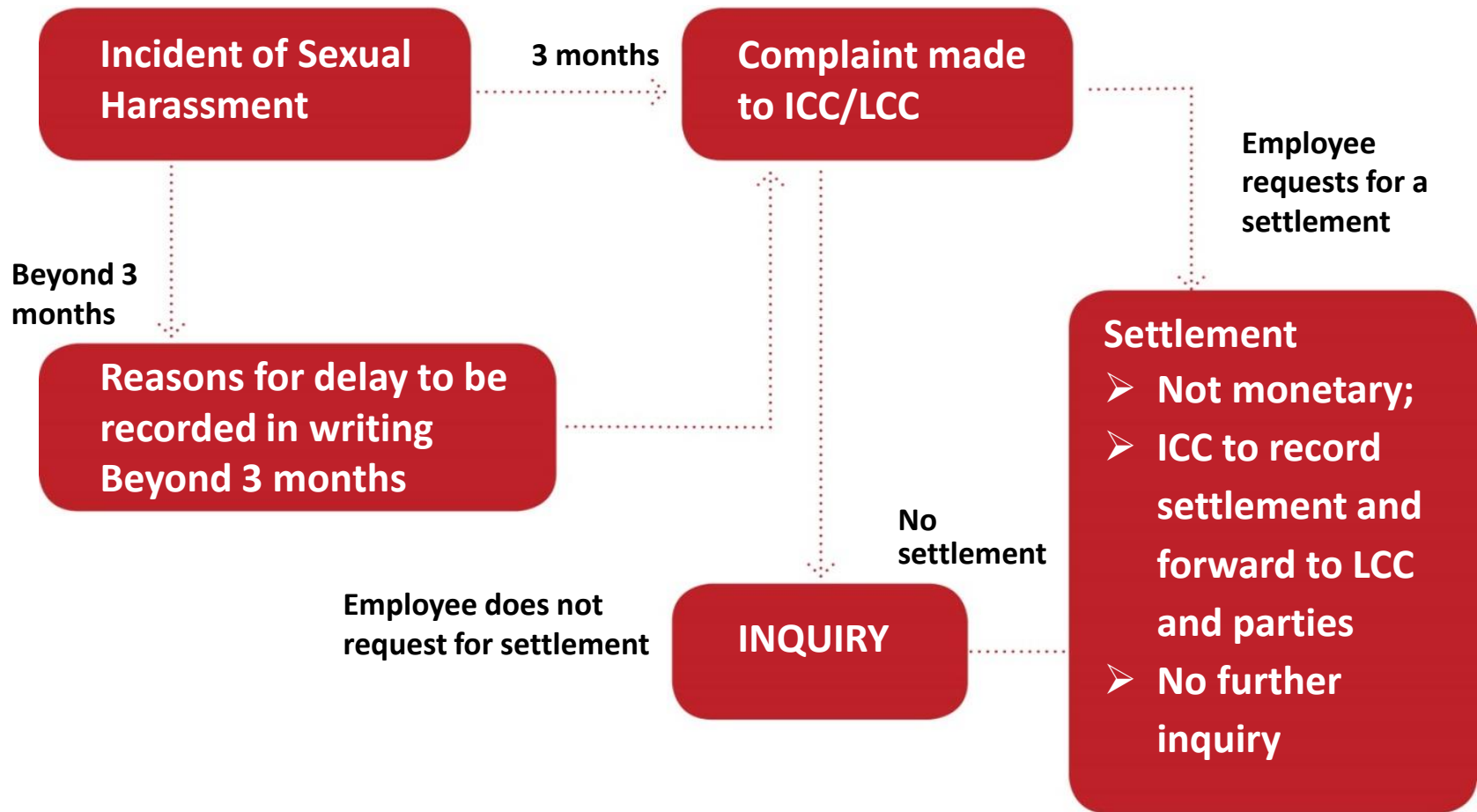
Chairperson to be nominated from amongst eminent women in the field of social work and committed to the cause of women

One member to be nominated from amongst the women working in block, taluka, tehsil or ward or municipality in the district;

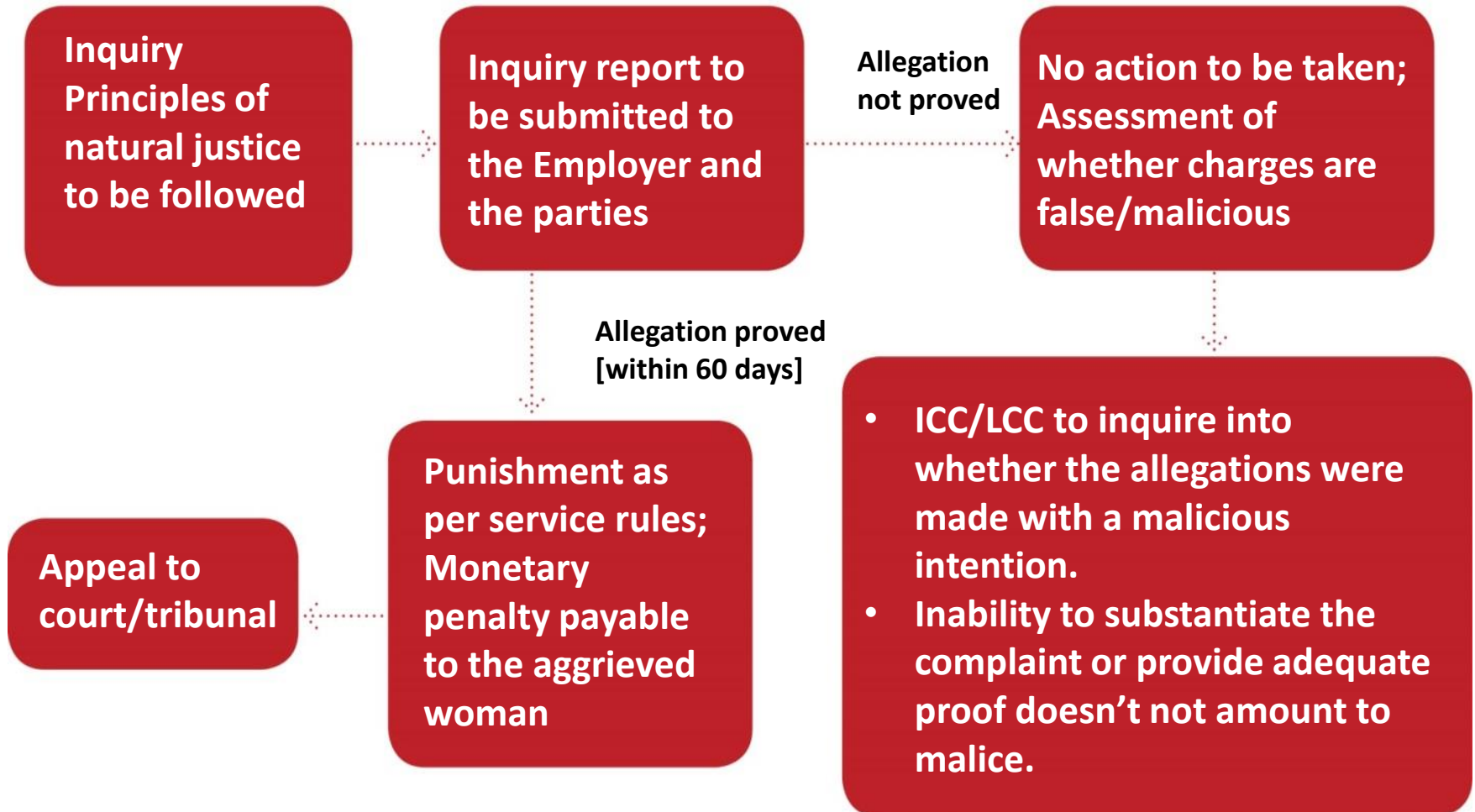
Two members, of whom atleast one shall be a woman, to be nominated from amongst NGOs or associations committed to the cause of women or a person familiar with issues relating to SH – one member should have a background in law or legal knowledge (preferably)

Concerned officer dealing with social welfare or women and child development shall be a member *ex-officio*

Grievance Redressal Process



Grievance Redressal Process



Procedure for Filing a Complaint

- Aggrieved woman to make a complaint in writing within 3 months to the ICC or LCC;
- Legal heir or such other prescribed person may also file a complaint;
- ICC or LCC, at the request of the aggrieved woman, to take steps to settle the matter through conciliation;
- No monetary settlement shall be made as a basis of conciliation;
- ICC or LCC shall record the settlement and forward it to the employer or the D.O. to take action;
- ICC or LCC to provide copies of settlement to aggrieved woman and Respondent and no further inquiry shall be conducted.

Inquiry

- Where the allegation against the Respondent has been proved, ICC or LCC shall recommend to the employer or the D.O. –
 - To take action for SH as a misconduct in accordance with service rules or as may be prescribed;
 - To deduct, notwithstanding anything in the service rules applicable to the Respondent, from his salary or wages such sum as it may consider appropriate to be paid;
 - If the employer is unable to make any deduction, it may direct the Respondent to pay such amount to the aggrieved woman;
 - If the Respondent fails to pay the sum, the ICC or LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned D.O.

Inquiry

- **Interim Relief**
- During the pendency of an Inquiry, ICC or LCC may recommend to –
 - Transfer the aggrieved woman or the Respondent to any other workplace; or
 - Grant leave to the aggrieved woman upto a period of 3 months; or
 - Grant such other relief to the aggrieved woman as may be prescribed.
- Leave granted shall be in addition to the leave otherwise entitled;
- ICC or LCC to provide a report of its findings within 10 days from the date of completion of inquiry and such report may be made available to the concerned parties.
- **Employer or the D.O. to act upon the recommendation within 60 days of its receipt by him.**
- All inquiries must be completed **within 90 days.**
- For the purposes of making an inquiry, the ICC shall has similar powers as a civil court – it can summon and enforce attendance of any person, examine him on oath, order production of documents, etc.

Inquiry

- Where the allegation against the Respondent has been proved, ICC or LCC shall recommend to the employer or the D.O. –
 - To take action for SH as a misconduct in accordance with service rules or as may be prescribed;
 - To deduct, notwithstanding anything in the service rules applicable to the Respondent, from his salary or wages such sum as it may consider appropriate to be paid;
 - If the employer is unable to make any deduction, it may direct the Respondent to pay such amount to the aggrieved woman;
 - If the Respondent fails to pay the sum, the ICC or LCC may forward the order for recovery of the sum as an arrear of land revenue to the concerned D.O.

Determination of compensation

- ICC or LCC shall have regard to –
 - The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
 - The loss in the career opportunity due to the incident in sexual harassment;
 - Medical expenses incurred by the victim for physical or psychiatric treatment;
 - Income and financial status of the Respondent;
 - Feasibility of such payment in lump sum or in instalment.



False or malicious complaint (Section 14)

- If the allegation against the Respondent is malicious or
- The complaint has been made knowing that the complaint is false or
- The aggrieved woman or any other person making the complaint has produced any forged or misleading documents;
 - ICC or LCC to recommend the employer to take action against the woman or person making the false complaint in accordance with the provisions of the service rules or where no such rules exists, in such manner as may be prescribed.
 - A mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant;
 - Malicious intent shall be established only after an inquiry is conducted.

Penalty



- Where the employer fails to –
 - Constitute an ICC; or
 - Take action based on recommendation of ICC or
 - To include the details in the annual report,
 - **Shall be punishable with a fine of Rs. 50,000.**
- If the employer is previously convicted of an offence and commits the same offence, the employer shall be liable to –
 - **Twice the punishment, which might have been imposed on first conviction;**
 - **Cancellation of license or withdrawal or non-renewal or approval or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.**
 - **All offences under the statute are non-cognizable**

PROHIBITION OF PUBLICATION OR MAKING KNOWN THE CONTENTS OF COMPLAINT AND INQUIRY PROCEEDINGS

- Notwithstanding anything contained in the Right to information Act, 2005, following can not be communicated or made known to public, press or media
 - Identity and address of the aggrieved woman, respondent or witnesses
 - Any information relating to conciliation and inquiry proceedings, recommendations of the internal committee
 - Action taken by the employer

There is a penalty for the person entrusted with the duty to handle or deal with the complaint, inquiry, recommendations or actions for the publication or making known the contents of complaint and inquiry proceedings.

Key Obligations of the Employer

- Every employer shall –
 - Provide a safe working environment at the workplace;
 - Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the ICC;
 - Organise workshops and awareness programs at regular intervals for sensitising the employees regarding the provisions of the Act and orientation programmes for members of the ICC;
 - Provide necessary facilities to the ICC or LCC for dealing with the complaint and conducting an enquiry;
 - Assist in securing the attendance of the Respondent and witnesses;
 - Make such information available to the ICC or LCC;

Key Obligations of the Employer

- Every employer shall –
 - Provide assistance to the woman if she chooses to file a complaint under the IPC or any other law for the time being in force;
 - Cause to initiate action, under the IPC or any other law, against the perpetrator;
 - Treat SH as a misconduct under the service rules and initiate action for such misconduct;
 - Monitor the timely submission of reports by the ICC.

Other Provisions

- Publication or making known the contents of the complaint and inquiry proceedings is expressly prohibited.
- May disseminate information regarding the justice secured to any victim of SH under the Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.
- Penalty is prescribed for publication or making known the complaint and inquiry proceedings.
- Appeal can be preferred within 90 days of the recommendations to the court or tribunal in accordance with the provisions of the service rules or where no such service rules exists, such other manner as may be prescribed.

Other Provisions

- ICC or LCC to submit annual report and employer to include information in the annual report;
- Appropriate Government to monitor implementation and maintain data;
- Appropriate Government to take measures to publicise the Act;
- Appropriate Government has power to call for information and inspection of records.
- No Court shall take cognizance of an offence, punishable under this Act, save on a complaint made by the aggrieved woman or any person authorized by the ICC or LCC in this behalf.

Other Provisions

- Regarding monitoring, the Act provides that the State Governments will monitor implementation and maintain data for all State Government establishments as well as private establishments in their territory. For establishments of the Central Government this duty is cast on the Government of India.
- All ICCs have to submit Annual reports to the employer who in turn will submit it to the district officer. All LCCs shall submit their annual report to the district officer. The district officers will submit the report annually to the State Governments.
- The Central and State Governments are mandated to develop relevant training materials and organise awareness programmes to advance the understanding of the public on the provisions of this Bill.
- The Central Government will provide financial assistance to the States to meet the expenditure of fee and allowances payable to the members of the Local Complaints Committee.

Guidelines for Members of ICC

- Believe in the reality of the complaint lodged.
- Empathize with the complainant. Do not function like a criminal court.
- Remember that it may be difficult for an employee to talk about anything 'sexual'. Hence there can be a long time interval between the harassment and the actual complaint.
- Handle complaints in a confidential manner and within 30 working days.
- Submit annual report on sexual harassment cases, if any and actions taken to address the same, to the Employer
- Maintain all the data related to sexual harassment cases in the Organization
- Provide safety for the complainant and his / her supporters, if such a need be felt and that the committee can recommend action against persons indulging in intimidation of the complainant or witness to a complaint.

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- Discard pre-determined notions of how an accused should look or behave or dress. Be aware of stereotypes.
- Do not insist on detailed description of harassment. This could increase the complainant's trauma.
- Most sexual crimes are committed in private; hence there may not be any eye-witnesses.
- Since this is a human rights issue, balance of probabilities is a sufficient measure of proof.
- Help the complainant regain his / her self-respect.
- Make 'discreet' enquiries as to whether other employees have experienced similar problems. Document results of any sexual harassment complaint or investigation. Not only the results, but also document any corrective action that the employee or supervisor was asked to take.
- Inform all employees that it is their obligation to report sexual harassment that they either experience or witness.
- The inability to substantiate a complaint or provide adequate proof need not attract action against the woman.

Three pronged approach

- The Act has adopted a three pronged approach –
 - Protecting women against sexual harassment at workplace;
 - Preventing instances of sexual harassment at work place; and
 - Providing redressal of complaints of sexual harassment at workplace.

Indian Penal Code Provision

- **Section 509** - Word, gesture or act intended to insult the modesty of a woman
- **Offence:**
 - utterance of any word,
 - making any sound or gesture
 - exhibiting any object
- With an intention to intrude upon the privacy of such woman
- **Punishment:** Simple imprisonment up to 3 years + fine
- **Nature of offence:** Cognizable

Amendments to Indian Penal Code Provisions

- **Section 354 A:** Sexual harassment and punishment for sexual harassment
- **Offence:**
 - physical contact and advances involving unwelcome and explicit sexual overtures; or
 - a demand or request for sexual favours; or
 - showing pornography against the will of a woman; or
 - making sexually coloured remarks
- **Punishment:** Commission of an offence under (i), (ii) or (iii) punishable with rigorous imprisonment for a term of up to 3 years and/or fine; commission of offence under (iv) punishable with imprisonment for a term up to one year and/or fine
- **Nature of offence:** Cognizable

Contd..

- **354B (Act with intent to disrobe a woman)**
- **Punishment**
- Imprisonment not less than three years but which may extend to seven years and with fine.
- **What is included**
- Assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked.

Contd..



- **Section 354C (Voyeurism)**
- **Punishment**
- In case of first conviction, imprisonment not less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.
- **What is included**
- Watching or capturing a woman in “private act”, which includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy, and where the victim's genitals, buttocks or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the person is doing a sexual act that is not of a kind ordinarily done in public.

Contd..



- **Section 354D (Stalking)**
- **Punishment**
- Maximum imprisonment of 3 years and/or fine. Five years in case of subsequent convictions.
- **What is included**
- Anybody who follows a woman and contact, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman
- Or Monitors the use by a woman of the internet, email or any other form of electronic communication.

Contd..

- **Section 370,370A of IPC**
(trafficking of person for exploitation)
- **Punishment**
- 3-5 years imprisonment and/or fine
- **What is included**
- If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to life imprisonment.



Contd..

- **Section 375 of IPC**
- **Punishment**
- At least 7 years jail and maximum life imprisonment with/without fine. In aggravated cases minimum 10 years rigorous imprisonment which can extend to life.
- **What is included**
- Even touching private parts will constitute sexual assault including having sex (with lack of physical resistance).



Contd..

- **Section 376A of IPC**
- **Punishment**
- Minimum 20 years rigorous imprisonment which can extend to life with compensation to victim.
- **What is included**
- if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state.

Contd..

- **Section 376C**
- **Punishment**
- Rigorous imprisonment of term between 5-10 years and/or fine
- **What is included**
- Whoever abuses a woman using his position of authority (or fiduciary relationship) to induce or seduce any woman in his charge or present in the premises to have sexual intercourse.

Some of the well-known Cases

- **Bhanwari Devi Case**

- In 1992 Bhanwari Devi, a social worker in Rajasthan was brutally gang raped by a number of upper class men, because she had tried to stop a child marriage. Bhanwari Devi was determined to get justice and lodged a case against the offenders. However, the accused was acquitted by a trial court. This appalling injustice, together with the fighting spirit of Bhanwari Devi, inspired several women's groups and NGOs to file a petition in the Supreme Court under the collective platform of Vishakha.

Source: http://www.seasonsindia.com/education/woes_sea.htm

- **Shehnaz Mudbhatkal case**
- Sexual harassment at the workplace, as an issue, captured the collective consciousness of working women, following the Shehnaz Mudbhatkal case.
- Shehnaz worked as a hostess for Saudi Arabian airlines. She was subjected to sexual harassment by her boss in 1985, and dismissed when she complained to higher authorities. But Shehnaz would not give in. Filing suit, she fought for 11 years and won her case in 1996 when the Bombay labour court judged it to have been a case of unfair dismissal under the Industrial Disputes Act. It ordered her re-instatement with full back payment, perks and promotions. Sadly, the airlines appealed to Bombay High Court, which granted a stay.

Source: http://www.seasonsindia.com/education/woes_sea.htm

- **Sailaja Suman Case**

- In 1994, Doordarshan (Hyderabad) producer Sailaja Suman took director P L Chawla to court on charges of defamation, criminal intimidation and trying to outrage her modesty. She filed two separate cases in the metropolitan magistrate's court. Unfortunately, Suman was transferred to Lucknow.

- **Nutan Sharma case**

- Nutan Sharma a steno in the Union Ministry of Railways, was transferred, following her complaint that R P Sharma, secretary to the Chief Operating Manager, molested her.

- **Alisha Chinai Case**
- Alisha Chinai's suit against music composer Anu Malik, demanding Rs. 26,60,000 as damages for sexual harassment, met with a similar fate. Malik filed a Rs. 2 crore defamation suit.
- **Rupan Deol Bajaj Case**
- The most well-known instance of a sexually harassed woman taking the help of the law to teach the harasser a lesson is that of Rupan Deol Bajaj. Bajaj was slapped on the bottom by the then DGP of Punjab, K P S Gill. Accusing him of indecent behaviour, Bajaj fought an 8-year legal battle. The hard work paid off. Gill was convicted and sentenced to three months RI.

- **Tarun Tejpal Case**

- Tarun Tejpal, Editor of Tehelka was accused by a woman journalist colleague of sexual assault. Tejpal was charged under all the seven sections for which he has been booked: 354 [molestation], 354-A [sexual harassment and outraging the modesty of a woman], 341 [wrongful restraint], 342 [wrongful confinement], 376 [rape] and 376(2)(f) [rape by a person in a position of control or dominance over a woman] of the IPC; and 376(2)(k) [rape by a relative or guardian or a person in a position of trust or authority, and rape by a person in a fiduciary position] of the Criminal Law (Amendment) Act.
- Tejpal has been accused by a former junior colleague of assaulting her in a lift at the Grand Hyatt hotel, Bambolim, on two occasions on November 7 and 8, 2013, during the Thinkfest event.
- Investigators said this was the first time that charges had been brought anywhere in the country under the new section 376(2)(k).

Source: <http://www.canindia.com/2014/02/tehelka-case-tarun-tejpal-accuses-go-a-police-of-acting-under-political-bosses/#>

If you have any questions or need any help,
please call!

Thank You

