

PRIMUS LIFESTYLE PRIVATE LIMITED

(Formerly Known as Ameliorate Realtors Private Limited)

PRIMUS LIFESTYLE
No. 22, 5th Floor, Hara Chamber, KH Road,
Shanthinagar, Bangalore South, Karnataka 560027

Manual
Sexual Harassment of Women at Workplace (prevention, prohibition and redressal) Act 2013

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SECTION 1: INTRODUCTION

As enshrined in the Preamble to the Constitution of India doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity.

This handbook is a guide towards safe workplace that benefits to employees, employers and other stake holders to create a win-win situation

THE MANDATE

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

Background to enact this Act

In 1992, a rural level change agent, Bhanwari Devi, was engaged by the state of Rajasthan to work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a one-year-old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. That omission came at great cost – Bhanwari was subsequently gang raped by those very men.

The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behavior in the workplace.

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. It proposed that sexual harassment be recognized as a violation of women's fundamental right to equality and that all workplaces/establishments/institutions be made accountable and responsible to uphold these rights.

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

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Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- A definition of sexual harassment
- Shifting accountability from individuals to institutions
- Prioritizing prevention
- Provision of an innovative redress mechanism

Definition of Sexual Harassment in work place as per Act;

1. Sexual harassment to include unwelcome acts such as physical contact and sexual advances,
2. Demand or request for sexual favours,
3. Making sexually coloured remarks,
4. Showing pornography, and
5. Any other unwelcome physical, verbal, or non-verbal conduct of a sexual nature.

It also lists down five circumstances that would constitute sexual harassment if they are connected to the above-mentioned acts-

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

SECTION 2: WORKPLACE SEXUAL HARASSMENT

This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviors through which a woman can experience possible professional and personal harm. It presents the user with scenarios from across-section of work contexts to build clarity on different forms of sexual harassment as identified under the Act.

2.1 WHO IS AN AGGRIEVED WOMAN?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a

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voluntary basis or otherwise. Their terms of employment can be express or implied. Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.

2.2 WHAT IS A WORKPLACE?

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 organized and un-organized 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:

1. Government organizations, including Government company, corporations and cooperative societies;
2. Private sector organizations, 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.

The Act defines the Unorganized Sector as:

- Any enterprise owned by an individual or self-employed worker engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.

All women working or visiting workplaces, for example:

2.3 KEY ELEMENTS OF WORKPLACE SEXUAL HARASSMENT

Often situations that start off innocently end up in inappropriate and unprofessional behaviors. It is the impact and not the intent that matters

UNWELCOME	WELCOME
Feels bad	Feels good
One-sided	Reciprocal
Feels powerless	In-control

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Power-based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Causes anger/sadness	Happy
Causes negative self-esteem	Positive self-esteem

Impact of inappropriate behavior

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts.

Professional	Personal
Decreased work performance	Depression
Increased absenteeism, loss of pay	Anxiety, panic attacks
Loss of promotional opportunities	Traumatic stress
Retaliation from the respondent, or colleagues/ friends of the respondent	Sleeplessness
Subjected to gossip and scrutiny at work	Shame, guilt, self-blame
Being objectified	Difficulty in concentrating
Becoming publicly sexualized	Headaches
Defamation	Fatigue, loss of motivation
Being ostracized	Personal Difficulties with time
Having to relocate	Eating disorders (weight loss or gain)
Job and career consequences	Feeling betrayed and/or violated
	Feeling angry or violent towards the respondent

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SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held “We therefore prefer to analyze harassment from the [complainant’s] perspective. A complete understanding of the [complainant’s] view requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women... Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.”

Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009 On 9 September 2010 in the High Court of Delhi

Weakened support network

Feeling powerless

2.4 EXAMPLES OF BEHAVIOURS AND SCENARIOS THAT CONSTITUTE SEXUAL HARASSMENT

Below are examples of behaviour that may or may not constitute workplace sexual harassment in isolation. At the same time, it is important to remember that more often than not, such behaviour occurs in cluster. Distinguishing between these different possibilities is not an easy task and requires essential training and skill building.

Some examples of behaviour that constitute sexual harassment at the workplace:

1. Making sexually suggestive remarks or innuendos.
2. Serious or repeated offensive remarks, such as teasing related to a person’s body or appearance.
3. Offensive comments or jokes.
4. Inappropriate questions, suggestions or remarks about a person’s sex life.
5. Displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or e-mails.
6. Intimidation, threats, blackmail around sexual favours.
7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
10. Physical contact such as touching or pinching.
11. Caressing, kissing or fondling someone against her will (could be considered assault).
12. Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
13. Persistently asking someone out, despite being turned down.

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14. Stalking an individual.
15. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours.
16. Falsely accusing and undermining a person behind closed doors for sexual favours.
17. Controlling a person's reputation by rumor-mongering about her private life.

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

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

Some examples of workplace behaviours that may not constitute sexual harassment:

1. Following-up on work absences.
2. Requiring performance to job standards.
3. The normal exercise of management rights.
4. Work-related stress e.g. meeting deadlines or quality standards.
5. Conditions of works.
6. Constructive feedback about the work mistake and not the person.

2.5 FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally, workplace sexual harassment refers to two common forms of inappropriate behaviour:

- **Quid Pro Quo (literally 'this for that')**
 - Implied or explicit promise of preferential/detrimental treatment in employment
 - Implied or express threat about her present or future employment status
- **Hostile Work Environment**
 - Creating a hostile, intimidating or an offensive work environment

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- Humiliating treatment likely to affect her health or safety

2.6 SCENARIOS

The following scenarios have been constructed as examples based on real life experiences of women at workplaces. The scenarios attempt to build an understanding of the two types of workplace sexual harassment as prescribed by the Act i.e. quid pro quo and hostile environment.

The names in the following examples are fictional and in no way refer to any individual alive or dead.

A. Examples of scenarios that constitute quid pro quo or 'this for that' type of sexual harassment at the workplace:

EXAMPLE 1

Ms. A is a bright young executive working in a company. Known to be forthright, she is dedicated, hardworking and is a perfectionist.

Ms. A stays back at work late one evening with her colleague Mr. B to complete work for an important presentation. Mr. B offers to buy Ms. A dinner and later drop her home since it's been a long day. After dinner, Mr. B proposes to Ms. A that he would like her to spend the night with him. Ms. A refuses politely but firmly and goes home. Next evening, Mr. B repeats his request and on Ms. A's refusal, threatens her that if she doesn't give-in, he will tell everyone that she made a pass at him.

What is Workplace 'this for that' Sexual Harassment?

In the above example, Mr. B's threat to Ms. A that if she does not agree to his 'request' for a sexual favour, he will in return smear her character at the workplace as a person who wants to use sexual favours to his advantage constitutes quid pro quo form of sexual harassment. Mr. B's behaviour is unwelcome, sexual, and has a negative impact on Ms. A.

B. Examples of scenarios that constitute a 'hostile work environment' type of sexual harassment at the workplace:

SCENARIO EXAMPLE 1

Ms. B works as office executive in X place. Mr. A, Ms. B's Manager, often tries to touch her on one or the other pretext. For example, he adjusts her dupatta while she is walking to her workstation on the pretext of covering her back. Ms. B is very uncomfortable with his behaviour. Her colleagues at the workplace ridicule Ms. B and mock her for the 'special treatment' by her Manager. They often gossip about her and Mr. A.

What is a Hostile Workplace Environment Sexual Harassment?

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In the above example, the physical touching by Mr. A is unwelcome and sexual in nature. The gossip, which is based on Mr. A's behaviour towards Ms. B at the workplace, is creating a hostile work environment for Ms. B.

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SECTION 3: PREVENTION AND PROHIBITION

This section describes those who are both responsible and accountable to prevent workplace sexual harassment in compliance with the Act. It also highlights the role of workplaces in prohibiting workplace sexual harassment through an effectively communicated policy.

3.1 PREVENTIVE AUTHORITIES

3.1.1 WHO IS AN EMPLOYER?

An employer refers to:

- The head of the department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the Appropriate Government or local authority or such officer specified in this behalf.
- Any person (whether contractual or not) responsible for the management, supervision and control of a designated workplace
- A person or a household who employs or benefits from the employment of domestic worker or women employees.

3.1.2 WHO IS AN APPROPRIATE GOVERNMENT?

As per the Act, Appropriate Government means:

- I. In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly
 - a. By the Central Government or the Union Territory administration, the Central Government;
 - b. By the State Government, the State Government;
- II. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

3.2 WHO IS A DISTRICT OFFICER (DO)?

State Governments will notify a District Magistrate/Additional District Magistrate/ collector/Deputy Commissioner as a District Officer at the local level. The DC will be responsible for carrying out the powers and functions under the Act at the district levels (including every block, taluka, tehsil, ward, and municipality).

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3.2.1 COMPLAINTS COMMITTEE/S

The Act provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All Complaints Committees must have 50 per cent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.

1. Internal Complaints Committee (ICC)

Every employer is obliged to constitute an ICC through a written order. The ICC will be composed of the following members:

No	Member	Name of Member	Contact Details
1	Chair Person for ARPL	MANGALAM S	Mangala.S@primuslife.in
2	Member	SANJANA SS	Sanjana.S@primuslife.in
3	Member	Maria Bhakre	Maria.bhakre@primuslife.in
6	External Member	Nagaraja Amaragolla	nagarajaamaragolla@gmail.com

Where the office or administrative units of a workplace are located in different places, division or sub-division, an ICC has to be set up at every administrative unit and office.

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ICC/LCC ARE MANDATORY

The employee who had a fundamental right to a workplace free of sexual harassment, had complained about sexual harassment. According to the Court, had the organisation complied with the Vishaka Guidelines and set up such a Complaints Committee, the preventative benefit would have been three-fold:

1. Ensured a place where women employees could seek redress;
2. Sent a clear message to the workplace that such complaints would be enquired into by a specially designated committee with external expertise;
3. Prevented a series of litigation that followed.

Hence, the Madras High Court awarded Rs. 1.68 crores in damages to an employee for the no constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).

Ms. G v. ISG Novasoft Technologies Ltd. Madras High Court (Crl.R.C.No.370 of 2014 order dated 02.09.2014. Original Petition No. 463 of 2012)

2. Local Complaints Committee (LCC)

The company would constitute a LCC based on the growth and necessity in every branch so as to enable women to work in an environment free of sexual harassment. The LCC can also receive complaints:

The constitution of LCC would be similar to ICC

3.2.2 DISSEMINATION OF INFORMATION AND AWARENESS TO ALL EMPLOYEES

1. Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes.
2. Carry out awareness and orientation for all employees.
3. Ensure capacity and skill building of Complaints Committees.
4. Publicize names and contact details of Complaints Committee members on company notice board/s, web site or canteen and any other prominent places inside the premises.

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SECTION 4: REDRESS

This section is about Redressal. It provides helpful information on who can complain, to whom, and what a complaint should contain. 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.

4.1 WHO CAN COMPLAIN AND WHERE?

Any aggrieved woman employee can complain to the Internal Complaints Committee (ICC) or to the Local Complaints Committee (LCC) depending on the location.

4.2 CONTENTS OF A COMPLAINT

A complaint can be in the form or oral/written or through a known acquaintance (if illiterate)

The written complaint should contain the following

1. Complaint details
2. Description of the incident
3. Date
4. Time
5. Respondent's name
6. Working relationship

4.3 WHAT CAN AN EMPLOYEE/WORKER EXPECT?

When it comes to redress for workplace sexual harassment, employee/worker has a right to expect - a trained, skilled and competent Complaints Committee, a time bound process, information confidentiality, assurance of non-retaliation, counselling or other enabling support where needed and assistance if the complainant opts for criminal proceedings.

4.3.1 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
- In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent

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- Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee

4.3.2 RIGHTS OF THE RESPONDENT

- A patient hearing to present his/her 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

4.4 KEY RESPONSIBILITIES

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
- Analyze information gathered
- Prepare the report with findings/recommendations

4.5 KNOWLEDGE, SKILLS, TRAINING

Dealing with workplace sexual harassment complaints is often complex. Hence 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. Complaints Committee skills must include an ability to synthesize information i.e. relevant documents, the law and interviews. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews. They should be competent at showing empathy, being impartial and being thorough. They should be able to identify sexual harassment and its impact.

A Complaints Committee/s is required to be trained in both skill and capacity to carry out a fair and informed inquiry into a complaint of workplace sexual harassment. An absence of such training will lead to unequal and unfair results, which can cost employers, employees, complainants as well as respondents.

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4.6 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.

4.7 NON-NEGOTIABLES DURING THE INQUIRY PROCESS

During a redress process the Complaints Committee/s are required to assure confidentiality, nonretaliation and recommend interim measures as needed to conduct a fair inquiry.

4.8 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.

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 to receive and manage complaints of sexual harassment.

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Training and Skill Building: An Institutional Responsibility

It is important that both the Committee and any other person designated by the organization/District Officer to receive or otherwise handle a sexual harassment complaint has the required competency and skill building training for managing a complaint and/or any concern related to workplace sexual harassment.

Upon receipt, the complaint should be reviewed for:

1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, SOP/Standing orders, Workplace Policy, Vishaka Guidelines and related laws.
2. Clarity in the complaint.
3. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

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

1. 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.

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2. Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
3. 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

1. As per the procedure provided in the POSH Policy; or in absence of the same
2. Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.
3. 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 & 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.
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 of the critical elements are covered. It includes:
 - a. The names of the parties and witnesses to be interviewed
 - b. Any documentary support that needs to be examined
 - c. Timeline

Preparing the Plan - Key Elements to Consider

1. Defining the Issues
 - a. What is the complaint
 - b. Questions or points that require clarification
2. Determining a violation of the Policy/Act
 - a. What information is needed to determine that there has been a violation
3. Logistics
 - a. Venue for conducting the interviews. Are special logistics required
 - b. Creating timelines for each
4. Critical Information

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- a. What documents need to be looked at
 - b. Witnesses to be questioned and in what order
5. Areas of Questioning
- a. Questions for each specific incident and party/witness
 - b. Questions for each particular issue
 - c. 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 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 shall 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 THREE: INTERVIEWS

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

1. 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.
2. Interviews are meant to obtain information that is relevant to the complaint from individuals.
3. 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.

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 are complete, the Complaints Committee will make its reasoned finding(s), which involves having to: -

- Identify the substance of each aspect of the complaint.

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- 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: FINDING AND RECOMMENDATION

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 finalizing 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;

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- 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.

An inquiry must be completed within 90 days and a final report submitted to the Employer within ten days thereafter. Such report will also be made available to the concerned parties. The Employer is obliged to act on the recommendations within 60 days. Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation 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.

4.9 AT A GLANCE

1. Complaints Committee's Checklist

- Review the written complaints and response to complaints
- Review the applicable policy, the Act/Rules, Vishaka Guidelines and other relevant laws
- Develop a plan
- Meet with the complainant
- Meet with the respondent
- Meet with the witnesses

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- Record statements and have them dated and signed
- Review and adapt the plan, as needed
- Proceed with further interviews, as needed
- Analyze all the facts to develop reasoning
- Arrive at the findings
- Give recommendations
- Prepare the report
- Submit the file to the organization or District Officer for implementation of the recommendations and for safe keeping.

2. Timelines as per the Act

- Submission of Complaint - Within 3 months of the last incident
- Notice to the Respondent - Within 7 days of receiving copy of the complaint
- Completion of Inquiry - Within 90 days
- Submission of Report by ICC/LCC to employer/DO - Within 10 days of completion of the inquiry.
- Implementation of Recommendations - Within 60 days
- Appeal - Within 90 days of the recommend

3. Confidentiality

The Act prohibits the publication or making known the contents of a complaint and the inquiry proceedings. Any breach of confidentiality will result in specific consequences.

The Act prohibits the disclosure of:

- Contents of the complaint;
- Identity and address of complainant, respondent and witnesses; Information pertaining to conciliatory/inquiry proceedings or recommendations of the ICC/LCC;
- Action taken by the employer/DO.

Accountability: Any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action taken under the provisions of this Act.

Consequences: As per the SOP/HR /POSH policy or Rs.5,000/ to be collected by the employer.

Exception: Dissemination of information regarding the justice secured without disclosure of name, address, identity and particulars of complainant or witnesses.

Section 4 of the Act completes the details of the Complaints Committee process in addressing formal complaints. It serves as a guideline to action in providing appropriate redress. The manner in which a complaint is addressed will make all the difference to the equal rights of working women as well as the kind of workplace culture being promoted.

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SECTION 5: MONITORING

This section refers to ways in which application of the Act at all workplaces is monitored. Monitoring is a way to ensure compliance of the Act on the ground. As an additional means of monitoring, the Act mandates the submission of Annual Reports with specific information as well as specific consequences where compliance is lacking.

The Act authorizes Appropriate Government to monitor the implementation of the Act. As per the Act, Appropriate Government means:

- I. In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly.
 - a. By the Central Government or the Union Territory administration, the Central Government;
 - b. By the State Government, the State Government;
- II. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

Thus, to monitor the Act, the Appropriate Government has the authority to undertake any of the following measures:

5.1 INSPECTION

In relation to workplace sexual harassment, when it is in the public interest or in the interest of women employees, every employer/District Officer can be ordered by the Appropriate Government i.e. State and Central Government, to make available any information, record or document, including opening its workplace for inspection relating to the same.

5.2 ANNUAL REPORT

The Appropriate Government is entrusted with the monitoring of the implementation of this Act and for maintaining the data on the number of cases filed and disposed of under it. In particular, the Act mandates submission of an Annual Report by the ICC/LCC to the employer/District Officer.

The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

- No. of complaints received;
- No. of complaints disposed of;
- No. of cases pending for more than 90 days;
- No. of workshops/awareness programmes carried out;
- Nature of action taken by the employer/DO;
- The Report of ICC will be forwarded to the DO through the employer.

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5.3 PENALTIES

An employer can be subjected to a penalty of up to INR 50,000 for:

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules. Where an employer repeats a breach under the Act, they shall be subject to:
- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

Monitoring is a critical yardstick to measure success in terms of compliance with the Act. Additionally, it highlights those areas, in terms of law and practice, which may require improvement and/or additional information and guidance at both the State as well as the workplace levels.

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SECTION 6: GLOBAL NORMS AND GOOD PRACTICES

Increasing awareness and compliance with international standards is a reminder that we must not lose sight of the goal. Over the years, the international community has developed benchmarks that provide guidance on what the laws around workplace sexual harassment should look like in practice.

The key benchmarks are listed below:

1. Recognition that workplace sexual harassment is a form of human rights violation.
2. Recognition that sexual harassment is a form of gender-specific violence.
3. Equality, dignity and worth of a human person must be emphasized.
4. Gender-based violence includes sexual harassment and impairs the enjoyment by women of several basic human rights and fundamental freedoms. Some of these rights include:
 - a. The right to life, the right to liberty and security of the person.
 - b. The right to equal protection under the law.
 - c. The right to the highest standard attainable of physical and mental health.
 - d. The right to just and favourable conditions of work.
5. Eliminating violence against women and advancing women's equality includes the right to be free from workplace sexual harassment
4. Legislation on violence against women should define violence to include sexual harassment.
6. Such legislation should also recognize sexual harassment as a form of discrimination and a violation of women's rights with health and safety consequences.
7. The International Labour Organization (ILO) has also drawn specific attention to domestic workers, who have a right to "enjoy effective protection against all forms of abuse, harassment and violence."

In terms of practice, international law and policy frameworks have an important role to play in encouraging the adoption of an understanding of sexual harassment as a fundamental human right and equality issue, and not just a problem for Labour/employment law to solve. Converting these concepts into practice involves constant monitoring and adapting to changing circumstances.

As a start, six simple steps to keep in mind and practice in any workplace should involve the following:

1. Make sure there is a policy that has been "effectively" communicated to all workers, irrespective of whether they are paid or volunteers.
2. Display details of both informal and formal ways available to a worker to address/complain about workplace sexual harassment.
3. Undertake orientation on workplace sexual harassment for all workers in respective organizations, establishments or institutions.
4. A Complaints Committee which is trained in terms of skill and capacity is critical for building trust.
5. Encourage senior persons/leaders/supervisors or any person who can influence employment related decisions, to become role models.

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6. Men and women should be included in building a culture which no longer tolerates workplace sexual harassment.

Legally, workplace sexual harassment can no longer be dismissed as some moral transgression. The Vishaka Guidelines raised that bar, when for the first time it recognized “each incident of sexual harassment” as a violation of the fundamental right to equality. That notion has found its way into the Act, which promotes the right of women as citizens to a workplace free of sexual harassment. Complaints Committees at all workplaces are now charged with the role to ensure that the right remains intact, through a fair, informed, user-friendly process of redress.

Prioritizing prevention and establishing a redress mechanism, which comprises of 50 per cent women, a woman chair and an external third-party expert, is India’s innovative model in responding to working women’s experience of sexual harassment. Assuming adequate changes follow, in both law and practice to meet global benchmarks, that model can evolve into an exemplary best practice.