

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

Law on Sexual Harassment



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 Judgment - 1997

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

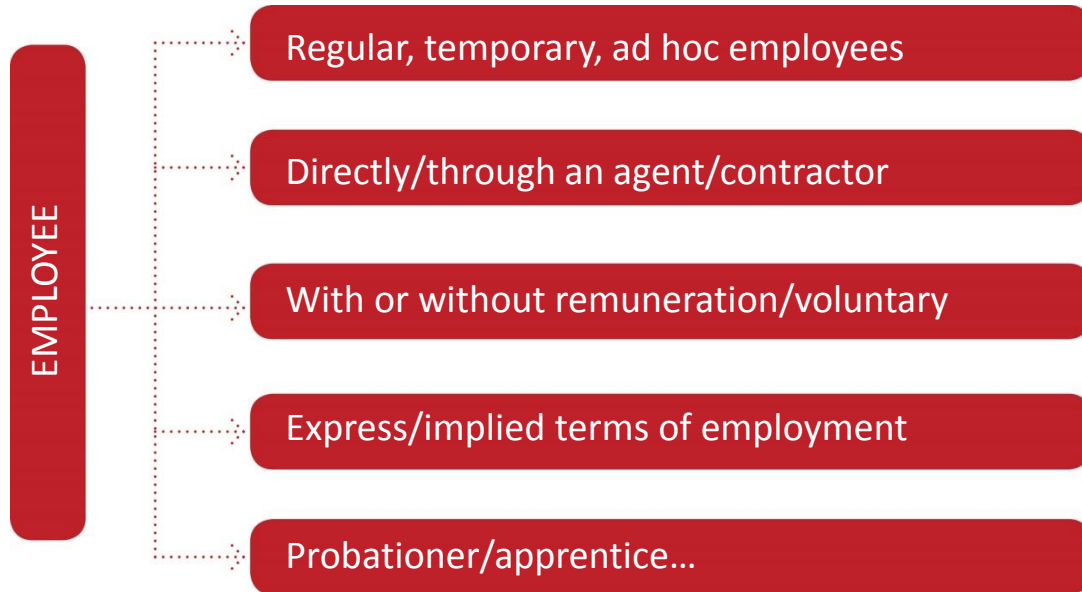
The Vishaka Judgment - Guidelines

- Employer's duty to
 - Prevent and prohibit acts of sexual harassment Article 21: Right to life - to live with dignity
 - Redress and resolve grievances pertaining to sexual harassment
- The Guidelines = Law, until such time a legislative frame work on the subject is enacted

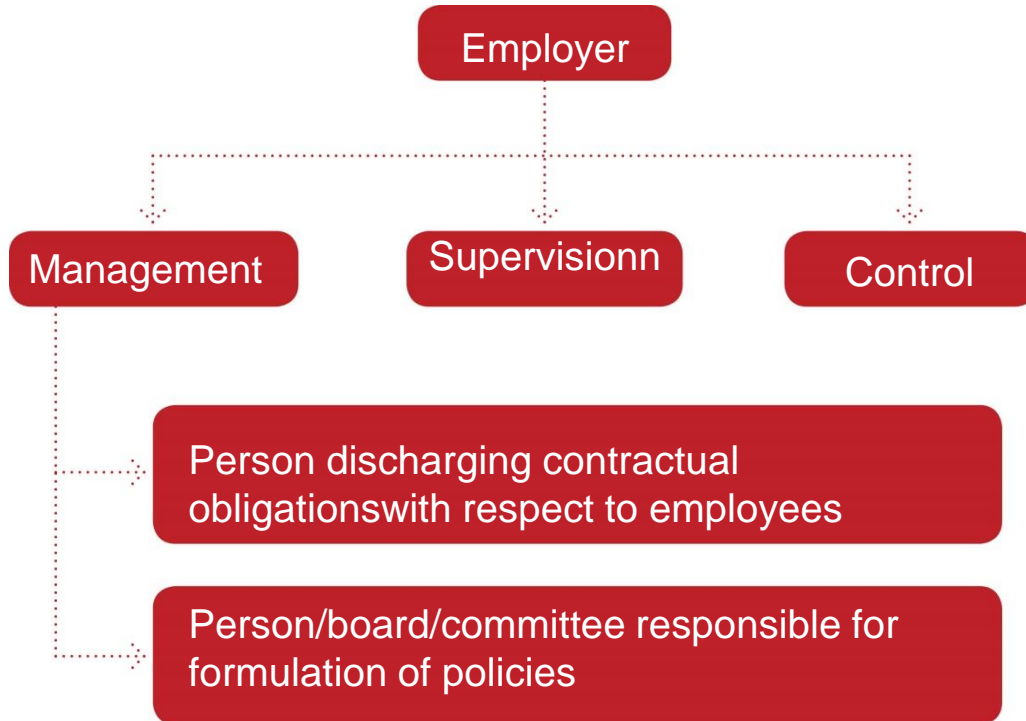
The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

- Object: Prevention + Protection + Redressal

Who is an “Employee”?



Who is the “Employer”?



The “workplace”



The extended “workplace” ...

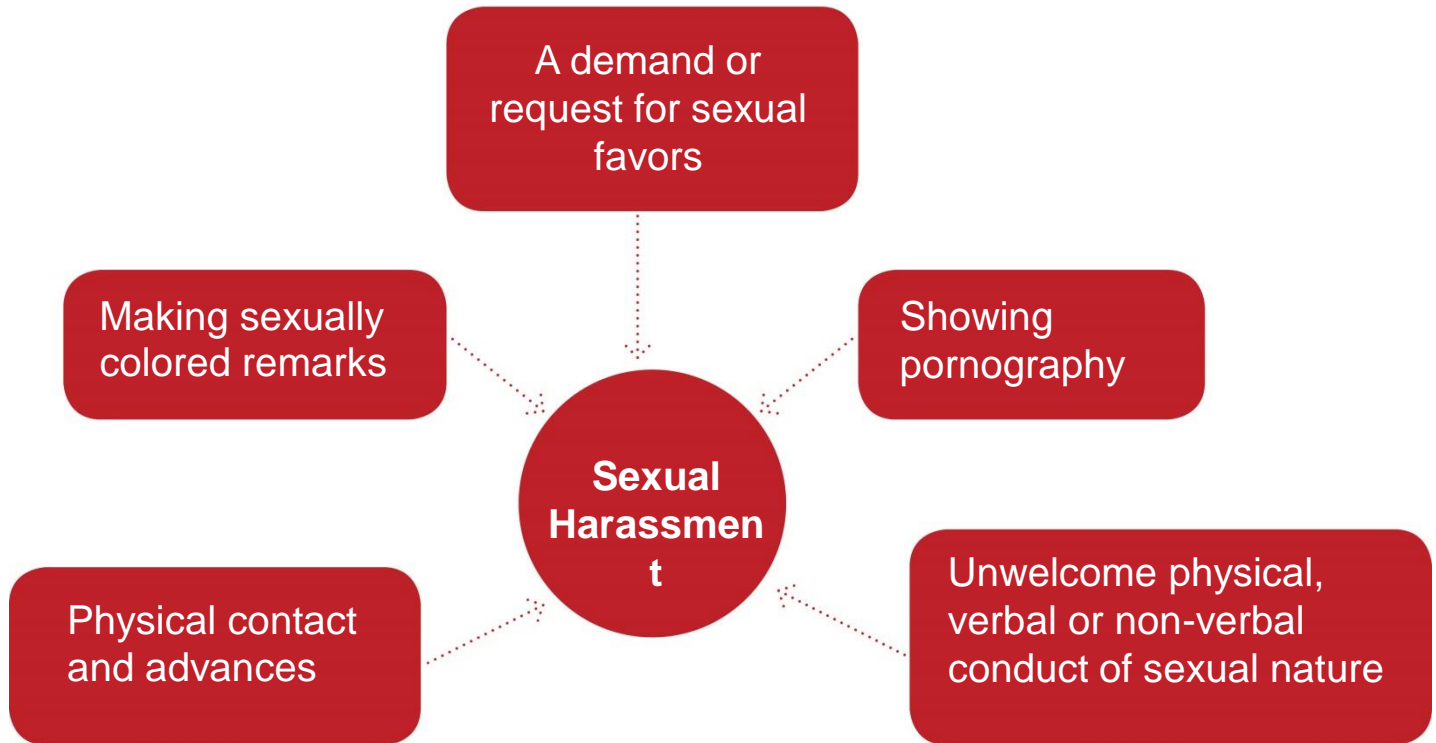


Any place visited by the employee

- arising out of;
- or during course of; employment, including transportation provided by employer.



“Sexual Harassment” under the new law



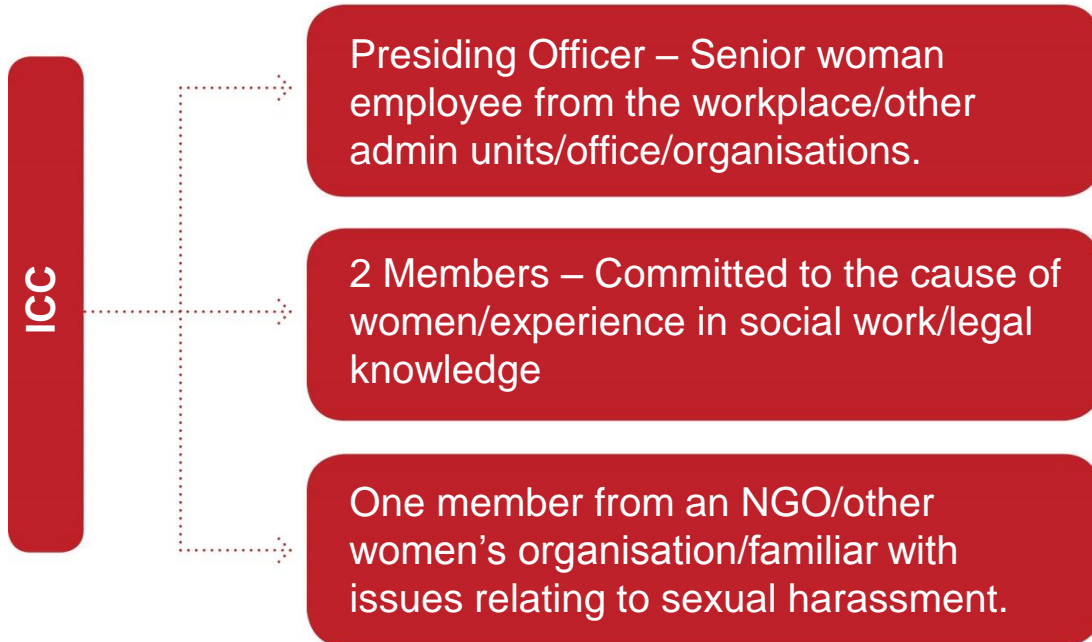
Circumstances Considered as Sexual Harassment

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

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

Internal Complaints Committee



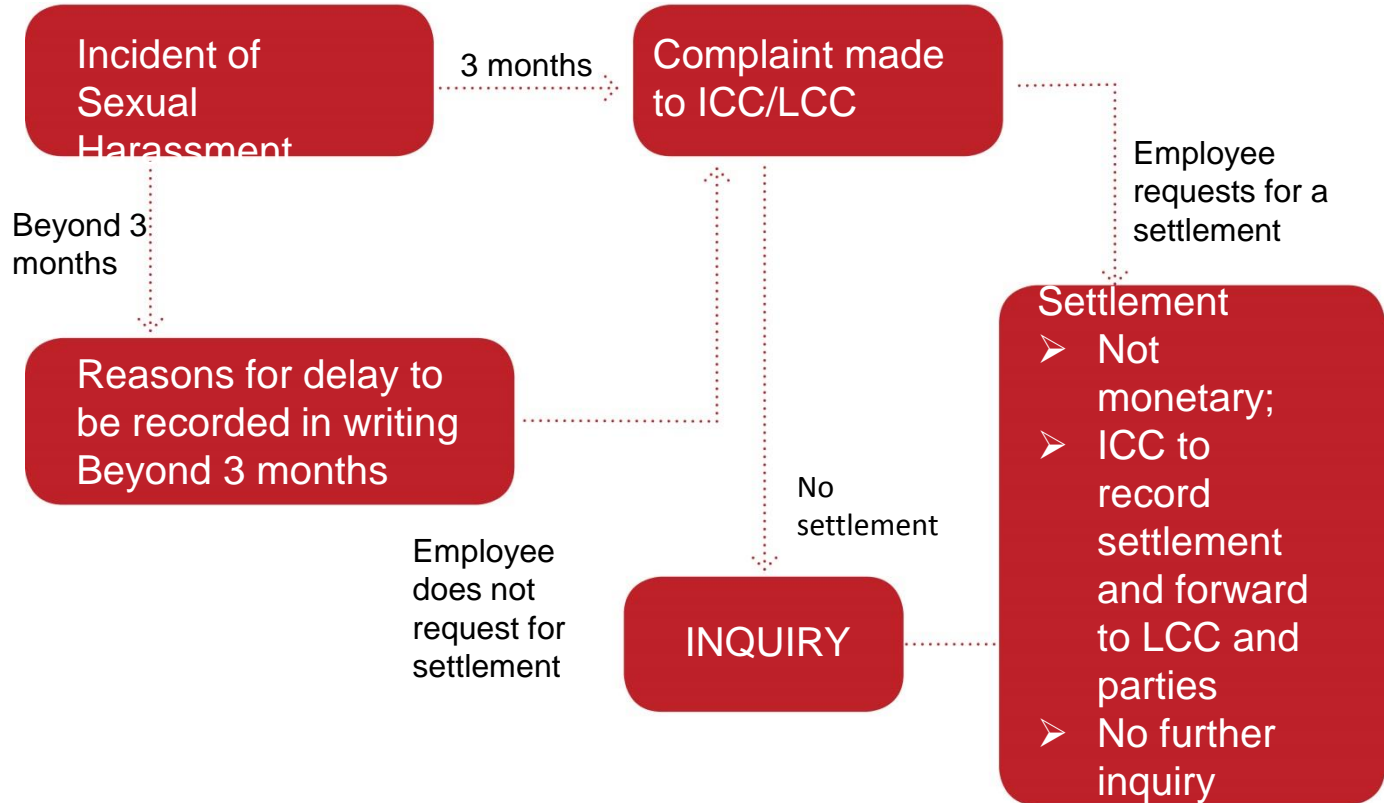
Local Complaints Committee

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

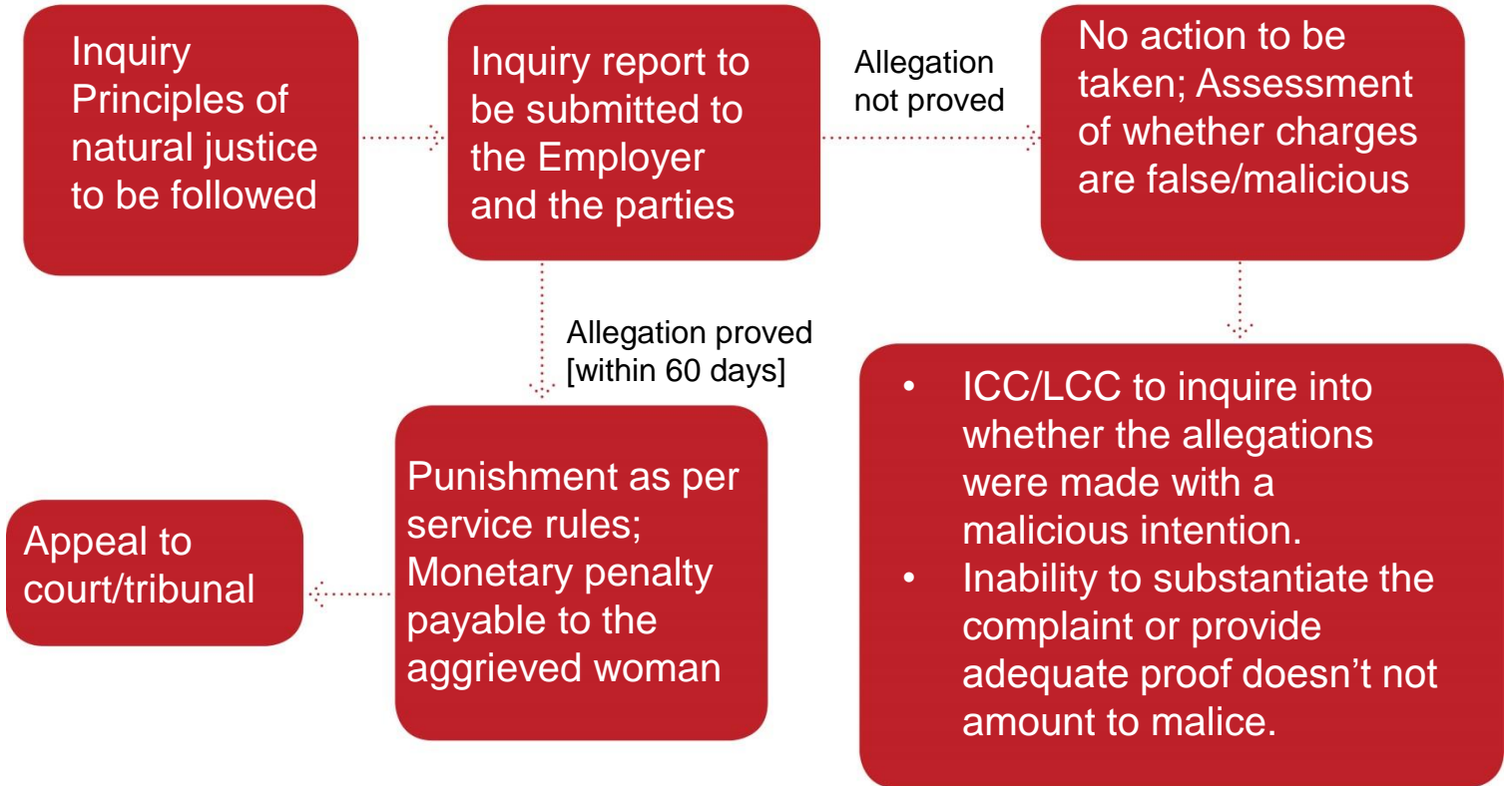
Members of LCC

- A. Chairperson to be nominated from amongst eminent women in social work
 - B. two members of whom at least one should be woman, from such NGO/ associations committed to the cause of women/ person familiar with the issues relating to sexual harassment
 - C. One member to be nominated from amongst the women working in the block / tehsil or ward municipality
- Provided that at least one nominee to have legal knowledge
- Provided further that at least one woman nominee be from SC/ ST/ OBC/ minorities
- Concerned officer dealing with social welfare or women and child dev dept in dist shall be an ex officio member

Grievance Redressal Process



Grievance Redressal Process



Status of Internal Committee

The internal committee has same powers as are vested in a civil court, such as

1. Summoning and enforcing attendance of any person and examining him on oath
2. Requiring the discovery and production of documents
3. Any other matter which may be prescribed
Inquiry to be completed within 90 days

Interim Reliefs

During the pendency of the enquiry, upon written request by the aggrieved employee:

- Transfer the aggrieved woman or the respondent to any other workplace
- Grant leave to the aggrieved woman up to a period of three months

Determination of Compensation

- Mental trauma, pain, suffering, emotional distress caused
- Loss in career opportunity due to the incident
- Medical expenses incurred
- Income/financial status of the respondent
- Feasibility of such payment in lump sum or in installments

Employer's Obligations

- Provide a safe working environment
- Display at the workplace, details of:
 - the penal consequences of indulging in acts of sexual harassment
 - composition of the ICC
 - the grievance redressal mechanism available to aggrieved employees
- Organize workshops and awareness programs for sensitizing employees
- Organizing orientation programs for members of the ICC

Employer's Obligations

- Cooperate and assist during the course of the inquiry
- Treat sexual harassment as misconduct under the service rules
- Provide assistance to the aggrieved employee, should she choose to file a police complaint;
- Initiate action under the IPC or such other applicable law
- Ensure timely submission of reports to the District Officer

Penalties

- Failure to constitute an ICC
- Contravention of any provision under the statute
 - Fine of INR 50,000 (approx. US\$1,000)
 - Cancellation of business licenses
- Second Conviction: Double punishment
- All offences under the statute are non-cognizable

Prohibition of Publication of the contents of complt/ enq procgs

- In spite of RTI 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.

The 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

Amendment to the Indian Penal Code Provision

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

Analysis/ Shortcomings

- No protection for male employees
- No reference to protection from 'victimization'
- Constitution of ICC for different offices
- External representation within ICC
- Timelines may be unrealistic
- Deterrence due to employer action for false or malicious complaints
- Ability to deduct from harasser's salary
- Absence of monetary liability on the part of the employer
- No protection from other forms of harassment