



The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: A Study to assess its impact, implementation issues and concerns in various Government/Semi-Government/PSUs/Private Sectors in Delhi (NCR)

**A RESEARCH PROJECT SPONSORED BY
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PREFACE

The menace of Sexual Harassment of Women at Workplace is increasing at an alarming rate, yet it does not receive the attention it deserves. This is one of the most unreported forms of harassment since, *inter alia*, the victim women fear losing their jobs, career and reputation. Sexual Harassment at workplace is a wrong that took a long time to be recognized as an offence. After 1997 monumental Vishakha judgement, the legislature finally enacted a statute to address the issue, known as the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” in India. However, mere enactment is not sufficient, the provisions of the Act need to be effectively implemented.

This Research Project titled “**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: Its impact, implementation issues and concerns in various Government/PSUs/Private Sectors in Delhi (NCR)**” aims to analyze the implementation of the Act in different institutions, like hospitals, schools, universities, banks, etc. in Delhi (NCR). The reason to undertake this research was to supplement and complement the existing literature on the issue and try to add to the existing knowledge surrounding the problem of sexual harassment at workplace.

Efforts were made, by way of questionnaires and interviews to collect data from employees belonging to different institutions across various sectors to gather information about functioning and implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, constitution of the Internal Committees and compliance of the provisions of the Act by these institutions.

The research team at NLUD traced the evolution of the problem. It followed a well-defined research methodology while working on this project. Appropriate research tools and designs have been used so as to bring out certain outcomes. The findings and observations have been expressed in simple language. At the end, certain suggestions have also been made.

The aim of the research would be fulfilled if the outcome shall be helpful for the NHRC and/or any other related agency, policy makers, legislature, or judiciary to bring the desired changes in the framework whenever the need be. The research team sincerely believes that this research would be a next step forward in protecting the human rights of the women victims of the workplace sexual harassment in India.

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DISCLAIMER

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LIST OF ABBREVIATIONS

S.No.	ABBREVIATION	FULL FORM
1.	AICTE	All India Council for Technical Education
2.	CBI	Central Bureau of Investigation
3.	CEDAW	The Convention on the Elimination of all Forms of Discrimination Against Women
4.	CSC Rules	Civil Services Conduct Rules
5.	EEOC	Equal Employment Opportunity Commission
6.	HEI	Higher Education Institution
7.	IC	Internal (Complaints) Committee
8.	ICESCR	International Convention on Economic, Social and Cultural Rights
9.	ILO	International Labour Organisation
10.	IPC	Indian Penal Code
11.	LC	Local (Complaints) Committee
12.	NGO	Non- Governmental Organisation
13.	PSU	Public Sector Undertakings
14.	UGC	University Grants Commission
15.	UN	United Nations
16.	WDP	Women's Development Project

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EXECUTIVE SUMMARY

“Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose...”

-Justice J.S.Verma (then CJI)¹

In common parlance, ‘sexual harassment’ can be described as the exploitation based upon sex. It includes any unwelcome or unwarranted conduct of sexual nature. In the context of employment, it refers to such conduct to affect or violate the dignity of a person or of creating a hostile, intimidating, humiliating, or degrading working environment for the woman employee. This can include unwelcome physical, verbal, or non-verbal conduct.² Sexual harassment sometimes referred as a form of ‘gender discrimination’ or ‘gender inequality’³ or a form of violence against women. It may hamper their ability to earn a living, feel secure, enjoy their working life, and participate fully in their workplace and the society at large.

Although a vast body of law existed in other countries under which a claim of sexual harassment at the workplace may be made under various anti-discrimination statutes, until the mid-1990’s the concept of sexual harassment was not recognized by Indian courts as such.

In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*,⁴ the SC recognized sexual harassment as a crime falling squarely under Section 354 of the Indian Penal Code by interpreting “outraging the modesty of a woman” to include outraging the dignity of a woman.

¹ Vishaka v. State of Rajasthan, (1997) 6 SCC 241; AIR 1997 SC 3011 para 10.

² L. Nagaraju v. Syndicate Bank, 2014 (2) ALD 758.

³ Amish Tandon, “*The Law of Sexual Harassment at Workplace: Practice and Procedure*”, Niyogi Books, (2017).

⁴ Rupan Deol Bajaj v. Kanwar Pal Singh Gill, (1995) 6 SCC 194.

In *Saudi Arabian Airlines v. Shehnaz*,⁵ the Bombay High Court recognized that the dismissal of a woman worker following a complaint of sexual harassment was an unfair labour practice and illegal and reinstated the woman who had been dismissed.⁶

There have been couple of more cases before the Hon'ble Supreme Court (SC) delivered its monumental judgment *Vishaka v State of Rajasthan*. Bhanwari Devi's brutal gang rape shook the conscience of the society. Vishaka, a conglomerate of various women's organizations led by Sakshi active in the campaign to bring the perpetrators to justice, filed a writ petition in the SC. The Court used the opportunity to address glaring lacunae in the law which left women workers in the country without any remedy in the cases of workplace sexual harassments. The Apex Court delved into the deep-rooted gender inequality in the Indian society that manifested itself in myriad forms of violence against women as sexual harassment at workplaces or rape. In response to the outrage regarding sexual harassment of working women, the appalling paucity of legislative responses to such incidents, and replying upon the ratification by India of the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)⁷, the SC took a much-awaited step and created a binding and enforceable set of guidelines designed to eradicate sexual harassment of women at the workplace in 1997. These guidelines have been popularly known as **Vishaka Guidelines**.

It took a long wait of 16 years to replace the stop-gap arrangement made then in the form of Vishaka guidelines⁸. The year 2013 witnessed enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁹ (hereinafter referred to as 'the Act') and the Rules¹⁰ followed by insertion of the Section 354A in the Indian Penal Code (IPC), 1860.¹¹

The Act comprises of eight chapters that deal with:

⁵ *Saudi Arabian Airlines v. Shehnaz*, 1999 (1) Bom LR 687.

⁶ Indira Jaising, *Sexual Harassment at Workplace*, Lexis Nexis (2015).

⁷ Convention on the Elimination of all Forms of Discrimination against Women (1979), The United Nations Entity for Gender Equality and the Empowerment of Women is an international instrument that contextualizes the neutral human rights standards to the situation of women and India having ratified the same is bound to implement the objectives contained in it.

⁸ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013.

¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

¹¹ The Criminal Law (Amendment) Act, 2013, No. 13 of 2013.

- definitions of the terms,
- constitution of Internal Committee (hereinafter referred to as ‘IC’),¹² Local Committee (hereinafter referred to as ‘LC’)¹³
- procedure to file a complaint, inquiry,
- determination of complaint,
- process of conciliation only at the request of the aggrieved woman, provisions, in case, the conciliation is not opted for,
- duties of the employer,
- duties, and powers of the concerned authorities and
- certain other miscellaneous provisions.

The Act, in nutshell, provides a comprehensive mechanism to address the violation of the basic human rights of women because of the sexual harassment of at workplaces. It also prescribes for maintaining the confidentiality and a multi-pronged mechanism to deal with the issue as well.

Although the Act was enforced in 2013 for dealing with the problem of sexual harassment at workplace in India, its implementation has not been up to the mark. The PI has experienced this first-hand while working with ICs of various organizations in different capacities. This state of affairs encouraged the present research project.

In these eight-plus years of its existence, on the one hand, the law has proved to be a much-needed tool to the victim. Also, often, it is reported that organizations and institutions neither did implement the *Vishaka guidelines* properly¹⁴ nor bother to implement the existing Act.

At this stage, it is desirable to assess the impact of the Act and highlight the issue, if any, in its implementation.

¹² The Internal Complaint Committee (ICC) has been renamed as Internal Committee (IC). On 9th May, 2016, The Repealing and Amendments Act 2016 was published and the amendments included:

The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013; In sections 6, 7 and 24,

- for the words “Local Complaints Committee”, wherever they occur, the words “Local Committee” shall be substituted;*
- for the words “Internal Complaints Committee”, wherever they occur, the words “Internal Committee” shall be substituted.*

¹³ *Ibid.*

¹⁴ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

In the wake of the global **#MeToo movement**, various issues have come to the fore throughout in our country as well regarding the working of the IC. On the other, some issues have cropped up at different levels in the organizations as far as its implementation is concerned.¹⁵

However, it has been realized that there is a paucity of authentic empirical research on the impact of the sexual harassment laws in India.¹⁶ More so, in the wake of the #MeToo movement and various issues raised throughout the country regarding the working of the IC. Also, it is frequently reported that organizations and institutions often don't implement the guidelines properly and some might not even know about the existing law of sexual harassment.

There has been a pressing need to examine the reasons and look for solutions to this issue. Moreover, during the discussions with various stakeholders, it was suggested to formulate a suggestive operative procedure that flows from the Act since the institutions face a lot of hardships in implementing the provisions due to lack of working knowledge and practical applicability of the Act.

There's, therefore, a need to also formulate an operative model procedure from the act which is understandable for everyone. The said operative procedure or model code may provide necessary guidance and make it easier to implement the provisions of the Act for such organizations.

The project aims to assess the implementation of the Act across various institutions in the Government sector, PSUs, and the Private Sector in Delhi (NCR). The empirical research was conducted in both the Organised as well as Unorganised sectors.

The study was conducted in institutions like hospitals, schools, banks, and Universities belonging to both public and private sectors. Visits were made to these places to collect data regarding the occurrence of cases of sexual harassment at these workplaces through questionnaires and interview schedules.

¹⁵ Sexual Harassment of Women: Climate, Culture, and Consequences in Academic Sciences, Engineering, and Medicine (2018) <https://nap.nationalacademies.org/catalog/24994/sexual-harassment-of-women-climate-culture-and-consequences-in-academic>

¹⁶ Sharvari Kothawade, *Sexual Harassment at the Workplace: What Kind of Change Do Internal Committees Need?* EPW Engage (August 26, 2019). Available at: <https://www.epw.in/engage/article/sexual-harassment-workplace-what-kind-change-do>

Major objectives of the study are as follows:

- A. To carry out the literature review of the existing work including available articles, books, websites, and judgments of the Courts for doctrinal work.
- B. To carry out empirical research so as to find out implementation of the provisions of the Act in the last 3 years, i.e. 2015-17, in various Government/ Semi-Government/ PSUs/ Private sectors in Delhi (NCR).
- C. To make appropriate suggestions and recommendations so as to assist the competent authority to devise a mechanism for better and effective implementation of the provisions of the Act and identify any difficulties which may be faced in the same.
- D. To highlight the role of the National Human Rights Commission (NHRC) to regulate and devise a suggested operative procedure/ model procedure. Also, if possible, suggest some webinar/ IT modules for the proper functioning of ICs.

General objectives of the study are as follows

- A. To study the compliance of the provisions of the Act with special reference to:
 - a. filing of the complaints
 - b. conduct of inquiry
 - c. preparation of the inquiry report
 - d. decisions
 - e. false complaints
 - f. compensation given
 - g. submission of annual reports to the State Government, etc. in these departments
- B. To examine the procedure adopted by these departments/ employers including awareness, training, and sensitization of its employees about the sensitive issue.
- C. To find out the reason for the absence of complaints in any of these and how many complaints were followed by FIR.

- D. To prepare a database about the constitution of Internal Committees in these departments
- E. To determine how victim-friendly the existing legal framework is, and whether there is any scope to make the provisions stricter for the offender.
- F. To suggest an operative procedure in sync with the Act.

The objective of the project has been to assess the working and implementation of the Act in different institutions across various sectors. Also, it brings forward the problems and loopholes identified by the present study regarding the implementation of the Act.

The project aims to supplement the existing literature on this issue. The research team sincerely believes that the study and its findings would be helpful to people like jurists, activists working for the cause of sexual harassment at workplace, legislators, judicial officers, and other stakeholders.

The limiting factors have been enlisted hereunder:

- A. Outright rejection by the institutions mostly hospitals, schools, sports stadiums, and banks in divulging any details or permitting access to employees.
- B. Unwillingness on the part of the participants in giving feedback and responses, even after assurance of confidentiality of their identities.
- C. Sensitivity of the subject matter made data collection difficult as the participants were cautious and got scared unnecessarily.
- D. Lack of awareness about the importance of the issue in the minds of the participants.
- E. Apprehension on part of the employees to answer questions on the topic due to fear of a hostile environment at their workplace or the fear of being ignored by their colleagues.
- F. The continuous lock-downs, due to the wide-ranging negative effects of Covid-19 pandemic, while the study was under progress made it difficult to adhere to the

schedule. Various restrictions made it arduous to collect the empirical data and carry the field work. The progress of the work got crippled while it was on the verge of completion.

The additional issues like online harassment that cropped up in the aftermath of this pandemic have not been part of this project.

A survey has been conducted to understand the level of awareness and comprehension of the provisions of the Act among various employees in the organized and the unorganized sector. A total of 450 people were surveyed from the organized sector and 350 people from the unorganized sector and the analysis of the same is done hereunder.

Data analysis has been done by use of MS Excel and pie diagrams have been made to depict and explain the data in a simple and easy-to-understand manner. Further, the observations at the end of the pie diagrams explain the outcome of the research.

The research was located in Delhi (NCR) and the organization surveyed included Government, Private, Public-Sector Undertaking (PSU), Non-Government Organization (NGO) and Police as mentioned in the objectives. Collecting data from the organized sector was relatively easier due to the level of awareness and literacy among employees. However, different kinds of difficulties were faced here, like apprehension on part of the employees to answer truthfully due to fear of losing the job or pressure from colleagues and seniors.

Most of the respondents from the unorganized sector were not aware of what exactly constitutes sexual harassment at workplace but knew about the IC. It was only after the same was explained in local parlance or simple terms to them, that they were in the position to answer the questions.

Few interesting but contrasting observations can be made about the provisions of the 2013 Act in view of the findings during this research. In nearly eight plus years of its existence, reasonable awareness of various provisions of the Act has been found but mostly the participants were unaware of the definition of the term.

The majority of the participants were aware but only to a little extent of the complaint mechanism/procedure existing in their respective workplaces to deal with the cases of sexual harassment of women at workplace.

The objective behind the enactment of the 2013 Act may be said to be achieved to the extent that most of the surveyed organizations have constituted an IC as per the provisions of the Act. However, the research further reveals that lack of any complaint in any department may be interpreted in the following ways:

- a. The workplace is safe for women employees for this type of harassment.
- b. The victims didn't have faith in the system or their IC and chose to maintain silence due to fear of stigma or loss of employment.

In none of the organizations, any arbitrariness has been found as far as the constitution of the IC is concerned. The cases of false complaint are handled as per the provisions of the 2013 Act.

As far as the departmental dissemination of the information about the constitution of IC is concerned, the organizations have displayed the details of the IC at conspicuous places or on the website of the organization to make employees aware as to where and how the complaint is to be filed. This is again a significant observation, showing the compliance of the provisions of the Act by the employers.

It is recommended that employers should create more awareness programmes on such issues so as to develop the confidence in the women employees. The findings further suggest that additional measures in addition to the 2013 Act are required, to end the sex-based discrimination suffered by women in the form of sexual harassment at workplaces. The steps taken by the legislature and the judiciary so far have very been positive and encouraging for women employees. The journey is difficult but together we hope to succeed.

CHAPTER I

INTRODUCTION: MAPPING THE PROGRESSION OF THE CONCEPT OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

“Feminism isn’t about making women strong. Women are already strong. It’s about changing the way the world perceives that strength.”

- G. D. Anderson¹⁷

I. Introduction

Human beings are social animals.¹⁸ They need a society to survive consisting of people with vivid sexual orientations and different genders. Predominantly and traditionally, society embodies two genders, men and women. Equal participation of women and men in decision-making processes, with particular emphasis on political participation and leadership, is required.¹⁹ This statement is violated more often than not and the compliance is mere decorative in nature across the countries. This imbalance creates insensitivity towards one gender, usually women in our society. The issue may appear subtle on the face of it but it pierces the heart and spine of the body of the human rights of the victim. Thus, the concept of ‘**Gender Sensitisation**’ needs to be understood.²⁰

The concept of Gender Sensitisation is the method of understanding and respecting the sensitivities of the other gender which would include both strengths and weaknesses. To unfasten the inequality amongst genders, the Supreme Court of India (hereinafter referred to as ‘SC’), while disposing of a Public Interest Litigation, made it clear that the *special laws in*

¹⁷ G.D Anderson is an Australian activist and writer, who has been quoted in Vogue UK, Harper’s Bazaar, Huffington Post, etc. Available at: <https://www.thecovaproject.com/gdanderson>

¹⁸ Man as a social animal, The Hindu (March 12, 2012 19:47 IST) <https://www.thehindu.com/features/education/research/man-as-a-social-animal/article2988145.ece>

¹⁹ Expert Group Meeting, United Nations Department of Economic and Social Affairs (DESA) and Division for the Advancement of Women (DAW) (October 2005) <https://www.un.org/womenwatch/daw/egm/eql-men/index.html>

²⁰ Deepa Rafeeqe, “Prevention of Sexual Harassment of Women at Workplace: Law and Practice – A Guide to the Sexual Harassment of Women at Workplace (Prohibition, Prevention and Redressal) Act, 2013”, Notion Press (2018).

*favor of women are essential and those laws cannot be made as 'gender-neutral laws'.*²¹

The Constitution of India in its Preamble enshrines 'equality of status and opportunity' to all its citizens.²² Articles 14, 15, and 21 of the Constitution of India protect every citizen's Right to Equality and Personal liberty. They ensure that every person lives a life free from any kind of discrimination. This is further reinforced by the CEDAW (Convention on the Elimination of all Forms of Discrimination against Women),²³ which was adopted by the UN General Assembly in 1979 and ratified by India.

This implies that the 'right to a safe workplace' is a woman's legal right.²⁴ Though the constitutional commitments of the nation to women were translated through various planning processes, legislations, policies, and programs over the last six decades, a situational analysis of social and economic status of women does not reflect satisfactory achievements in any of the important human development indicators.²⁵

The roots of this discrimination can be traced back to patriarchy and the age-old notion of men being superior to women. This further leads to the assumption that violence by men against women is acceptable in our society. One such form of violence women face today is 'Sexual Harassment of Women at Workplace'.

Sexual harassment is one of the synonyms of 'gender discrimination' and 'gender inequality'.²⁶ In common parlance, 'sexual harassment' can be described as the exploitation based upon sex. It includes any unwelcome or unwarranted conduct of sexual nature. In the context of employment, it refers to such conduct to affect or violate the dignity of a person, or of creating a hostile, intimidating, humiliating, or degrading working environment for the woman employee. This can include unwelcome physical, verbal, or non-verbal conduct.²⁷

²¹ Rishi Malhotra v. Union of India, (2017) 16 SCC 767.

²² INDIA CONST. Preamble.

²³ *Convention on the Elimination of all Forms of Discrimination against Women*, The United Nations Entity for Gender Equality and the Empowerment of Women (1979).

²⁴ *Handbook On Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 for Employers / Institutions / Organisations/ Internal Complaints Committee / Local Complaints Committee*, The Government of India, Ministry of Women and Child Development (November 2015).

²⁵ Ritu Gupta, 'Sexual Harrasment at Workplace', LexisNexis, 2014

²⁶ Amish Tandon, "*The Law of Sexual Harassment at Workplace: Practice and Procedure*", Niyogi Books, (2017).

²⁷ L. Nagaraju v. Syndicate Bank, 2014 (2) ALD 758.

Sexual harassment can occur in all social and economic classes, ethnic groups, jobs, and places in society.²⁸ Recipients of sexually harassing behavior can experience an array of physical and emotional after-effects, such as anxiety, depression, reclusion, reduced self-esteem, stress disorders, loss of confidence and morale, etc.²⁹ Sexual harassment is a form of violence against women and can hamper their ability to earn a living, feel secure, enjoy their working life, and participate fully in their workplace and the society at large.

The key to what constitutes ‘sexual harassment’ is that it is unwanted, unwelcome, and unasked-for behaviour of a sexual nature. Sexual harassment is a display of power that is intended to intimidate, coerce, or degrade another worker. It can have a negative effect on the individual, in both the short and long term. Those who have been harassed may experience illness, humiliation, anger, loss of self-confidence, and psychological damage. Sexual harassment may also lead to workplace problems such as decreased performance, lower job satisfaction, and higher absenteeism among employees.

Vulnerability of Women towards Sexual Harassment

Sexual harassment occurs across different occupations and industry sectors. While there exists no straitjacket formula to determine which sector/ industry suffers the most from this evil, however, in terms of vulnerability, it is important to note the following points:

- A. Women who perform jobs that are perceived to be subservient in nature, like domestic helps may experience higher rates of sexual harassment.
- B. Women who work in relative isolation along with a fewer number of co-workers may also be more vulnerable to sexual harassment.
- C. Traditionally male-dominated work environments (mining, infrastructure etc.) are at a higher risk, often because women entering such environments are perceived to be a threat to men.

²⁸ *Tackling Violence Against Women: A Study of State Intervention Measures (A comparative study of impact of new laws, crime rate and reporting rate, Change in awareness level)*, The Bhartiya Stree Shakti and the Ministry of Women and Child Development, Government of India (March 2017) https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_0.pdf

²⁹ *Consequences of Sexual Harassment*, Ramapo College of New Jersey, <https://www.ramapo.edu/sexual-harassment-resources/consequences/>

Consequences of Sexual Harassment at Workplace



Globalization created more job opportunities in India. It is no more a taboo that the women at home join men and go together for work. Though it was not very common to the last two generations who preferred man to earn the bread for the family and let the wife be a homemaker.

Gradually, the workplace was shared by both men and women and in many companies, the women officers are in leadership roles and many men have to report to them. Since this setup has been existing, more and more women began to work. And due to this, concerns like their safety started to arise since cases of sexual harassment started to be reported against male colleagues. Gradually, both Central and State Governments have come up with various laws and guidelines to ensure the safety and welfare of women employees.

It is historically true that women have struggled a lot to reach their desired place to achieve their rights & to have independence of their own. Women from different parts of the world had their share of struggles but they have bravely fought back in both East and West. Undoubtedly, the struggle to develop an inclusive vision of human rights has led to the broadening of the scope of the rights and communication. This was not an easy task to do as this path was full of

tensions and contradictions. Women, over the years, have had to work very hard for a better future and to achieve their goal of being equal members of the society and holders of natural rights. Harassment is a form of abuse of power that penetrates from higher to lower levels making lower-level people feel vulnerable.

At this stage, this is necessary to discuss the legal and conceptual framework of the laws of sexual harassment of women at workplace. Starting with the Equal Employment Opportunity Commission (EEOC) definition, which states that “Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- B. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- C. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.”³⁰

Although a vast body of law existed in other countries under which a claim of sexual harassment at the workplace may be made under various anti-discrimination statutes, until the mid-1990's the concept of sexual harassment was not recognized by Indian courts as such.

In *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*,³¹ the SC recognized sexual harassment as a crime falling squarely under Section 354 of the Indian Penal Code by interpreting “outraging the modesty of a woman” to include outraging the dignity of a woman.

In *Saudi Arabian Airlines v. Shehnaz*,³² the Bombay High Court recognized that the dismissal of a woman worker following a complaint of sexual harassment was an unfair labour practice and illegal and reinstated the woman who had been dismissed.³³

³⁰ *Sexual Harassment*, U.S. Equal Employment Opportunity Commission, <https://www.eeoc.gov/sexual-harassment#:~:text=It%20is%20unlawful%20to%20harass,harassment%20of%20a%20sexual%20nature.>

³¹ *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194.

³² *Saudi Arabian Airlines v. Shehnaz*, 1999 (1) Bom LR 687.

³³ Indira Jaising, *Sexual Harassment at Workplace*, Lexis Nexis (2015).

Then the *Vishaka case* happened wherein 1992, Bhanwari Devi's brutal gang rape was a backlash, a form of punishment, for organizing the community to oppose child marriage. Vishaka, a conglomerate of women's organizations active in the campaign to bring the perpetrators to justice, filed a writ petition in the SC. Originally, the main prayer sought a transfer of the investigation of that crime to the Central Bureau of Investigation (CBI), with an additional prayer seeking redressal for sexual harassment at the workplace. By the time the matter was heard by the SC, the matter had already been transferred to the CBI and was at an advanced stage.

The court used the opportunity to address a remaining issue- glaring lacunae in the law which left women workers in the country without any remedy when sexually harassed at work. In response to the outrage regarding sexual harassment of working women, and the appalling paucity of legislative responses to such acts, and replying upon the ratification by India of the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW)³⁴, the SC took a long-awaited step and created a binding and enforceable set of guidelines designed to eradicate sexual harassment of women at the workplace.

The Vishaka Judgment

Brief facts of the Case

Bhanwari Devi was a social activist and worker under the Women's Development Project (WDP) run by the Government of Rajasthan. She was working for the welfare of infants who were married when they were less than a year old. She used to work directly with the families to prevent child marriages and reported cases to the police herself.

In one incident, Bhanwari Devi reported a case of a family belonging to the Gujjar community to prevent the marriage of an infant. As a consequence, she was gang-raped by Ramakant Gujjar and his five men. The police department tried to dissuade her from filing a complaint, but she was determined, and a complaint was filed against the accused.

During this process, Bhanwari Devi and other members of various women organizations were subjected to harsh treatment by the female police constables, and they were also denied permission to stay the night at the police station. The brutality was to the extent that Bhanwari

³⁴ Convention on the Elimination of all Forms of Discrimination against Women, The United Nations Entity for Gender Equality and the Empowerment of Women (1979).

Devi was told to submit her *lehenga* as evidence and all she was left with was her husband's blood-stained *dhoti*.

However, the Trial Court acquitted the accused on the ground of lack of evidence. But Bhanwari Devi continued to fight, and owing to her inspiring determination, she was joined by several female social workers. They all filed a writ petition in the SC under the name 'Vishaka' wherein it was called upon to frame guidelines to "Prevent Sexual Harassment of Women at Workplace".

Key Points of the Guidelines

The intention and purpose of *Vishaka* has always been to provide a wide coverage as possible to the fundamental rights of women and therefore applies equally to conventional workplaces as well as to other professional spaces such as Universities (and the students therein), professional and technical bodies, and a variety of other spaces where sexual harassment could infringe upon such fundamental rights of women. The decision of SC is not confined to the traditional employer-employee relationship, but the ambit is wider covering all relationships that occur between those who inhabit a common workplace and interact with each other.

Some of the important points of the *Vishaka guidelines* (hereinafter referred to as 'the guidelines') are mentioned below:

- A. It shall be the duty of the employer or any other person responsible at the workplace to make efforts to deter or prevent acts of sexual harassment and lay down procedures for dispute resolution.
- B. The act of sexual harassment is sexually determined, unwelcome behavior like unwanted physical contact and advances, sexually colored remarks, showing pornography, or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.
- C. Where any act of sexual harassment happens, the employer shall take appropriate measures to deal with the complaint according to the law. It should be ensured that the victims/ witnesses are not victimized or discriminated against, and the victims have the option to seek transfer of the accused, or their own.
- D. Disciplinary action should be initiated by the employer if any misconduct of such kind occurs.

- E. Where a third party is involved then also the employer has to provide an appropriate remedy to the victim.
- F. There should exist an appropriate redressal mechanism for such complaints.
- G. A Complaints Committee, or a special counsellor, or other support services should be constituted to handle such complaints.
- H. Employees should be permitted to raise issues of sexual harassment at meetings or other appropriate forums and must be given adequate attention in employer-employee meetings.
- I. Awareness must be created among women employees in particular, by notifying these guidelines to them.
- J. Female employees must be sensitized about their rights and remedies.
- K. All these provisions are not to prejudice the rights available under the Protection of Human Rights Act, 1993.³⁵

Apart from these general directions, the guidelines provide for some particular measures to be taken by the employer by bringing changes in the rules and regulations of the government and private sector bodies and in the Industrial Employment (Standing Order) Act 1946, prohibiting sexual harassment and providing appropriate penalties in such rules against the offender. They also provide that in case a harasser commits an offence of sexual harassment, the employer has to take appropriate measures and has to ensure that neither the victimization nor discrimination is suffered by the victim so long as the case is *sub-judice*.

Expansive Scope of the Judgement

The Vishaka judgment gave an expansive interpretation to Article 19(1)(g) of the Constitution, insofar as sexual harassment at the workplace has been held to be violative of the fundamental freedom of a woman, as a citizen of India, to pursue the business, trade or profession of one's choice. It is within the framework of constitutional law that the judgment operates, holding that:

“Each such incident results in violation of the fundamental rights of “Gender Equality” and the “Right to life and liberty”. It is a clear violation of the rights under Articles 14, 15, and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of

³⁵ The Protection of Human Rights Act 1993, No. 10, Acts of Parliament, 1994 (India).

*the victim's fundamental right under Article 19 (1) (g) to "practice any profession or to carry out any occupation, trade or business".*³⁶

The other major advance was the emphasis on International Law as a source of law in India in the absence of any other governing statute which prevents such violation of fundamental freedom. The judgment, while recognizing the need for legislation on the subject, put in place a declaration of law that sexual harassment at the workplace is a constitutional wrong and a crime.

The SC herein provided with the definition of Sexual Harassment, which is as follows:

"Sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- (a) Physical contact and advances*
- (b) A demand or request for sexual favours*
- (c) Sexually coloured remarks*
- (d) Showing pornography*
- (e) Any other unwelcome physical verbal or non- verbal conduct of sexual nature*

Where any of these acts are committed in circumstances under which the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work (whether she is drawing a salary, or honorarium or voluntary service, whether in government, public or private enterprise), such conduct can be humiliating and may constitute a health and safety problem, it has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work (including recruiting or promotion), or when it creates a hostile work environment. Adverse consequences might result if the victim does not consent to the conduct in question or raises any objection thereto."³⁷

The guidelines laid down in this case were the first attempt to provide a framework for enforcement authorities and relevant stakeholders to become aware and make use thereof in addressing the issue of sexual harassment at workplace.

³⁶ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

³⁷ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

Further, the judgment recognized the need for and provided for an internal complaints procedure for dealing with complaints of sexual harassment at workplace. The SC observed that rights without remedies are meaningless and thus, notified certain guidelines for sexual harassment at workplace. The Internal Committees (hereinafter referred to as ‘IC’)³⁸ were held to be of utmost importance for the redressal of complaints and were also vested with the responsibility of sensitization as part of their mandate and functions.

Post – Vishaka changes in the Law

The *Vishaka* judgment may be considered as inchoate. However, gradually, the law relating to sexual harassment at workplace advanced subsequent to the *Vishaka case*. Women employees and workers began to actively repudiate the egregious and oppressive conditions of work, till then considered commonplace. These advances were made in the ordinances and policies of educational institutions and universities, in the service rules of the Central and State governments, and even in the Model Standing Orders applicable to industrial establishments. Each positive change represented the courage and perspicacity of women who asserted the rights *Vishaka* had underscored, whether through complaints, petitions, negotiations with management and employers, or long-drawn-out court proceedings. Some advances were in specific areas of legal interpretation, such as the definition of workplace³⁹ or the method of the constitution of the complaints committee.⁴⁰

In *Apparel Export Promotion Council v. A. K. Chopra*⁴¹, the Supreme Court reaffirmed that sexual harassment at workplace is a form of gender discrimination. The Court held that an attempt or actual molestation of a female employee by her superior constitutes sexual harassment at the workplace. The court’s decision was based upon the *Vishaka case* and the

³⁸ The Internal Complaint Committee (ICC) has been renamed as Internal Committee (IC). On 9th May, 2016, The Repealing and Amendments Act 2016 was published and the amendments included:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; In sections 6, 7 and 24,

- (i) *for the words “Local Complaints Committee”, wherever they occur, the words “Local Committee” shall be substituted;*
- (ii) *for the words “Internal Complaints Committee”, wherever they occur, the words “Internal Committee” shall be substituted*

³⁹ *The Management of Hirsch Watch Straps (P) Ltd v. The Presiding Officer, Labour Court, Salem*, W. P. No. 37091 of 2003.

⁴⁰ *Dr. B. N. Ray v. Ramjas College*, 2012 (130) DRJ 277.

⁴¹ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

guidelines contained therein. It was also reiterated that sexual harassment is a violation of the fundamental rights under Articles 14, 15 and 21 of the Constitution and the judiciary has an obligation to protect and preserve fundamental rights. The court stated that sexual harassment at workplace had been held to be a form of gender discrimination at the International Labour Organisation Seminar in Manila as early as 1993. Moreover, international instruments such as CEDAW⁴² and the Beijing Declaration⁴³ obligate India to make laws gender-sensitive and take appropriate measures to prevent all forms of discrimination against women.

Despite the clear directions of the SC, the guidelines were followed primarily in the breach. Even in cases where the guidelines were purportedly followed and enquiries were conducted, such enquiries were treated as ‘preliminary’ in nature and where a *prima facie* case of sexual harassment was found, a full enquiry was conducted all over again. These issues were brought to the attention of the Supreme Court in a series of PILs, in which the Court passed a series of interim directions, culminating in the judgment of *Medha Kotwal Lele v. Union of India*⁴⁴ in December 2012.

The Report of the National Commission for Women⁴⁵

The National Commission for Women (NCW) had published a Report (hereinafter referred to as ‘the Report’)⁴⁶ during the same time, on the issue of Sexual Harassment at Workplace which discussed various important judicial pronouncements. Following are the highlights of the Report:

- A. The Report began by introducing the Vishaka judgment,⁴⁷ and by stating brief facts of the case. It laid down that such incidents of sexual harassment at workplace lead to violation of fundamental rights of ‘Gender Equality’, and the ‘Right to Life and Liberty’ as enshrined under Article 21 of the Constitution of India. Thus, there are blatant violations of Articles 14, 15, and 21 of the Constitution. Also, such cases violate the

⁴² Convention on the Elimination of all Forms of Discrimination against Women, The United Nations Entity for Gender Equality and the Empowerment of Women (1979).

⁴³ 4th UN Women’s Conference, Beijing (1995).

⁴⁴ *Medha Kotwal Lele v. Union of India*, (2013) 1 SCC 297.

⁴⁵ Sexual Harassment of Women at Workplace- A Report, The National Commission for Women <http://ncw.nic.in/content/sexual-harassment-women-work-place-report>

⁴⁶ Sexual Harassment of Women at Workplace- A Report, The National Commission for Women <http://ncw.nic.in/content/sexual-harassment-women-work-place-report>

⁴⁷ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241.

fundamental right provided under Article 19(1)(g) of the Constitution, ‘to practice any profession or to carry out any occupation, trade or businesses.’

- B. These violations attract remedy under Article 32 which can be invoked to enforce the fundamental rights of a person. In the *Vishaka case*, class action was taken under Article 32 of the Constitution.
- C. It was also suggested that apart from remedy under Article 32, some other provisions can be invoked which envisage judicial intervention to cope with this social evil. In addition, the Report mentioned Articles 15, 42, 51-A, and 253 and further stated that gender equality includes protection of a woman from sexual harassment at workplace and to work with dignity is a basic human right to which every person is entitled. This right has received global acceptance and the international norms are instrumental in this regard. Moreover, the scope of fundamental rights guaranteed by the Constitution of India is sufficient to encompass all facets of gender equality-including the prevention of sexual harassment at workplace.
- D. Another important case discussed in the Report was *Apparel Export Promotion Council v. A.K. Chopra*.⁴⁸ While referring to the *Vishaka judgment*, the SC held that sexual harassment is a form of sexual discrimination which is projected through ‘unwelcome sexual advances’, ‘request for sexual favors’ and ‘other verbal or physical conduct with sexual overtones’, particularly when the same is rejected by the female employee and is unreasonably interfering with her work performance and is creating an unsafe and hostile work environment for her.
- E. The Report then provided a “Code of Conduct for Workplace”.⁴⁹ It stated that sexual harassment is a serious criminal offense and is capable of destroying human dignity and a Code of Conduct was therefore devised to prevent such instances. Some important points that can be noted from this Code of Conduct are:

⁴⁸ *Apparel Export Promotion Council v. A.K. Chopra*, AIR 1999 SC 625.

⁴⁹ *Sexual Harassment of Women at Workplace- A Report*, The National Commission for Women, pg. 31, <http://ncw.nic.in/content/sexual-harassment-women-work-place-report;>.

- a. It shall be the duty of the employer to prevent/ deter instances of sexual harassment at workplace.
- b. Sexual harassment will include any unwelcome sexually determined behavior, like eve-teasing, unsavory remarks, sexist remarks, touching/ brushing against any body part, innuendos and taunts, showing pornographic content, physical confinement against will, and so on.
- c. It would also include any act or conduct by a person in authority and belonging to one sex, which denies or would deny equal opportunity in pursuit of career progress, or otherwise any kind of intimidation to a person belonging to the other sex, only on the ground of sex.
- d. Sexual harassment of an employee would mean undue use of authority by any person in charge of management, to exploit the sexuality of a subordinate employee to harass her, in a manner that hampers the full utilization of employment benefits or opportunities. It also includes any behavior that uses the power or status held by the person in authority to adversely affect the career or work experience of the employee or to intimidate an employee to accept sexual advances.
- e. All employers shall take appropriate steps to prevent sexual harassment of any nature and express prohibition of the same at workplace, and the same shall be notified and published for the general information of employees and evaluated periodically.
- f. Appropriate working conditions should be provided with respect to work, leisure, health, hygiene, and safety and it should be ensured that there is no hostile work environment towards women at the workplace.
- g. Women employees shall not be treated as sex objects.
- h. No male employee can outrage the modesty of a woman employee.

- i. Each organization should put in place an effective complaint mechanism to look into the complaints made by employees.
- j. The employer should initiate disciplinary action if the conduct of an employee amounts to misconduct.
- k. Employees shall be permitted to make complaints or raise their voices against sexual harassment at workers' meetings and other significant forums.
- l. If sexual harassment occurs as a result of an act/ omission by third party, or an outsider, then the employer shall take necessary action to assist the victim.
- m. A Complaints Committee (hereinafter referred to as 'the Committee') should be established where necessary; it should be headed by a woman and at least half its members should be women. To avoid any pressure from senior levels, it should also involve a third party. Such party could be an NGO or any other body which is familiar with the issue of sexual harassment.
- n. Inquiry should be conducted by the Committee; any aggrieved person can file a complaint before it within 15 days of the alleged incident, and the complaint shall contain all material and relevant details of the matter. The details of identity can be kept confidential, at the discretion of the complainant.
- o. The Committee shall take immediate necessary action to make the enquiry and examine the complaint and file their recommendations after giving both parties the opportunity of being heard.
- p. The Committee shall also prepare an Annual Report providing details of its actions during the previous year and submit a copy of the same to the Head of the Organization, who will then forward the same to the concerned government department.

- q. It shall be ensured that the victims or witnesses are not discriminated against while dealing with complaints and they should have the option to seek transfer of the perpetrator or their own.

The Case of Medha Kotwal Lele

The present case arose when Medha Kotwal Lele, coordinator of Aalochana (a centre for documentation and research on women), and other women's rights groups petitioned the Court highlighting several individual cases of sexual harassment and arguing that the *Vishaka Guidelines* were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra-legal means, making them suffer and by insulting their dignity. The Court was specifically required to consider whether individual state governments had made the changes to procedure and policy required by the guidelines and a number of earlier orders of the Court.

The Court recalled that the Beijing Platform for Action⁵⁰ states that:

“Violence against women both violates and impairs or nullifies the enjoyment by women of human rights and fundamental freedoms in all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture”.

It went on to reproach the fact that India's record on gender equality remains poor, stating:

“We have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 percent of the total seats. India ranks 129 out of 147 countries in the United Nations Gender Equality Index. Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States' commitment of gender parity and gender equality and guarantee against sexual harassment to women.”

⁵⁰ *Beijing Declaration and Platform for Action*, Beijing+5 Political Declaration and Outcome, UN Women (2014) https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf?la=en&vs=1203.

The SC noted that a number of states were falling short in this regard. It referred to its earlier findings on 17 January 2006, that the guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The SC went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the guidelines. Moreover, some states had only amended certain aspects of their legislations rather than carrying out all required amendments and others had taken even less action.

The Court reiterated that there is an obligation to prevent all forms of violence. It stated that *“lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women”*.

Accordingly, the Court provided the following directions:

- A. States governments must make the necessary amendments to their CCS Rules and Standing Orders within two months of the date of judgment.
- B. States governments must ensure there is an adequate number of Complaint Committees within each state to hear complaints and that such Committees are headed up by a woman.
- C. State functionaries must put in place sufficient mechanisms to ensure effective implementation of the *Vishaka Guidelines*.
- D. The Bar Council of India (BCI) shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the *Vishaka Guidelines*. Similarly, the Medical Council of India (MCI), Council of Architecture, Institute of Chartered Accountants (ICA), Institute of Company Secretaries (ICS), and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the *Vishaka Guidelines*.

The SC emphasized the fact that the guidelines had to be implemented in form, substance, and spirit to help bring gender parity by ensuring women can work with dignity, decency and due respect. It held that the guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women.

The court did not want the *Vishaka case* to become just symbolic. Thus, the SC reiterated the guidelines and urged the government to come up with legislation.

Lastly, the SC held that “*if there is any non-compliance or non-adherence to the Vishaka Guidelines, orders of this court following the Vishaka Guidelines, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such a state would be in a better position to effectively consider the grievances raised in this regard.*”

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

In view of the situation, that issue of the workplace sexual harassment of women had become so ubiquitous but was hardly taken note of by the employers as well as the employees, the legislature was constrained to act upon it.

The lack of a single and unambiguous law on the issue, coupled with the demand of civil society organisations, created the much-needed pressure on the then government to act upon the issue. Consequently, the legislature in 2013 passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

The Approach of Judiciary Towards Sexual Harassment at Workplace

In this chapter, the history of the development of sexual harassment of women law through various prominent cases which changed the attitude of our nation towards the safety of women has been discussed.

- State of NCT of Delhi v. Gopal Goyal Kanda⁵¹

In this case, Gopal Kanda was arrested for allegedly abetting the suicide of Geetika Sharma. In her two-page suicide note, Geetika Sharma said that she was ending her life due to ‘harassment’ by Gopal Kanda and one of his employees.

After 6 months, her mother also committed suicide and Gopal Kanda was again accused of abetment to suicide.

Initially, he was charged for rape that was dropped later and the Delhi High Court granted him bail in 2014 in the abetment to suicide case.

⁵¹ State of NCT of Delhi v. Gopal Goyal Kanda, CRL. M.C. 1542/2014.

- Justice A.K. Ganguly's Sexual Harassment case⁵²

A law intern had accused A.K. Ganguly J., former SC Judge and the then Chairman of the West Bengal Human Rights Commission, of sexual harassment. Additional Solicitor General, Ms. Indira Jaising demanded his resignation. The excerpts of the complaint's affidavit were made public which she filed before.

A three-judge panel set up by Chief Justice of India P. Sathasivam to look into the allegations. The committee found him guilty of Workplace Sexual Harassment and that he subjected her to "unwelcome sexual behavior". Justice Ganguly had to resign from the West Bengal Human Rights Commission after the Union Cabinet decided to make a Presidential Reference on 2nd January 2014 to the SC for his removal.

He was acquitted of all charges after the intern refused to record her statement before the police.

- Tarun Tejpal Sexual Harassment case (State v. Tarunjit Tejpal)⁵³

The Editor-in-Chief of 'Tehelka' magazine, Tarun Tejpal was accused of sexually assaulting a female colleague inside an elevator of a hotel in Goa in 2013 during a ThinkFest Conference organised by his publication.

The woman had complained to her seniors at Tehelka. A series of emails between her, Mr. Tejpal and the magazine's then Managing Editor Shoma Chaudhary, were published by media. Based on the media reports, the Goa police began an investigation and arrested him.

Tejpal faced the trial under IPC Sections 341 (wrongful restraint), 342 (wrongful confinement), 354 (assault or criminal force with intent to outrage modesty), 354-A (sexual harassment), 354-B (assault or use of criminal force to woman with intent to disrobe), 376(2)(f) (person in a position of authority over women, committing rape) and 376(2)(k) (rape by a person in a position of control).

⁵² J.Venkatesan, *Judges' panel finds evidence against Ganguly*, THE HINDU (May 06, 2016, 10:03 AM), <https://www.thehindu.com/news/national/judges-panel-finds-evidence-against-ganguly/article5425993.ece>.

⁵³ State (Through CID CS North Goa) v. Tarunjit Tejpal, CR. No. GANG01000854/2014 (India).

On May 21, 2021, a fast-track sessions court in Mapusa, Goa, acquitted Tarun Tejpal of all the charges.⁵⁴ The Goa bench of the Bombay High Court had to hear an appeal against his acquittal in August 2021 filed by the Goa Government. Tejpal challenged the maintainability of the appeal.

- Justice S. K. Gangele case⁵⁵

In 2014, a lady judicial officer had levelled charges of Sexual Harassment against Justice S. K. Gangele, then her supervisor judge. He had sent her a message through the registrar of District Court to dance on an item song at a function organised at his residence. She was transferred from Gwalior to Sidhi after the alleged incident and she resigned from her post as an Additional District and Sessions Judge of Madhya Pradesh after accusing. A three-member Judges inquiry committee formed in the Rajya Sabha had rejected her sexual harassment allegations.

It was found that the evidence was “*suggestive of the respondent judge’s interference with the transfer and rejection of the representations of the complainant. But since charges of sexual harassment are not proven, it cannot be said that this interference is on account of not submitting to his immoral demands*”, the committee said. The committee in its report termed Justice Gangele’s conduct as ‘improper’ and not ‘misbehaviour’.⁵⁶

In 2018, she approached the SC demanding her reinstatement. She had alleged that her resignation was an act of “constructive termination” and had claimed that she was forced to resign as a consequence of her being 'unlawfully and in a mala fide manner transferred' to a conflict area for refusing 'immoral demands' of Justice Gangele, her superior.⁵⁷

⁵⁴ Sandeep Unnithan, *Tarun Tejpal case: The trial isn't over*, INDIA TODAY (June 14, 2021, 02:29 PM), <https://www.indiatoday.in/magazine/special-report/story/20210614-tarun-tejpal-case-the-trial-isn-t-over-1810619-2021-06-05>.

⁵⁵ *Justice Gangele sexual harassment case highlights how institutions are inherently biased against complainants*, FIRSTPOST (July 31, 2018, 09:43 PM), <https://www.firstpost.com/india/justice-gangele-sexual-harassment-case-highlights-how-institutions-are-inherently-biased-against-complainants-4862281.html>.

⁵⁶ *Woman judge sexually harassed by Madhya Pradesh High Court’s Justice Gangele files for reinstatement*, THE LEAFLET (July 23, 2018), <https://www.theleaflet.in/woman-judge-sexually-harassed-by-madhya-pradesh-high-courts-justice-gangele-files-for-reinstatement/>

⁵⁷ *SC issues notice to MP High Court, govt on petition seeking reinstatement of woman judge who accused senior of sexual harassment*, FIRSTPOST (Oct. 12, 2018, 01:36 pm), <https://www.firstpost.com/india/sc-issues-notice-to-mp-high-court-govt-on-petition-seeking-reinstatement-of-woman-judge-who-accused-senior-of-sexual-harassment-5366011.html>

However, the panel ruled in favour of the judicial officer's reinstatement to her position, but this was not binding as it required the permission of the SC. A committee was formed comprising of SC Justice R. Bhanumathi, Former Chief Justice of Bombay High Court Manjula Chellur, and Attorney General of India, K. K . Venugopal. The SC had stayed the investigation made by the High Court and the inquiry finding the allegation of sexual harassment against the judge having sufficient material to establish a charge.

On 12th February 2020, Justice S.A. Bobde (then CJI), expressed that a 'peaceful conclusion' for this case would be made.

- R. K. Pachauri, TERI case⁵⁸

R. K. Pachauri, the world-known climate scientist, TERI Chief and Chairman of the Inter-Governmental Panel on Climate Change resigned due to sexual harassment allegations by an ex-colleague.

A research associate who joined TERI under him had accused him of sexual harassment, outraging the modesty of a woman and stalking in February 2015.

The court had asked the charges to be framed under Section 354 (outraging modesty of a woman), Section 354A (sexual harassment) and Section 509 (words used to outrage the modesty of a woman) of the Indian Penal Code.

Charges were framed against him with an intent to outrage her modesty, advances made in an unwelcome manner with explicit sexual overtures and for using words, gestures and acts intended to insult her modesty under various sections of the IPC.⁵⁹ Pachauri had recently passed away due to a cardiac illness on 13 February 2020.

- Jawaharlal Nehru University (JNU) case⁶⁰

⁵⁸ Nikita Saxena, *How RK Pachauri Systematically Harassed Women at TERI*, THE CARAVAN (Nov. 07, 2017), <https://caravanmagazine.in/vantage/rk-pachauri-systematically-harassed-women-teri>.

⁵⁹ *Environmentalist RK Pachauri Faces Molestation Charge, Pleads Not Guilty*, Sukrit Dwivedi, NDTV (Oct. 20, 2018, 2:48pm), <https://www.ndtv.com/india-news/sexual-harassment-case-against-rk-pachauri-heads-to-trial-1934859>

⁶⁰ Pritam Pal Singh, *Sexual harassment case: JNU official pulled up by court*, THE INDIAN EXPRESS (Dec. 12, 2019, 09:24 AM), <https://indianexpress.com/article/cities/delhi/sexual-harassment-case-jnu-official-pulled-up-by-court-6162666/>.

In March 2018, eight women accused one Professor of Jawaharlal Nehru University's (JNU) School of Life Sciences (SLS) of sexual harassment under sections 354 and 509 of the IPC, leading to his arrest and subsequent bail.

The IC gave a clean chit to the professor in August, blatantly encouraging punitive action against the complainant instead of protecting her.

The case was transferred to the Delhi High Court which directed JNU to investigate. While submitting its report to the High Court, the committee instead stated that he posed "no threat" to the complainants, and instead it was the complainants, along with others, who had threatened Johri and his family.

- CJI Ranjan Gogoi case⁶¹

A junior court officer alleged that she was sexually harassed by Justice Ranjan Gogoi, the then Chief Justice of India. She submitted documents to substantiate her claims and wrote a letter to 22 Supreme Court judges. On 20 April 2019, CJI Ranjan Gogoi called a special hearing and denied all allegations. The panel consisted of Justices Arun Mishra and Sanjiv Khanna. No judicial orders were passed, and the Chief Justice stepped aside.

On 25 April 2019, the Bench directed retired Justice AK Patnaik to conduct an inquiry into the alleged conspiracy. He was assisted by the Director of the Central Bureau of Investigation (CBI), the Chief of the Intelligence Bureau (IB), and the Delhi Police Commissioner. Justice AK Patnaik was asked to submit a report in a sealed cover to the Bench, documenting his findings.

Simultaneous to these hearings, the SC formed an in-house panel to investigate the sexual harassment allegations. The AK Patnaik inquiry specifically focused on the conspiracy allegations, while the in-house panel limited its inquiry to the sexual harassment allegations. The in-house panel comprised of Justices SA Bobde, NV Ramana, and Indira Banerjee. On 25 April 2019, Justice NV Ramana recused himself from the panel after the complainant

⁶¹ Prabhash K Dutta, *Explained: Case of sexual harassment charge against Justice Ranjan Gogoi*, *Explained: Case of sexual harassment charge against Justice Ranjan Gogoi*, INDIA TODAY (Feb. 18, 2021, 05:39 PM), <https://www.indiatoday.in/india/story/explained-case-of-sexual-harassment-charge-against-justice-ranjan-gogoi-1770530-2021-02-18>.

expressed her objections to him being included on the panel. She cited Justice Ramana's close friendship with the Chief Justice. Justice Ramana was replaced by Justice Indu Malhotra.

However, on 30 April 2019, the complainant withdrew from the in-house inquiry. She cited various reasons, including:

- a. Complainant did not allow the presence of her lawyer during proceedings.
- b. No video/audio recordings allowed during proceedings.
- c. Complainant not informed about the Committee's procedure.

There were many problems with the way the inquiry was being conducted. All Principles of Natural Justice were flouted in investigating the matter when the CJI himself presided over his case. At the outset, an in-house panel was constituted, that was not in conformity with the Vishaka Guidelines, and POSH Act. It was after the media outrage that an IC was formed. Furthermore, the complainant was not allowed legal representation and statement recordings. Finally, she backed out of the proceedings stating that justice was unlikely. Copy of the report was also not shared with her.

A schoolteacher charged of sexually harassing students in Coimbatore⁶²

On 3rd February 2020, a science teacher working at a government school for 23 years was arrested for sexually harassing female students.

Sexual Harassment Allegations on Shiamak Davar⁶³

Celebrated Bollywood choreographer, Shiamak Davar, who runs a chain of popular dance schools in six countries, has been accused of sexual abuse by two former dance students in Canada.

In the first lawsuit, the Complainant claimed that as a member of the core dancing group, he was subjected to several months of a “grooming process” in which Davar manipulated him into

⁶² Shalini Lobo, *Coimbatore: Govt school teacher arrested for sexually harassing 12-year-old*, INDIA TODAY (Feb. 03, 2020, 01:38 PM), <https://www.indiatoday.in/crime/story/coimbatore-govt-school-teacher-arrested-sexually-harassing-minor-1642824-2020-02-03>.

⁶³ Anirudh Bhattacharya, *Shiamak Davar sued for sexually abusing two Canadian dancers*, HINDUSTAN TIMES (May 08, 2015, 08:44 PM), <https://www.hindustantimes.com/bollywood/shiamak-davar-sued-for-sexually-abusing-two-canadian-dancers/story-QVQO5arqipm7KVQafm7RM.html>.

“sexual submission”. He alleged that Davar would touch him and other boys flirtatiously and invite a clique of male dancers to his home and ask them to lie in bed with him and stroke his body.

While categorically dismissing all the allegations in both lawsuits, Davar has submitted to the court that he is the “custodian” and not the leader of the spiritual sect and does not consider himself anyone’s spiritual guru.

In his written responses, Davar has stated that he has never had any “inappropriate sexual relations” with any of his students, that allegations of “sexual grooming” are false and that he has never manipulated or threatened anyone through his spirituality.

The Vishaka judgment expanded the scope of laws pertaining to sexual harassment at workplace and included it in the ambit of Article 19(1)(g) of the Constitution of India. It was favourable to the victim and strongly condemned sexual harassment at workplace, which encouraged more women to speak up and report any such act of harassment. This historical judgment also paved the way for numerous other decisions, as Courts followed suit, and the guidelines laid down by the Apex Court were referred to while drafting the Act.

Over the years, Courts have adopted a more liberal approach in interpreting the provisions of the Act and the Constitution of India to ensure justice to the victims of workplace sexual harassment.

Several cases mentioned in this chapter establish the wide-ranging emerging issues related to this problem. The enactment of the Sexual Harassment of Women at Workplace Act, 2013 has been a progressive step in this direction.

International Commitments: Measures to Prevent and Penalize Sexual Harassment at Workplace

Protecting women from sexual harassment at work and ensuring a safe working environment is an important element in achieving women's empowerment and gender equality. This is also universally recognised as a Human Right.

The International Covenant on Economic, Social and Cultural Rights, 1966⁶⁴ to which India is also a signatory gives recognition to a woman's right to a fair and secure working environment that is free from any form of sexual harassment.

CEDAW⁶⁵, also called the “*International Bill of Rights for Women*”, provides provisions that require its signatories to prohibit and eliminate discrimination against women and protect them from all kinds of violence, including sexual harassment at workplace.

Also, the fourth UN Women's Conference in Beijing⁶⁶ drew a Platform of Action of Objectives and Actions⁶⁷ to advance women's rights, including outlawing sexual harassment at workplace.

Further, the governing body of the International Labour Organisation (ILO) drafted a Code of Practice on Workplace in Service Sectors⁶⁸, offering guidance on many aspects, including sexual harassment at workplace. There was a campaign by ILO called the “*Campaign for Decent Work*”. It provides for keeping a check on sexual harassment at workplace and calls it a violation of a worker's basic right.

A recent World Bank Report⁶⁹ also brought to attention that the more women are in workplaces, the chances of economic growth of India will be greater.

The Global Movement: #MeToo

The **Me Too** (or **#MeToo**) **movement**, with variations of related local or international names, is a social movement against sexual abuse and sexual harassment where people publicize

⁶⁴ International Covenant on Economic, Social and Cultural Rights, 1966.

⁶⁵ Convention on the Elimination of all Forms of Discrimination against Women, The United Nations Entity for Gender Equality and the Empowerment of Women (1979).

⁶⁶ 4th UN Women's Conference, Beijing (1995).

⁶⁷ *Beijing Declaration and Platform for Action*, Beijing+5 Political Declaration and Outcome, UN Women (2014) https://www.unwomen.org/-/media/headquarters/attachments/sections/csw/pfa_e_final_web.pdf?la=en&vs=1203

⁶⁸ Code of Practice on Workplace Violence in Services Sectors and Measures to Combat this Phenomenon, International Labour Organisation, 2003.

⁶⁹ *World Development Report 2012 : Gender Equality and Development*, World Bank (2012) <https://openknowledge.worldbank.org/handle/10986/4391>

allegations of sex crimes.⁷⁰ The phrase "Me Too" was initially used in this context on social media in 2006, on Myspace, by sexual harassment survivor and activist Tarana Burke.⁷¹

Just like other social justice and empowerment movements based upon breaking silence, the purpose of "Me Too", as initially voiced by Burke as well as those who later adopted the tactic, is to empower sexually assaulted individuals through empathy and solidarity through strength in numbers, especially young and vulnerable men and women, by visibly demonstrating how many have survived sexual assault and harassment, especially in the workplace.

Following the exposure of the widespread sexual abuse allegations against Harvey Weinstein in early October 2017,⁷² the movement began to spread virally as a hashtag on social media. On October 15, 2017, American actress Alyssa Milano posted on Twitter, "If all the women who have been sexually harassed or assaulted wrote 'Me too' as a status, we might give people a sense of the magnitude of the problem," saying that she got the idea from a friend.

Widespread media coverage and discussion of sexual harassment, particularly in Hollywood, led to high-profile terminations from positions held, as well as criticism and backlash.

After millions of people started using the phrase and hashtag in this manner in English, the expression began to spread to dozens of other languages. The scope has become somewhat broader with this expansion, however, and Burke has more recently referred to it as an international movement for justice for marginalized people in marginalized communities.⁷³

⁷⁰ *From Politics to Policy: Turning the Corner on Sexual Harassment* – Center for American Progress, Center for American Progress (January 31, 2018) <https://www.americanprogress.org/issues/women/news/2018/01/31/445669/politics-policy-turning-corner-sexual-harassment/>

⁷¹ Abby Ohlheiser, *The woman behind 'Me Too' knew the power of the phrase when she created it – 10 years ago*, The Washington Post (October 19, 2017) https://web.archive.org/web/20171019201825if_/https://www.washingtonpost.com/web/20171019201825/https://www.washingtonpost.com/news/the-intersect/wp/2017/10/19/the-woman-behind-me-too-knew-the-power-of-the-phrase-when-she-created-it-10-years-ago/?utm_term=.d0a542f997a9

⁷² Elizabeth Chuck, *#MeToo: Alyssa Milano promotes hashtag that becomes anti-harassment rallying cry*, NBC News (October 16, 2017) <https://www.nbcnews.com/storyline/sexual-misconduct/metoo-hashtag-becomes-anti-sexual-harassment-assault-rallying-cry-n810986>

⁷³ Chris Snyder; Linette Lopez, *Tarana Burke on why she created the #MeToo movement – and where it's headed*, Business Insider (December 13, 2017) <https://www.businessinsider.in/home/tarana-burke-on-why-she-created-the-metoo-movement-and-where-its-headed/articleshow/62057171.cms>

#Me Too Movement in India

After allegations against Harvey Weinstein, the use of the #MeToo hashtag on social media spread quickly in India,⁷⁴ where sexual harassment is commonly referred to by the word 'eve-teasing', a term described as misleading, tame, and diluting the seriousness of the crime.⁷⁵ In response to #MeToo, there have been attempts to teach Indian women about workplace rights and safe reporting, as well as educate men about the scope of the problem.⁷⁶ Some have likened #MeToo to a 2012 social movement that followed a violent gang rape in New Delhi that later resulted in a woman's death, which caused the Indian government to institute harsher punishments for rape.⁷⁷ Others have suggested there was underlying public anger over a Delhi rape conviction that was overturned by Judge Ashutosh Kumar a month before against filmmaker and writer Mahmood Farooqui, ruling that a "feeble" no was not enough to revoke consent because it was typical for one partner to be less willing.⁷⁸

On 26 September 2018, after having been out of the Bollywood spotlight for about a decade, actress Tanushree Dutta gave an interview to Zoom TV in which she publicly accused Nana Patekar of sexually harassing her on the set of the 2009 movie. This declaration would be seen as the catalyst of the Me-Too movement in India, on the same lines as happened in the U.S. a year earlier with Harvey Weinstein, in which more and more women in the entertainment industry would publicly expose high-profile individuals who had sexually exploited them. Dutta had first made the allegations against Patekar in 2008, filing a complaint with the 'CINTAA' (Cine & TV Artists Association), but no action was taken as the case was considered a criminal case. The allegation was repeated in 2013 in an interview,⁷⁹ and again largely

⁷⁴ Zehra Kazmi, *#MeToo: Does it take a Twitter trend to know women are harassed every day?*, Hindustan Times (October 17, 2017) <https://www.hindustantimes.com/analysis/metoo-does-it-take-a-twitter-trend-for-men-to-know-women-are-harassed-every-day/story-c8InKAyvFnBALNxejogTEL.html>

⁷⁵ Why Are We Still Calling Sexual Harassment 'Eve-Teasing' In India?, Huffington Post India (July 4, 2017) https://web.archive.org/web/20171107004500/http://www.huffingtonpost.in/2017/07/04/why-are-we-still-calling-sexual-harassment-eve-teasing-in-india_a_23015316/

⁷⁶ Zehra Kazmi, *#MeToo: Does it take a Twitter trend to know women are harassed every day?*, Hindustan Times (October 17, 2017) <https://www.hindustantimes.com/analysis/metoo-does-it-take-a-twitter-trend-for-men-to-know-women-are-harassed-every-day/story-c8InKAyvFnBALNxejogTEL.html>

⁷⁷ *Women in India are also saying #MeToo*, PBS NewsHour (October 19, 2017) <https://web.archive.org/web/20180106120223/https://www.pbs.org/newshour/world/women-in-india-are-also-saying-metoo>

⁷⁸ Huizhong Wu, *A feeble no may mean yes: Indian court overturns rape conviction*, CNN (September 27, 2017) <https://edition.cnn.com/2017/09/27/asia/indian-court-overturns-rape-conviction/index.html>

⁷⁹ Divya Goyal, *Nana Patekar Dismisses Tanushree Dutta's Allegations, Asks 'What Sexual Harassment?'*, NDTV (September 27, 2018) <https://www.ndtv.com/entertainment/nana-patekar-dismisses-tanushree-duttas-allegations-asks-what-sexual-harassment-1923208>

ignored. It was not until her September 2018 statements that the CINTAA apologized to Dutta, admitting that the "chief grievance of sexual harassment wasn't even addressed [in 2008]", but added that since the case was more than three years old, they could not reopen it.

In October 2018, in an interview with Huffington Post India, a former employee of Phantom Films accused director Vikas Bahl of sexually harassing her on the set of the 2014 film *Queen*.⁸⁰ Later, the film's lead actress Kangana Ranaut, in support of the former employee, also accused Bahl of sexual misconduct. Following this, Nayani Dixit, Ranaut's co-star in the movie, leveled similar accusations against Bahl. As a result, Phantom Films announced its dissolution on 5 October 2018, largely in response to the sexual assault allegation against Bahl by another former Phantom employee, which was reported in 2015.

In October 2018, MJ Akbar, India's Minister of State for External Affairs, was accused of sexual harassment by several female colleagues.⁸¹ At least ten allegations have emerged against Akbar, the first public servant in high office to be accused. In mid-October, a 41-page letter was written to Delhi's chief metropolitan magistrate by Akbar, which accused journalist Priya Ramani of defaming him on scandalous grounds. Akbar's hearing for his defamation case began on 18 October. On February 17, 2021, the court dismissed Akbar's complaint against Priya Ramani, stating the charges had not been proven.

In the ruling, Judge Ravindra Kumar Pandey wrote, *"The woman cannot be punished for raising (her) voice against the sex abuse on the pretext of criminal complaint of defamation, as the right of reputation cannot be protected at the cost of the right of life and dignity of woman as guaranteed in the Indian Constitution."*⁸²

On May 22, 2019, former AIB comedian Utsav Chakraborty was accused of sexual harassment by a writer and fellow comic, who also said that the company had not taken any action despite her complaints. Following the incident, AIB founding member and CEO Tanmay Bhat "stepped away" from his role, while another founding member Gursimran Khamba, who was

⁸⁰ *Queen' Director Vikas Bahl Sexually Assaulted Me, Phantom Films Did Nothing: Survivor Speaks Out*, HuffPost India (6 October 2018) https://www.huffpost.com/archive/in/entry/queen-director-vikas-bahl-sexually-assaulted-me-phantom-films-did-nothing-survivor-speaks-out_a_23552623

⁸¹ Mobashar Jawed Akbar v. Priya Ramani, decided on 17.02.2021 by Sh. Ravindra Kumar Pandey, ADJ, Rouse Avenue, Distt. Court New Delhi; Vindu Goel et al., *After a Long Wait, India's #MeToo Movement Suddenly Takes Off*, NYTimes.com (October 9, 2018) <https://www.nytimes.com/2018/10/09/world/asia/india-sexual-harassment-me-too-bollywood.html>

⁸² Jayna Kothari, *"Priya Ramani verdict has expanded the law on sexual harassment"*, The Indian Express (24 February 2021) <https://indianexpress.com/article/opinion/columns/priya-ramani-verdict-has-expanded-the-law-on-sexual-harassment-7201745/>

also accused of sexual misconduct, was asked to go on temporary leave.⁸³ In May 2019, the group announced that they had to let go of their entire team in the wake of the controversy and that their YouTube channel would remain inactive indefinitely. While Bhat's suspension was lifted, he was barred from holding the position of CEO and Khamba was let go of.

On 12 October 2018, after accusations from several women of abusive and perverse sexual behavior, director Sajid Khan announced that he would step back from the production of his upcoming film *Housefull 4* until he could clear his name. In December 2018, Sajid Khan was suspended from IFTDA (Indian Film and Television Director's Association) for one year, following the accusations of sexual assault against him from three women.⁸⁴

On October 21, 2018, former music director Anu Malik was suspended from the jury panel of *Indian Idol* 2018, after facing multiple allegations of sexual harassment made through the movement.⁸⁵

In October 2018, veteran character actor Alok Nath was accused of rape by TV producer Vinta Nanda who worked with him in the TV show *Tara* in the mid-1990s.⁸⁶ Subsequently, actresses Renuka Shahane, Himani Shivpuri, Sandhya Mridul, and Deepika Amin have either admitted to knowing about Nath's predatory behavior or written about instances where they have been assaulted by him. On 15 October 2018, Nath sued Nanda for defamation, asking for a written apology and ₹1 as compensation. The Cine and TV Artists Association (CINTAA) sent Mr. Nath a show-cause notice on Vinta Nanda's post. The association asked why he should not be expelled from CINTAA. The actor urged that the notice be withdrawn, that he was innocent until proven guilty. On 14 November 2018, the CINTAA expelled Alok Nath from their organization after he failed to appear at a body meeting on 12 November to discuss his rape accusations against Vinta Nanda, and instead sent a response to the 'show-cause' notice.

⁸³ #MeToo row: AIB posts after 7 months; Gursimran Khamba to not be a part of the company, Tanmay Bhat demoted, *The Economic Times* (May 23, 2019) https://economictimes.indiatimes.com/magazines/panache/metoo-row-aib-posts-7-months-gursimran-khamba-to-not-be-a-part-of-company-tanmay-bhat-demoted/articleshow/69458852.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

⁸⁴ *Me Too: IFTDA suspends filmmaker Sajid Khan over complaints of sexual harassment*, *Hindustan Times* (12 December 2018) <https://www.hindustantimes.com/bollywood/me-too-ift-da-suspends-filmmaker-sajid-khan-over-complaints-of-sexual-harassment/story-jPRzbtGymjFgPKuKN7FIWN.html>

⁸⁵ *Sony suspends Anu Malik as the judge of Indian Idol 10 after multiple sexual harassment allegations*, *DNA* (October 21, 2018) <https://www.dnaindia.com/bollywood/report-sony-suspends-anu-malik-as-the-judge-of-indian-idol-10-after-multiple-me-too-allegations-2677563>

⁸⁶ #MeToo hits Sanskari Babuji Alok Nath, accused of rape and sexual harassment by TV show 'Tara' producer, *DNA* (9 October 2018) <https://www.dnaindia.com/television/report-metoo-hits-sanskari-babuji-alok-nath-accused-of-rape-and-harassment-by-tv-show-tara-producer-2673235>

CHAPTER II

THE RUBRIC OF THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 AND THE RULES, 2013

“The right to be protected from Sexual Harassment is one of the pillars on which the very construct of gender justice stands”

- Justice J. S. Verma⁸⁷

The Law for prevention of sexual harassment of women at workplace was formulated by an Act of Parliament as the “**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**” (hereinafter referred to as ‘the Act’) and it came into force on 9th December 2013.

The purpose of enacting a separate law for sexual harassment at workplace is two-fold as explained below:

- A. Sexual harassment results in the violation of Fundamental Rights of-
 - a. Right to Equality
 - b. Right to Life and Liberty
 - c. Right against discrimination on grounds of religion, race, caste, creed, and sex.

- B. Right to Equality was reinforced by the UN Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)⁸⁸, ratified by India as well. It underlines that discrimination and attacks on women’s dignity violate the principle of equality rights.

⁸⁷ Justice J. S. Verma Report of the Committee on Amendments to Criminal Law, 2013.

⁸⁸ Convention on the Elimination of all Forms of Discrimination against Women, The United Nations Entity for Gender Equality and the Empowerment of Women (1979).

The legislative progress of the Act was a long process.

The Bill was first introduced by the Women and Child Development Minister in 2007 that was approved by the Union Cabinet in January 2010.⁸⁹ It was tabled in the Lok Sabha in December 2010 and 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 finally passed by the Lok Sabha on September 03, 2012. The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on February 26, 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated 23 April 2013 as Act No. 14 of 2013.

Enforcement of the Act in 2013 was an important measure by the Indian legislators to concretize the various judgments of the courts and various parliamentary debates and discussions.

The Act is based on the same lines as the *Vishaka Guidelines*, namely fundamental rights provisions of the Indian Constitution and the CEDAW.⁹⁰ The Preamble⁹¹ of the Act further reaffirms the statement that sexual harassment results in the violation of the following fundamental rights of the woman bestowed upon her by the Constitution:

- A. Right to equality under Articles 14-15.
- B. Right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment under Article 19(1)(g).
- C. Right to life and to live with dignity under Article 21.

⁸⁹ Sonam Saigal, *Sexual harassment at work: The limits of the law*, THE HINDU, (April 03, 2017, 01:25 PM) <https://www.thehindu.com/news/cities/mumbai/sexual-harassment-at-work-the-limits-of-the-law/article17763605.ece>.

⁹⁰ Convention on the Elimination of all Forms of Discrimination against Women, The United Nations Entity for Gender Equality and the Empowerment of Women (1979).

⁹¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Preamble [Annexure-A].

The Statement of Objects and Reasons,⁹² accompanying the Bill when it was placed before Parliament, describes the entire history of the legislative process.

The Objects of the Act:

- A. Protection of women against sexual harassment at their place of work.
- B. Prevention and Redressal of the complaints of sexual harassment both in government and private sectors.⁹³
- C. Action in the matters connected therewith or incidental thereto.
- D. Creating and maintaining a work environment for working women in India that is conducive, safe, secure, and free from sexual harassment.
- E. Creation of an environment where the woman's integrity, dignity, and privacy are preserved and protected.

Application of the Act:

The Act is applicable to the whole of India. All the workplaces in India are covered.

Scope of the Act

This Act is a novel statute which seeks to address gender discrimination at workplaces and ensures protection to the right to equal opportunity to work as well as work with dignity for all women.

However, the Act does not encompass all forms of sexual harassment or abuse occurring in the workplace. It is only directed as 'discrimination on the basis of sex'. Some notable **exclusions** are -

- A. **Same-sex harassment:** It was perhaps not the principal evil the legislature wanted to address when it enacted the Act. Hence, sexual harassment committed by a female or experienced by a male victim is not included within the Act.
- B. **Harassment on account of sexual orientation:** Harassment on account of sexual orientation has also not been included in the Act.

⁹² Statement of Objects and Reasons, The Protection of Women Against Sexual Harassment At Workplace Bill, 2010, Bill No. 144 of 2010.

⁹³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Preamble [Annexure-A].

However, sexual harassment should always be actionable, regardless of the sex or sexual orientation of the harasser/ victim.⁹⁴

Despite the absence of such provisions in the Act, employers are at liberty to qualify them as workplace misconduct and formulate appropriate internal policies to contain them.

Brief Outline of the Act

The Act is divided into a total of 8 Chapters and 29 sections. The Preamble⁹⁵ of the Act states that the intent of the legislature was to enact a comprehensive legislation to deal with the problem of sexual harassment at workplace with utmost seriousness.

Chapter I- Preliminary⁹⁶

The first chapter comprises three sections.

Section 1 gives the short title, extent and commencement of the Act. The Act extends to the whole of India and came into force on 9th December, 2013.

Section 2 gives the definitions of important terms used throughout the Act, such as “aggrieved woman”⁹⁷, “employee”⁹⁸, “employer”⁹⁹, “sexual harassment”¹⁰⁰, “workplace”¹⁰¹ etc. Section 3 categorically states that no woman should be subjected to any kind of sexual harassment at her workplace, and sets forth the circumstances which may amount to sexual harassment.

⁹⁴ Doe v. Belleville, 119 F.3d 563 (CA7 1997).

⁹⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Preamble [Annexure-A].

⁹⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Preliminary [Annexure-A].

⁹⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(a) [Annexure-A].

⁹⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(f) [Annexure-A].

⁹⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(g) [Annexure-A].

¹⁰⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(n) [Annexure-A].

¹⁰¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(o) [Annexure-A].

Chapter II: Constitution of Internal Complaints Committee¹⁰²

The second chapter consists of a single section, which provides for the establishment of an IC, which shall be constituted at all administrative units or offices. The section lays down the composition of the IC and the requirements for appointing the Presiding Officer as well as the Members.

Chapter III: Constitution of Local Committee¹⁰³

The third chapter consists of four sections.

Section 5 provides for the appropriate government to notify the District Officer for every District to exercise powers or discharge functions under the Act.

Section 6 gives the composition of the LC and the requirements for the appointment of the officers thereof. The section also states that the jurisdiction of the LC shall extend to the areas of the district where it is constituted.

Section 7 provides for the composition, tenure, and other terms and conditions of LC.

Section 8 provides for grants and audits by the Central and the State governments.

Chapter IV: Complaint¹⁰⁴

The fourth chapter consists of three sections.

Section 9 provides that an aggrieved woman can file a complaint of sexual harassment to the IC or LC within a period of 3 months from the date of the incident, which can be further extended for a period of 3 months if the IC/ LC is satisfied that circumstances were such that prevented the woman from filing the complaint within the stipulated time period.

Section 10 of the law provides the option to the aggrieved woman, to choose to settle or at least attempt to settle the matter between her and the respondent. The qualification is that no monetary settlement shall be made on the basis of this conciliation.

Section 11 states that where both the parties are employees, both the parties are heard and opportunity is given to make representations against the findings of the committee. For the

¹⁰² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Constitution of Internal Committee** [Annexure-A].

¹⁰³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Constitution of Local Committee** [Annexure-A].

¹⁰⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Complaint** [Annexure-A].

purpose of making an inquiry, the committee shall have the same powers as are vested in a civil court. The committee has to complete the inquiry within a period of 90 days.

Chapter V: Inquiry into Complaint¹⁰⁵

This chapter consists of 7 sections.

Section 12 lists out the certain interim reliefs the committee can give to the aggrieved woman during the pendency of the inquiry.

Section 13 states that the committee within 10 days after completion of the inquiry shall provide the report of its findings to the employer/District Officer and the concerned parties. When the allegation against the respondent has been proved the committee shall recommend the employer/District Officer to take action for sexual harassment and the employer/District Officer shall act upon the recommendations within 60 days.

According to Section 14, in case of filing of false or malicious complaint or false evidence the committee may recommend to the employer or District Officer to take action in accordance with the provisions of service rules or where no such service rules exist, in such manner as may be prescribed.

Section 15 talks about the determination of compensation.

Section 16 states that there is a prohibition on publication of identity of the aggrieved woman, respondent, witnesses, contents of the complaint, inquiry proceedings, or recommendations of the committee, except information regarding the justice secured to any victim of sexual harassment.

Section 17 states that in case of contravention of Section 16 of the Act, such person shall be liable for penalty in accordance with service rules and in absence of service rules, in such a manner as may be prescribed.

Section 18 states that an appeal can be filed against the recommendations made by the committee before the court or tribunal, within 90 days from the recommendations.

Chapter VI: Duties of Employer¹⁰⁶

This chapter consists of a single section which lists out the duties of the employer.

¹⁰⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Inquiry into Complaint** [Annexure-A].

¹⁰⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Duties of Employer** [Annexure-A].

Chapter VII: Duties and Powers of District Officer¹⁰⁷

This chapter also consists of a single section which lists out the duties and powers of the District Officer.

Chapter VIII: Miscellaneous¹⁰⁸

This chapter consists of 10 sections.

Section 21 directs the IC/LC to submit an annual report every year to the employer and the District Officer.

Section 22 requires the employer to include the annual report information about the number of cases filed in the year.

Section 23 prescribes for the appropriate government to monitor the implementation of the Act and maintain date on the number of cases filed and disposed of.

Section 24 provides that the appropriate government should take measures such as developing relevant information, educating the public and communicating with them, providing training materials, organizing awareness programmes, formulating orientation and training programmes etc., in order to publicise the Act.

Section 25 gives the appropriate government the power to call for information and inspection of records.

Section 26 lays down the penalties for non-compliance with the various provisions of the Act.

Section 27 provides for cognizance of offences by courts upon a complaint by an aggrieved woman or any person authorized by the IC/LC. This section makes every offence under the Act non-cognisable.

Section 28 states that the provisions of the Act should not be in derogation of the provisions of any other law for the time being in force.

Section 29 empowers the appropriate government to make rules and states the procedure of making such rules.

Lastly, Section 30 gives the Central Government the power to remove difficulties through making provisions consistent with the Act, by an order published in the Official Gazette.

¹⁰⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Duties and Powers of District Officer** [Annexure-A].

¹⁰⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, **Miscellaneous** [Annexure-A].

Distinguished Features of the Act

A. It defines and elucidates “sexual harassment”.

The Act defines ‘sexual harassment’ in conformity with the definition provided by the Apex Court in the *Vishaka* judgment.

According to Section 2(n) of the Act¹⁰⁹, sexual harassment includes unwelcome sexually tinted behaviour, whether directly or by implication. Instances of such harassment are depicted graphically in the following chart.

Figure 1: Sexual Harassment



¹⁰⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(n) [Annexure-A].

Few of the other circumstances which may also amount to sexual harassment,¹¹⁰ apart from the above, are listed in the following chart.

Figure 2: Circumstances Amounting to Sexual Harassment at Workplace



Some examples of behaviour that can constitute sexual harassment at workplace are:

- a. Unwanted sexual advances/ propositions;
- b. Pestering for dates or receiving unwelcome sexual suggestions or invitations;
- c. Offering employment benefits in exchange for sexual favours;
- d. Leering;
- e. Making sexual gestures;
- f. Displaying sexually suggestive objects or pictures, cartoons, calendars, or posters;
- g. Making/ using derogatory comments, comments about a person's body or dress, slurs, epithets, or sexually suggestive jokes;

¹¹⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 3(2) [Annexure-A].

- h. Written communications of a sexual nature distributed in hard copy or via a computer network, suggestive or obscene letters, notes or invitations;
- i. Physical conduct such as unwanted touching, assault, impeding or blocking movements;
- j. Being forcibly kissed or hugged;
- k. Having someone expose their private parts or repeatedly staring at a woman's body parts making her uncomfortable;
- l. Making or threatening retaliation after a negative response to sexual advances or for reporting or threatening to report sexual harassment;
- m. Eve-teasing;
- n. Sexually tinted remarks, whistling, staring, sexually slanted and obscene jokes, jokes causing or likely to cause awkwardness or embarrassment;
- o. Subtle innuendos or open taunting regarding perfection, imperfection of characteristics of the physical appearance of a person's body or shape;
- p. Gender-based insults and/or sexist remarks;
- q. Displaying pornographic or other sexually offensive or derogatory material;
- r. Forcible invitation for dates;
- s. Forcible physical touch or physical assault or molestation;
- t. Suggesting or implying that failure to accept a request for a date or sexual favours would adversely affect the individual in respect to performance evaluation or promotion;
- u. Explicitly or implicitly suggesting sexual favours in return for hiring, compensation, promotion, retention decision, relocation, or allocation of job/work;
- v. Any act/ conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at workplace hostile or intimidating to a person belonging to the opposite sex, only on the ground of such individual providing or refusing sexual favours; and
- w. Physical confinement against one's will and any other act likely to violate one's privacy.

The scope of this definition is very wide. It covers both direct as well as implied sexual behaviour which can be physical, verbal, or written. The key feature is the behaviour or conduct

by the respondent is ‘unwelcome’ by the woman who is complaining. It also includes *quid pro quo* harassment i.e. blackmailing by the respondent if he is in a dominant position over the woman employee.

Another aspect is the creation of an ‘intimidating, offensive or hostile’ environment for the woman. An example of this can be a situation wherein the woman employee is being mistreated, being commented on with respect to her body type, resulting in low self-esteem and extreme discomfort in the woman.

In *Dr. Punita K. Sodhi v. Union of India & Ors.*,¹¹¹ the Delhi High Court observed that

“A complete understanding of the complainant’s view requires an analysis of the different perspectives of men and women. Conduct that may 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 a 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.”

B. It explains the scope and ambit of “workplace”.

While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, departments, office, branch units, etc. in the public and private sector, organized and unorganized sector, hospitals, nursing homes, educational institutions, sports institutions, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.

¹¹¹ Punita K. Sodhi (Dr.) v. Union of India, (2010) 172 DLT 409.

Figure 3: Workplace



In *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*¹¹², the Delhi HC extensively discussed the scope of ‘workplace’. In this case, the respondent faced departmental inquiry for allegedly sexually harassing a senior woman officer. He contended that he cannot be accused as the incident did not take place at the workplace, but at an official mess where the woman officer was residing. The Court opined that the expression of ‘workplace’ cannot be given a narrow interpretation. It was observed that it is not necessary that a workplace would be one where the actual work is performed. Any extension of the place where the employer has control of management would also be treated as a workplace.¹¹³ It would typically envisage any situation which is linked to official work or official activity. It was therefore concluded that the official mess where the employee was alleged to have been sexually harassed falls under ‘workplace’. The accused was held guilty of sexual harassment.

¹¹² *Saurabh Kumar Mallick v. Comptroller & Auditor General of India*, (2008) 151 DLT 261.

¹¹³ Smita Paliwal, *India: Notional Extension Of Workplace vis-à-vis POSH Act, 2013*, MONDAQ (June 18, 2019), <https://www.mondaq.com/india/employee-benefits-compensation/816388/notional-extension-of-workplace-vis-vis-posh-act-2013>.

Furthermore, in this case, the court endorsed the following parameters for determining whether the locality of the offence qualifies to be a ‘workplace’:¹¹⁴

- a. proximity from the place of work.
- b. control of management over such place/ residence where the working woman is residing; and
- c. such a ‘residence’ has to be an extension or contiguous part of the working place.

On similar lines, the Act offers an enhanced definition of ‘workplace’. It goes beyond the traditional ‘brick and mortar’ definition and includes within its ambit all places having a linkage with the employment including places visited by the employees arising out of and in connection with the employment and/or having work-related consequences.

The width of the term ‘workplace’ was notionally extended in the Act in recognition of the fact that a woman employee may be subjected to sexual harassment even outside the physical boundaries of her workplace. This may include harassment by a co-worker outside the precincts of her workplace or by an employee of another workplace visited by her during the course of her employment. For example, sexual harassment is proscribed at the place of work, during work hours, at work-related activities such as training, conferences, trips, functions, etc. at any place arising out of or during the course of employment, including transportation provided by the employer.¹¹⁵

- a. ‘Arising out of and during employment’:

Sexual harassment under the Act is prohibited in situations where it occurs away from the workplace but is a culmination or extension of events of the workplace.¹¹⁶

The proposition becomes lucid from the use of the expression ‘arising out of and during the course of employment’ by the legislature within the definition of ‘workplace’.¹¹⁷

¹¹⁴ It should be noted that during the said period, the Act had not come into force and the Vishaka case had occupied the field.

¹¹⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(o)(v) [Annexure-A].

¹¹⁶ M. Kavya v. Chairman, University Grants Commission, (2015) 1 LW 835 (India).

¹¹⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(o)(v) [Annexure-A].

The expression ‘arising out of and during the course of employment’ postulates the theory of notional extension of the employer’s premises.¹¹⁸

This theory extends to the ‘time’ (i.e. work hours of the employee) as well as the ‘place’ (i.e. the employment premises) in a reasonable manner.¹¹⁹ This expression ‘arising out of and during the course of employment’ had been a subject matter of judicial interpretation in the past, albeit in the context of labour and employment statutes such as the Employee Compensation Act, 1923¹²⁰ and the Employee State Insurance Act, 1948.¹²¹

In *Kamala v. Madras Port Trust*¹²², it was held that for an employee to come within the scope of the expression ‘arising out of and during the course of employment’, she should be able to prove that she was, at the time of the incident, engaged in the employer’s business or in furthering business and was not doing something for her benefit or accommodation.

In the context of the Employees Compensation Act 1923, the SC in *Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahommed Issak*¹²³, analysed the term ‘arising out of and during the course of employment’, and construed it to mean “*in the course of the work which the workman is employed to do and which is incidental to it*”.

In the case of *Regional Director, Employees State Insurance Corporation v. Derhin Bai*¹²⁴, the Chhattisgarh High Court, in the context of Employee State Insurance Act 1948¹²⁵, summed up the position as follows:

- i. The words ‘in the course of employment’ mean in the course of the work which the workman is employed to do and which is incidental to it.
- ii. The words ‘arising out of employment’ are understood to mean during the course of employment, injury has resulted from some risk incidental to the duties of the service,

¹¹⁸ *Sheela v. Regional Director, Employees State Insurance Corporation*, ILR (1991) 1 P&H 417 (India).

¹¹⁹ *Saurashtra Salt Mfg. Co. v. Bai Valu Raja*, AIR 1958 SC 881 (India).

¹²⁰ The Employee Compensation Act, 1923, No. 8, Acts of Parliament, 1923, (India).

¹²¹ The Employee Compensation Act, 1923, No. 8, Acts of Parliament, 1923, (India).

¹²² *Kamala v. Madras Port Trust*, (1966) 1 LLJ 690 (Mad) (India).

¹²³ *Mackinnon Mackenzie & Co. Pvt. Ltd. v. Ibrahim Mahmmud Issak*, AIR 1970 SC 1906 (India).

¹²⁴ *Regional Director, Employees State Insurance Corporation v. Derhin Bai*, (2012) IV LLJ 324 CG (India).

¹²⁵ The Employee State Insurance Act 1948, No. 34, Acts of Parliament, 1948 (India).

which unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered. In other words, there must be a casual relationship between the incident and the employment.

- iii. Expression ‘arising out of employment’ is again not confined to the mere nature of the employment. It applies to the employment as such to its nature, conditions, obligations, and incidents. If by any reason or any of those factors the workman is brought within the zone of special danger, the injury would be one which arises out of employment.
- iv. The onus of proving that the injury by accident arose out of and in the course of employment rests upon the applicant but these essentials may be inferred when the proved facts justify the inference.

The wide canvass being afforded to the term ‘arising out of and during the course of employment’ brings to the fore the intention to provide protection and prevention at all possible places where either aggrieved woman works or may be present or may visit in connection with her duty.¹²⁶

b. Harassment during transportation

The legislature has acknowledged that women employees may be sexually harassed during their official journey and brought transportation within the scope of the term ‘workplace’.¹²⁷

c. Home as ‘workplace’

As far as domestic workers are concerned, the Act recognizes residential homes (as a site for labour) as a ‘workplace’. It is pertinent to note here that India had, in the past, voted in favour of the International Labour Organisation’s Convention for Decent Work for Domestic Workers.¹²⁸

¹²⁶ *Jaya Kodate v. Rashtrasant Tukoji Maharaj Nagpur University*, W.P. Nos. 3449, 3450 & 3451 of 2013 (India).

¹²⁷ Parliamentary Standing Committee on Human Resource Development, 239th Report on “*The Protection of Women against Sexual Harassment at Workplace Bill, 2010*”.

¹²⁸ The Convention defines a ‘domestic worker’ as one who carries out domestic work in an employment relationship. Workers who carry out domestic work occasionally and not on occupational basis are excluded from the Convention.

The Act describes a ‘domestic worker’ as a woman who is employed to do the household work in any household for remuneration whether in cash or in-kind, whether directly or through any agency on a temporary, permanent, part-time or full-time basis, but does not include any member of the family of the employer.¹²⁹

The domestic sector is poorly regulated in this country. Not only in India, but across the globe, the conditions in which domestic workers work are seldom talked about or discussed. Their stories make headlines only in extreme cases of exploitation or abuse, while they continue to routinely face harassment on the job with little protection.¹³⁰

Talking of sexual harassment, domestic workers constitute a vulnerable category since they comprise the ‘low wage’ category having financial problems and negligible bargaining power. Induction of ‘domestic workers’ within the sweep of the Act appears to be a natural consequence of making the Act applicable to the unorganized sectors, including residential homes. However, the mere inclusion of the term ‘domestic workers’ is not enough. Cases of sexual harassment of these workers are not sufficiently highlighted.¹³¹ Some level of innovative thinking would be necessary for the purpose of enforcing the provisions of the Act for their benefit. This may be achieved by cooperation and involvement of various agencies such as police, residential welfare associations, panchayats, NGOs, etc.

It appears that the term ‘workplace’ is intended to include within its ambit all conduct which may have a connection with the work/ employment regardless of the place of occurrence.

Vishaka guidelines were confined to the traditional office setup. However, considering the fact that the incident of sexual harassment can also happen beyond the primary place of employment, the concept of ‘extended workplace’ is incorporated in the Act.

¹²⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(e) [Annexure-A].

¹³⁰ Ritu Gupta (2019) ‘*Workplace Sexual Harassment of Women Domestic Workers: Issues and Challenges in the Legal Framework in India.*’ In: Mahanta U., Gupta I. (eds) *Recognition of the Rights of Domestic Workers in India*. Springer, Singapore. https://doi.org/10.1007/978-981-13-5764-0_5

¹³¹ Avanti Deshpande, *Does The POSH Law Protect Women Working In The Unorganised Sector?*, UNGENDER (Jan. 6, 2021) <https://www.ungender.in/sexual-harassment-against-women-in-the-unorganised-sector/>.

C. It provides the definition of ‘aggrieved woman’.

Generally speaking, the term ‘aggrieved’ refers to a person who has suffered ‘loss or injury’. This term is also defined as ‘feeling resentment at having been unfairly treated’.¹³²

Under the Act, the term ‘aggrieved woman’ means¹³³:

- a. in relation to a workplace, of any age, whether employed or not, who alleges to have been subjected to any act of sexual harassment; or
- b. in relation to a dwelling place or house, a woman of any age who is employed in such dwelling place or house.

It appears from the definition, that only the person who is a target of the harassment (direct victim) or any other person affected by the offensive behaviour can initiate action under the Act.

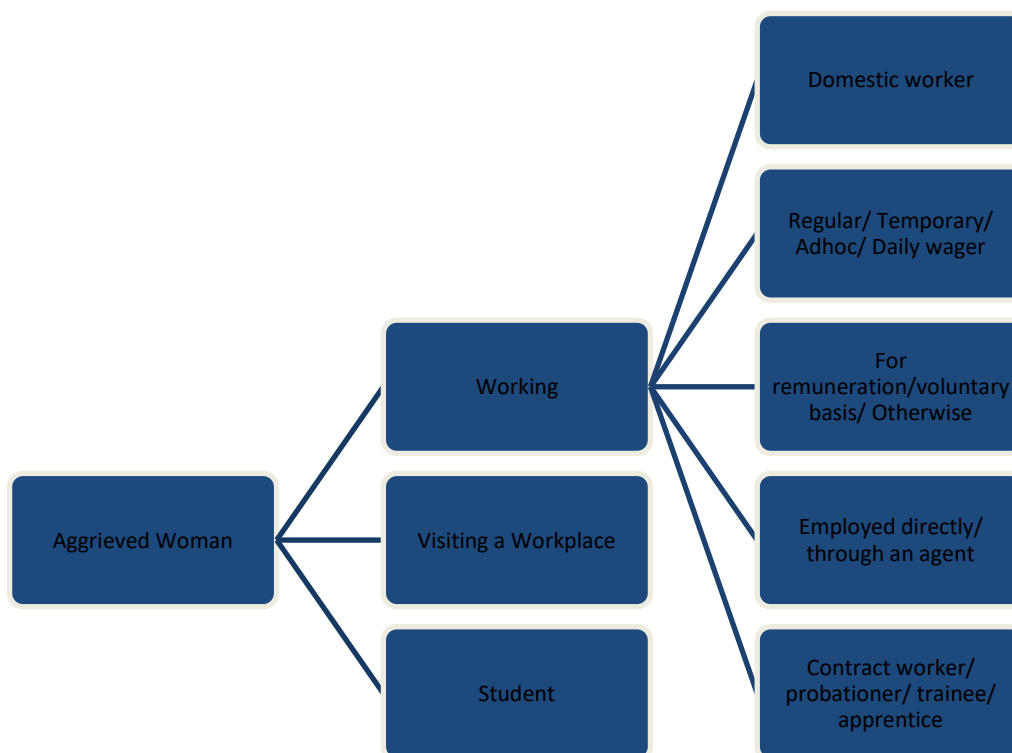
The Act provides for an inclusive definition, to bring into its ambit all women who are not only employed but also non-employees who enter the workplace as clients, customers, apprentices, etc.¹³⁴ Hence, the concept of ‘third party harassment’ has also been built into the Act.

¹³² Leena Doley v. State of Assam, (2014) 4 Gau LR 665 (India).

¹³³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(a) [Annexure-A].

¹³⁴ M. Kavya v. Chairman, University Grants Commission, (2015) 1 LW 835 (India).

Figure 4: Aggrieved Woman



D. It establishes a complaint mechanism for filing of a complaint by an aggrieved woman.

Section 9¹³⁵ provides for the filing of a complaint under the Act. As per the provision, any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the IC or the LC, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of the last incident.

In cases where such a complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the LC shall render all reasonable assistance to the woman for making the complaint in writing. The IC or the LC may also extend the time limit, not exceeding three months if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

¹³⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 9 [Annexure-A].

Reporting the incident as promptly as possible is very important, as is its prompt disposal. The section¹³⁶ further provides that where an aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person may make a complaint on her behalf. Rule 6¹³⁷ lays down more details regarding a complaint of sexual harassment. It provides that:

If an aggrieved woman is unable to make a complaint on account of physical incapacity, then a complaint may be filed on her behalf by any of the following people¹³⁸:

- a. Relative/ friend
- b. Co-worker
- c. An officer of NCW (National Commission for Women) or State Women Commission
- d. Any person having knowledge of the incident (with the written consent of the aggrieved woman)

If an aggrieved woman is unable to make a complaint on account of mental incapacity, then a complaint may be filed on her behalf by any of the following people¹³⁹:

- a. Relative/ friend
- b. Special educator
- c. Qualified psychiatrist/ psychologist
- d. Guardian/ authority taking care of the woman
- e. Any person having knowledge of the incident jointly with a friend/ relative/ special educator etc.

Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.¹⁴⁰

¹³⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 9 [Annexure-A].

¹³⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 6 [Annexure-B].

¹³⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 6(i) [Annexure-B].

¹³⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 6(ii) [Annexure-B].

¹⁴⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 6(iii) [Annexure-B].

Where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.¹⁴¹

A complaint made by an aggrieved woman should be well-drafted and have certain features as mentioned below:

- a. It should be addressed to the IC members and not to the employer.
- b. It should be precise and to the point, in simple language, and shall clearly explain the grievance. Well-written complaints have better credibility.
- c. Particulars like time, place, and date of the incident should be properly stated.
- d. Preceding and following circumstances of the incident.
- e. Whether the respondent faced resistance from the complainant.
- f. Append as many documents as possible in whatever format, i.e relevant e-mails, screenshots of SMS, WhatsApp conversations, call logs, photographs, etc.
- g. Particulars of the complainant, as well as the respondent, should be clearly mentioned.
- h. All facts must be true and to the point.
- i. Relief sought must be defined precisely.

E. It provides guidelines for composition and powers of the IC and LC.

Internal Committee

Every Executive Authority shall constitute an IC with an inbuilt mechanism for gender sensitization against sexual harassment. The Act requires every employer to constitute an IC at each office or branch of an organization employing 10 or more employees to hear and dispose of complaints of sexual harassment.¹⁴² Failure to do so will lead to the imposition of fine on the employer.¹⁴³

The IC shall have the following composition:

¹⁴¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 6(iv) [Annexure-B].

¹⁴² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 4 [Annexure-A].

¹⁴³ Global Health Pvt. Ltd. v. Local Complaints Committee, (2019) 4 MP LJ 424 (India).

Figure 5: Composition of Internal Committee



The IC members are to be nominated by the employer and the following prerequisites must be fulfilled:¹⁴⁴

- a. The Presiding Officer shall be a woman employed at a senior level at the workplace from amongst the employees. In case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace.

Furthermore, in case the other offices or administrative units of the workplace do not have a senior-level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization.

- b. Not less than two members shall be from amongst the employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge.

¹⁴⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 4[Annexure-A].

- c. One member shall be from amongst Non-Governmental Organisations (NGOs) or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Such a member shall be paid such fees or allowances for holding the proceedings of the IC by the employer.
- d. At least one-half of the total members so nominated shall be women.
- e. Every Member of the IC (including the Presiding Officer) shall hold office for the period not exceeding three years, from the date of their nomination.
- f. A minimum of 3 members of the IC, including the Presiding Officer, are to be present for conducting inquiry.

Section 4¹⁴⁵ further provides the grounds for removal of the Presiding Officer or any Member of the IC, such as:

- a. If he/she contravenes the provisions of Section 16.
- b. If he/she has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him/her.
- c. If he/she has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him/her.
- d. If he/she has so abused his/her position as to render his continuance in office prejudicial to the public interest.

Consequently, on the basis of these grounds, such Presiding Officer or Member, shall be removed from the IC and the vacancy so created shall be filled by fresh nomination in accordance with the provisions of the above-mentioned section.

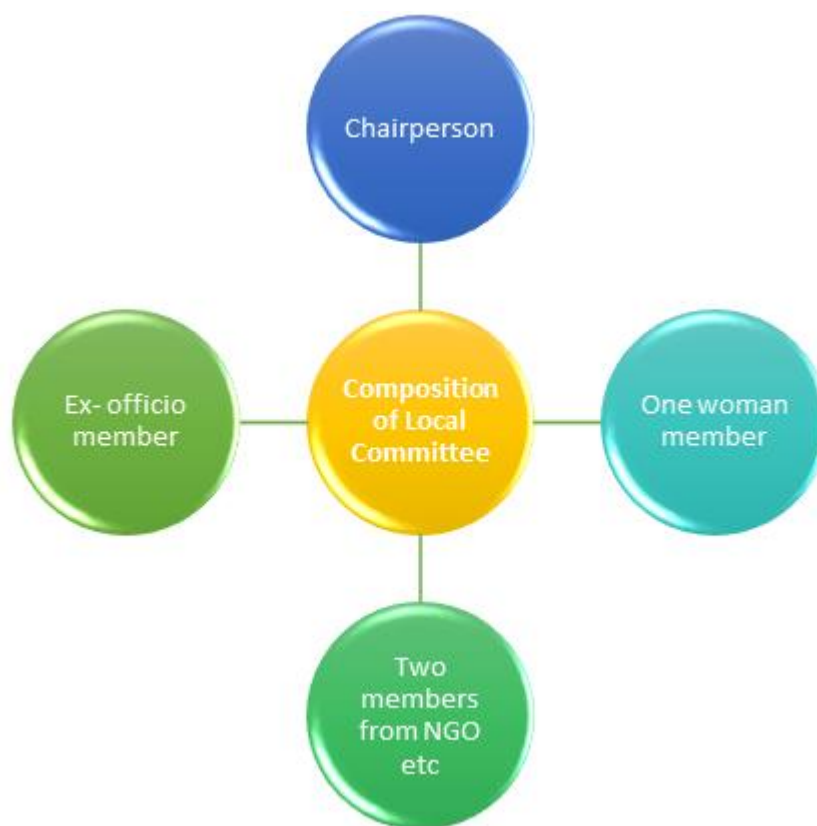
¹⁴⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 4 [Annexure-A].

Local Committee

The Government is required to constitute an LC at the District level to inquire into and redress complaints of sexual harassment from the unorganized sector or from organizations where no IC has been constituted since the number of employees is less than 10, or if the complaint is against the employer.

The LC shall have the following composition:

Figure 6: Composition of Local Committee



The LC members are to be nominated by the District Officer and the following prerequisites must be fulfilled:¹⁴⁶

- a. The Chairperson shall be from amongst the eminent women in the field of social work and committed to the cause of women.

¹⁴⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 7 [Annexure-A].

- b. One Member shall be from amongst the women working in the block, taluka or tehsil or ward or municipality in the district.
- c. Two Members, of whom at least one shall be a woman, shall be from amongst such Non-Governmental Organisations (NGOs) or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment.
- d. At least one of the nominees should, preferably, have a background in law or legal knowledge.
- e. At least one of the nominees shall be a woman belonging to the Scheduled Castes (SC) or the Scheduled Tribes (ST) or the Other Backward Classes (OBC) or minority community notified by the Central Government.
- f. A member *ex-officio* shall be a concerned officer dealing with the social welfare or women and child development in the district.
- g. The Chairperson and every Member of the LC shall hold office for a period not exceeding three years, from the date of their appointment.
- h. The Chairperson and Members of the LC, other than the Members nominated under clauses (b) and (d) of sub-section (1), shall be entitled to fees or allowances for holding the proceedings of the LC.

Section 7¹⁴⁷ further provides the grounds for removal of the Chairperson or any Member of the LC, such as:

- a. If he/she contravenes the provisions of Section 16.

¹⁴⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 4 [Annexure-A].

- b. If he/she has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him/her.
- c. If he/she has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him/her.
- d. If he/she has so abused his/her position as to render his continuance in office prejudicial to the public interest.

Consequently, on the basis of these grounds, such Chairperson or Member, shall be removed from the LC and the vacancy so created shall be filled by fresh nomination in accordance with the provisions of the above-mentioned section.

Powers of IC or LC

The IC or the LC shall have the same powers as a Civil Court under the Code of Civil Procedure, 1908, including:

- a. Summoning and enforcing the attendance of any person and examining him on oath
- b. Requiring the discovery and production of documents
- c. Any other matter which may be prescribed.¹⁴⁸

F. It provides a process for conciliation.

The IC or the LC may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through conciliation. It is, however, provided that no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been arrived at, the Committee shall record the settlement so arrived at and forward the same to the employer or the District Officer to take action as specified in the recommendation. It shall also provide copies of the settlement to the aggrieved woman and the respondent.

Where a settlement is arrived at, no further inquiry shall be conducted by the Committee.

¹⁴⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 11(3) [Annexure-A].

G. It lays down a mechanism for inquiry proceedings and actions to be taken by the Committee during pendency of inquiry.

Inquiry Proceedings

Section 11 of the Act provides that:

- a. Where the respondent is an employee, the IC or the LC shall proceed to inquire into the complaint according to the service rules applicable to the respondent. In absence of the same, the inquiry may proceed according to the prescribed procedure.
- b. In the case of a domestic worker, the LC shall, if a *prima facie* case exists, forward the complaint to the police within 7 days to register a case under Section 509 of the Indian Penal Code.
- c. If the woman informs the IC/ LC that any terms and conditions of a settlement arrived at between the parties has not been fulfilled by the respondent, then the Committee shall either start an inquiry or forward the complaint to the police.
- d. If both parties are employees, they shall be given an opportunity of being heard and copies of findings shall be given to both of them so that they can present their case before the IC/ LC.
- e. For the purpose of conducting the inquiry, the IC/ LC shall have the same powers as the Civil Court under the Code of Civil Procedure, 1908.
- f. Every inquiry shall be completed within 90 days.

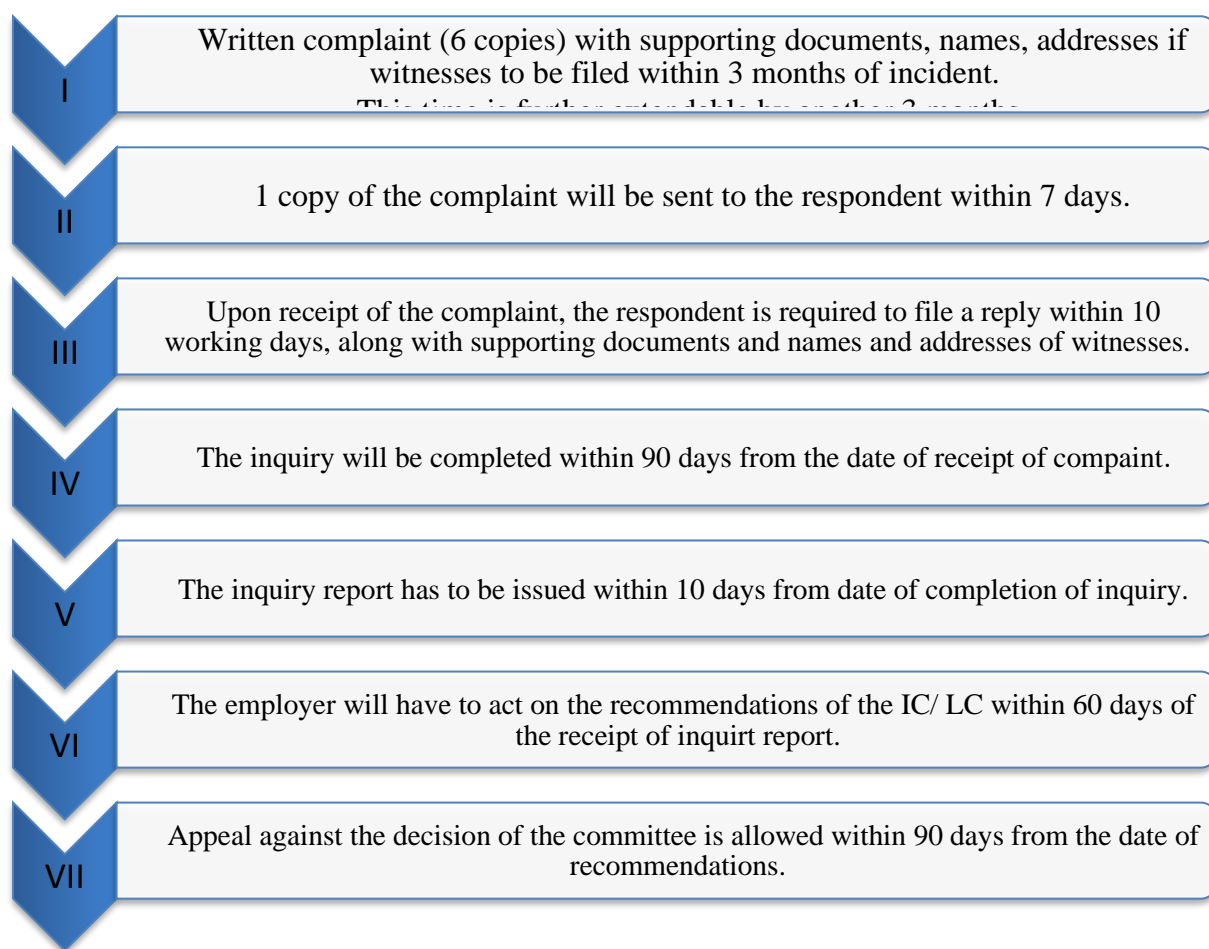
Further, **Rule 7¹⁴⁹** of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 lays down procedure regarding the manner of complaint to be filed before the IC/ LC. It provides:

¹⁴⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 7 [Annexure-B].

- a. 6 copies of the complaint are to be submitted to the IC/ LC along with supporting documents.
- b. 1 copy will be sent to the respondent by the IC/ LC after which the respondent will file a reply within 10 working days.
- c. The committee will then inquire into the complaint according to principles of natural justice.
- d. If the complainant or respondent fails to present herself or himself before the committee for 3 consecutive hearings, the committee can terminate the inquiry or pass an *ex parte* order (*ex parte* order cannot be passed without giving a 15 days' notice to the party concerned).
- e. Parties are not permitted to bring a legal practitioner to the proceedings to represent them.
- f. For the inquiry, minimum of 3 members of the committee including the presiding officer shall be present.

A brief procedure for filing a complaint has also been summarised in the following chart:

Figure 7: Procedure for Filing a Complaint under the Act



Actions to be Taken During the Pendency of an Inquiry

Section 12 of the Act provides that during the pendency of an inquiry, on a written request made by the aggrieved woman, the IC/LC may recommend to the employer to:

- a. transfer the aggrieved woman or the respondent to any other workplace
- b. grant leave to the aggrieved woman up to a period of three months
- c. grant such other relief to the aggrieved woman as may be prescribed

It shall be noted that the leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled to.

On the recommendation of the IC/LC, the employer shall implement the recommendations and send the report of such implementation to the IC/LC.

Rule 8¹⁵⁰ of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 further provides that:

- a . Respondent can be restrained from reporting on the work performance of the complainant or writing her confidential report, and the same can be assigned to another officer.
- b . In case of an educational institution, the respondent can be restrained from supervising any academic work of the complainant.

H. It lays out a provision for Inquiry Reports.

Section 13 of the Act¹⁵¹ states that on completion of an inquiry under this Act, the IC/LC shall provide a report of its findings to the employer or the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

Where the IC/LC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer or the District Officer that no action is required to be taken in the matter.

Where the IC/LC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer to:

- a. Take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed; or
- b. Deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15.

¹⁵⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 8 [Annexure-B].

¹⁵¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 13 [Annexure-A].

In case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment, it may direct the respondent to pay such sum to the aggrieved woman. In case the respondent fails to pay the sum the IC/LC may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

The employer or the District Officer is required to act upon the recommendation within sixty days of its receipt.

I. It lays down the factors to be considered for determination of compensation to be paid to the aggrieved woman.

According to Section 15 of the Act¹⁵², for the purpose of determining the sums to be paid to the aggrieved woman, the IC/LC shall have regard to:

- a. The mental trauma, pain, suffering, and emotional distress caused to the aggrieved woman.
- b. The loss in the career opportunity due to the incident of sexual harassment.
- c. Medical expenses incurred by the victim for physical or psychiatric treatment.
- d. The income and financial status of the respondent.
- e. Feasibility of such payment in lump sum or installments.

J. It stipulates a course of action for prosecution for false or malicious complaints and false evidence.

This provision¹⁵³ has been included to ensure that the provisions of the Act are not misused. If the IC/LC is satisfied that the complaint filed by a woman is frivolous or malicious, and it has been filed knowing it to be false or forged or misleading, disciplinary action in accordance with the service rules can be taken against the woman complaining.

¹⁵² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 15 [Annexure-A].

¹⁵³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 14 [Annexure-A].

Where the organization does not have service rules in this regard, the statute provides that disciplinary actions like a written apology, warning, reprimand, censure, withholding of promotion or pay rise/ increments, termination of services, undergoing counselling, or carrying out community service can be imposed.

Mere ability to substantiate a complaint or provide adequate proof need not attract action. Moreover, the malicious intention of the complainant shall be duly proved after an enquiry before action is taken.

Rule 10¹⁵⁴ of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 provides that except in cases where service rules exist, the IC/ LC is satisfied that the allegations were false or made with malicious intent, or have been made by the complainant knowing it to be false, or the woman has produced any forged/ misleading document, it may recommend the employer or the District officer to take appropriate action.

K. It contains a confidentiality clause and a penalty clause for not abiding by secrecy rules.

Considering the sensitivity of the issue of sexual harassment at workplace, the makers of the Act incorporated this provision of maintaining ‘confidentiality’ of the complaint. It prohibits the dissemination of details like particulars of both parties (complainant and respondent), witness details, information regarding proceedings and inquiry, recommendations of the IC/ LC to the press or media in any way.¹⁵⁵

It permits disclosure of information pertaining to the justice done to the victim, without disclosing personal details like name, address, or other details. This disclosure is allowed to set an example for future potential offenders to deter them from doing anything of this sort, as well as to inform everyone about the seriousness of the employer to create a safe and secure working environment for its employees.

¹⁵⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 10 [Annexure-B].

¹⁵⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 16 [Annexure-A].

Section 17¹⁵⁶ and Rule 12¹⁵⁷ of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 provides that there shall be a penalty for making known contents of complaint and inquiry proceedings public.

Where any person entrusted with the duty to handle or deal with the complaint, inquiry, or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of Section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.¹⁵⁸

It further provides that if any person fails to comply with Section 16 (the confidentiality clause), the employer shall recover an amount of Rs. 5,000 as penalty from such person.¹⁵⁹

L. It provides for an Appeal Procedure.

Section 18 of the Act¹⁶⁰ states that any person aggrieved from the recommendations made under Sections 13, 14 or 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person.

Where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

The appeal shall be preferred within a period of 90 days of the recommendations.

¹⁵⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 17[Annexure-A].

¹⁵⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 12 [Annexure-B].

¹⁵⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 17 [Annexure-A].

¹⁵⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 12 [Annexure-B].

¹⁶⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 18 [Annexure-A].

Moreover, **Rule 11**¹⁶¹ of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 provides that subject to the provisions of Section 18, the aggrieved party can prefer an appeal to the appellate authority notified under clause (a) of Section 2¹⁶² of Industrial Employment (Standing Orders) Act, 1946.

M. It lays down the duties of the employer.

The Act puts a legal duty upon the employer to provide a working environment free from any form of sex-based discrimination including sexual harassment. Section 19 of the Act¹⁶³ provides for the following ten duties of an employer:

- a. Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.
- b. Display at any conspicuous place in the workplace, the penal consequences of sexual harassment, and the order constituting the IC.
- c. Organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed.
- d. Provide necessary facilities to the IC/LC for dealing with the complaint and conducting an inquiry.
- e. Assist in securing the attendance of respondent and witnesses before the IC/LC.
- f. Make available such information to the IC/LC as it may require having regard to the complaint made under sub-section (1) of Section 9.

¹⁶¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 11 [Annexure-B].

¹⁶² Industrial Employment (Standing Orders) Act, 1946, § 2.

¹⁶³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 19 [Annexure-A].

- 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.
- 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.
- i. Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct.
- j. Monitor the timely submission of reports by the Internal Committee.

Rule 13¹⁶⁴ of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 further provides the manner of conducting the above-mentioned workshops, programs, etc. It provides that every employer shall:

- a. Form and disseminate an internal policy/ resolution/ declaration for prohibiting, preventing, and redressing sexual harassment at workplace, and to promote gender sensitive workplace, and eliminate factors that contribute in creating a hostile work environment.
- b. Carry out orientation programmes and seminars for IC members.
- c. Conduct employee awareness programmes and create forums for deliberations for various groups like Panchayati Raj, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and other relevant bodies.
- d. Conduct capacity building and skill development programmes
- e. Declare details of IC members

¹⁶⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 13 [Annexure-B].

- f. Make use of modules made by the state governments to organise workshops and training/ awareness programmes.

N. It establishes a rule regarding submission of Annual Report.

In compliance with Section 21¹⁶⁵, the IC/ LC is supposed to submit an ‘Annual Report’ for each calendar year, in the prescribed form and time, to the employer and the District Officer. The District Officer shall then forward a brief report on the annual reports received to the State Government.

As per Section 22,¹⁶⁶ the employer shall include in the report the number of cases filed and their disposal under the Act. In cases where no such report is required to be made, the employer shall intimate the District Officer about such a number of cases.

Further, **Rule 14** of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013¹⁶⁷ lays down the following details which are to be incorporated in the Annual Report:

- a. Number of complaints of sexual harassment received in the year.
- b. Number of complaints disposed-off during the year.
- c. Number of cases pending for more than 90 days.
- d. Number of workshops or awareness programme against sexual harassment carried out.
- e. Nature of action taken by the employer/ District Officer.

¹⁶⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 21 [Annexure-A].

¹⁶⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 22 [Annexure-A].

¹⁶⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 14 [Annexure-B].

O. It contains a clause for non-compliance with the provisions of the Act and cognizance of offence by courts.

Section 26¹⁶⁸ imposes a penalty on the employer for non-compliance with the provisions of the Act. It states that the employer shall be penalized with a fine, which may extend to fifty thousand rupees if he fails to:

- a. Constitute an IC.
- b. Take action under Sections 13, 14 and 22.
- c. Contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder.

Further, if any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to:

- a. Twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence.

In case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

- b. Cancellation of his licence 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.

¹⁶⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 26 [Annexure-A].

P. Cognizance of Offence by Courts

Section 27¹⁶⁹ provides states that:

- A. No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee on this behalf.
- B. No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- C. Every offence under this Act shall be non-cognizable.

Some Other Important Provisions

- A. **Rule 3¹⁷⁰** provides for allowances to be paid to the members of IC. It says that the member appointed from amongst Non-Governmental Organisations (NGOs) shall be entitled to an allowance of Rs 200 per day for holding the proceedings of the IC and also the reimbursement of travel cost incurred in travelling.
- B. **Rule 4¹⁷¹** lays down who is a ‘person familiar with issues relating to sexual harassment’:
 - a. social worker with at least 5 years’ experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and particularly addressing sexual harassment at workplace
 - b. a person familiar with labour, service, civil or criminal law.
- C. **Rule 5¹⁷²** provides for allowances to be paid to the Chairperson of the IC and members of the LC. They are to be paid Rs. 250 per day for holding proceedings of the committee.

¹⁶⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 27 [Annexure-A].

¹⁷⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 3 [Annexure-B].

¹⁷¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 4 [Annexure-B].

¹⁷² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 5 [Annexure-B].

D. **Rule 9¹⁷³** provides for the manner of taking action for sexual harassment. It lays down that except in cases where service rules exist, the IC arrives at a decision that the respondent is guilty, it shall recommend to the employer/ District Officer to take action like:

- a. written apology
- b. warning
- c. reprimand/ censure
- d. withholding promotion
- e. withholding pay rise or increments
- f. termination of services
- g. undergoing counselling session
- h. carrying out community service

Applicability of the Act to the Unorganised Sector

The Act applies to both Organised and Unorganised sectors.

The term ‘Unorganised Sector’ has been defined under the Act as 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 10.¹⁷⁴

Applicability of the Act to Educational Institutions

The Act is applicable to all educational institutions as well. Every educational institute like colleges, schools, technical colleges etc. are bound to implement the law.

The University Grants Commission (UGC) and the All India Council for Technical Education (AICTE) have issued and gazette notified the separate regulations under the Act, to be followed by the educational institutions affiliated with UGC & AICTE.

The regulations are:

¹⁷³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 9 [Annexure-B].

¹⁷⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2 (p) [Annexure-A].

- A. University Grants Commission (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Education Institutes) Regulations, 2015.¹⁷⁵
- B. All India Council for Technical Education (Gender sensitization, Prevention and Prohibition of Sexual Harassment of Women Employees and Students and Redressal in Technical Educational Institutions) Regulations, 2016.¹⁷⁶

The above-mentioned guidelines apply to all women staff members, faculty members, students, researchers, etc.

Apart from this, UGC has issued a detailed handbook, SAKSHAM – Measures for Ensuring the Safety of Women and Programmes for Gender Sensitization in Campuses,¹⁷⁷ in this regard. This is for mandatory compliances by all Higher Educational Institutions (HEI) governed by the UGC.

Accordingly, every HEI shall be responsible for:

- A. Appropriately modifying ordinances and rules in consonance with the requirements of the Regulations, wherever required.
- B. Publicly notifying the provisions against sexual harassment and ensuring their wide dissemination with a zero-tolerance policy.
- C. Organising training programmes or workshops for the officers, functionaries, faculty, and students, to sensitize them and ensure knowledge and awareness of the rights, entitlements, and responsibilities enshrined in the Act and Regulations, including regular orientation or training programmes for the members of the IC to deal with complaints.

¹⁷⁵ Notification, University Grants Commission, Ministry of Human Resource Development (2016) https://www.ugc.ac.in/pdfnews/7203627_UGC_regulations-harassment.pdf

¹⁷⁶ Directorate of Technical Education Kerala, All India Council for Technical Education (Gender sensitization, Prevention and Prohibition of Sexual Harassment of Women Employees and Students and Redressal in Technical Educational Institutions) Regulations, November 2016, <http://www.dtekerala.gov.in/index.php/en/extensions/government-orders/2377-23nov16aicte>.

¹⁷⁷ University Grants Commission, SAKSHAM – Measures for ensuring the Safety of Women and Programmes for Gender Sensitization in Campuses, December 2013, https://www.ugc.ac.in/pdfnews/5873997_saksham-book.pdf.

- D. Acting 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.
- E. Reinforcing its commitment to creating its campus free from discrimination, harassment, retaliation, or sexual assault at all levels.
- F. Creating awareness about what constitutes sexual harassment including hostile environment harassment and quid pro quo harassment.
- G. Including in its prospectus and display prominently at conspicuous places or Notice Boards the penalty and consequences of sexual harassment and make all sections of the institutional community aware of the information on the mechanism put in place for redressal of complaints pertaining to sexual harassment, contact details of members of IC, complaints procedure and so on.
- H. Treating sexual harassment as a misconduct under service rules and initiate action for misconduct if the perpetrator is an employee.
- I. Treating sexual harassment as a violation of the disciplinary rules if the perpetrator is a student.
- J. Monitoring the timely submission of annual reports by the IC with details on the number of cases filed and their disposal and submit the same to the Commission.
- K. Providing adequate safety to female students/ wardens in women's hostels. The area in and around the hostel should be properly lit to avoid any dark spaces in the area.
- L. Providing adequate and reliable transport facility between different sections of the institute i.e. main building, hostels, library, etc.

- M. Conducting a regular and half-yearly review of the efficacy and implementation of their anti-sexual harassment policy and rules, regulations, or any such other instrument by which IC shall function have to be updated and revised from time to time, as court judgments and other laws and rules will continue to revise the legal framework within which the Act is to be implemented.
- N. The hostel wardens, provosts, Vice-Chancellor, Principals, legal officers, and other functionaries by whatever designation they are called, must be made responsible and accountable for the implementation of Anti sexual harassment policy through administrative orders.

Composition of an IC in the HEI

The following prerequisites must be fulfilled while establishing an IC in any HEI:

- A. The Chairperson shall be a senior woman faculty member.
- B. Two faculty members and two non-teaching employees shall be members, preferably who are committed to the cause of women or having legal knowledge or experience in social work.
- C. Three students, if the matter pertains to them, who shall be enrolled at the undergraduate, master's and research scholar levels respectively.
- D. At least one member from a Non-Governmental Organization (NGO) or an association working for women or any other person having knowledge of issues of sexual harassment.
- E. At least one-half of the total members shall be women.
- F. Persons in senior administrative positions in the HEI, like Vice-Chancellor, Pro Vice-Chancellors, Rectors, Registrar, Deans, Heads of departments, etc. shall not be members of ICs to ensure the autonomy of their functioning.
- G. The term of the members of IC shall be for a period of 3 years.

Provisions for Punishment and Compensation

Anyone found guilty of sexual harassment shall be punished in accordance with the service rules of the HEI, if the offender is an employee.

Where the respondent is a student, depending upon the severity of the offence, the HEI may:

- A. Withhold privileges of the student like access to the library, auditorium, halls of residence, scholarships, allowances, etc.
- B. Suspend or restrict entry into the campus for a specific period
- C. Expel and strike off the name from the rolls of the institution, including denial of readmission if the offence so warrants
- D. Award reformatory punishments like mandatory counselling, performing community services etc.

Further, the aggrieved woman is entitled to compensation. The HEI shall issue directions for payment of compensation recommended by the IC and accepted from the respondent. The amount shall be determined on the basis of:

- A. Mental trauma, pain, suffering, and distress caused to the woman
- B. Loss of career opportunity due to the sexual harassment
- C. Medical expenses incurred by the victim for physical, psychiatric treatments
- D. The income and status of the alleged perpetrator and victim
- E. Feasibility of such payment in lump sum or instalments

Consequences of Non-Compliance

The Commission shall, in respect of any institution who wilfully contravenes or repeatedly fails to comply with the obligations and duties laid out for prevention, prohibition and redressal of sexual harassment of employees and students, take one or more of the following actions after providing due notice:¹⁷⁸

- A. Withdrawal of declaration of fitness to receive grants under the UGC Act.
- B. Removing the name of university/ college from the list maintained by UGC.
- C. Withholding grants
- D. Recommending university to withdraw its affiliation etc.

¹⁷⁸ University Grants Commission Act, 1956, No. 3, Acts of Parliament, 1956 (India).

No action shall be taken by the Commission under these regulations unless the institution has been given an opportunity to explain its position and of being heard.

The HEI shall be punished with a fine up to Rs. 50,000 and twice the punishment in case of 2nd offence if it fails to:

- A. Constitute the IC
- B. Take action in terms of report
- C. Contravenes any provision of the Act

Retrospective Operation of the Act

The act does not have any retrospective operation. In other words, it may not be possible to take cognizance of offences of sexual harassment at workplace that occurred prior to 09.12.2013 under the Act.

In the case of *Mahender Kumar v. Linda Eastwood*,¹⁷⁹ the petitioner contended that they cannot be charged under the Act, which came into force with effect from 23.04.2013 and the same being a penal statute, cannot have retrospective operation. It was held:

“I find that the said Act was passed in the Parliament and then got the assent of the President on April 22, 2013 and came into force on being notified in the Official Gazette of India by the Central Government, on 9 December, 2013. Therefore, the cognizance taken on 29 August 2013 by the learned court for the offence is absolutely illegal and without jurisdiction, being hit by sub-article (1) of Article 20 of the Constitution. Furthermore, it is well-settled no penal statute has retrospective operation.”

Other Laws Pertaining to Sexual Harassment at Workplace

A. Industrial Employment (Standing Orders) Act, 1946

This Act requires the employer to define and publish uniform conditions of employment in the form of standing orders. According to the statute, the standing orders should contain terms of employment, including hours of work, wage rates, shift working, attendance and late coming, provision for leaves and holidays, and termination or suspension/ dismissal of employees.

¹⁷⁹ Mahender Kumar v. Linda Eastwood, (2015) 2 CAL LT 357 (India).

The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (Hereinafter referred to as “Standing Order Rules”) lay down a list of acts that constitute sexual harassment in conformity with the Vishaka judgment. It also provides for constituting a complaints committee for dealing with complaints of sexual harassment at workplace. The Standing Order Rules are not confined to women.

B. Indian Penal code, 1860

Section	Offence
354	<u>Outraging the modesty of a woman</u> – Assault or use of criminal force, intending to outrage/ knowing it to be likely that modesty would be outraged
354 A	<u>Sexual Harassment</u> – <ul style="list-style-type: none"> • Physical contact and advances involving unwelcome and explicit sexual overtures • Demand or request for sexual favours • Showing pornography against will of the woman • Making sexually coloured remarks
354 B	<u>Disrobing</u> – assault or use of criminal force to any woman with the intention of disrobing or compelling her to be naked
354 C	<u>Voyeurism</u> – watching, or capturing the image of a woman engaging in a private act wherein she is not expecting to be observed by any person or disseminates such image.
354 D	<u>Stalking</u> – following a woman and contacting or attempting to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman, or monitoring the use by a woman of the internet, email, or any form of electronic communication.

509	<u>Insulting modesty of a woman</u> – uttering any word, making sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or such gesture or object shall be seen, by a woman, with an intention to insult her modesty, or intruding upon the privacy of such woman.
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CHAPTER III

RESEARCH METHODOLOGY

Origin of the Research Problem

As discussed earlier, India is facing the problem of increasing number of cases of sexual harassment at workplace despite the fact that there are numerous laws to curb the menace. Irrefutably, it hampers women's constitutional and fundamental rights to equality, justice and dignity. There is a paucity of empirical research on the impact of the sexual harassment laws in India.¹⁸⁰ More so, in the wake of the #MeToo movement and various issues raised throughout the country regarding the working of the IC. Also, it is frequently reported that organizations and institutions often don't implement the guidelines properly and some might not even know about the existing law of sexual harassment. There's a need to examine the reasons and the solutions to this issue. There's, therefore, a need to also formulate an operative model procedure from the act which is understandable for everyone.

Although the Act was enforced in 2013 for dealing with the problem of sexual harassment at workplace in India, there is not much data to establish its effective implementation.

This state of affairs encouraged the present research project.

Significance of the Study

The project assessed the working and implementation of the Act in different institutions across various sectors. After the data collected from various places was analysed, the project came up with certain suggestions and recommendations to deal with the problems and loopholes that were identified by the study regarding implementation of the Act.

The project tries to supplement the existing literature on this issue and the already identified problems in the aforesaid Act. It is believed that the study and its findings would be helpful to people like jurists, activists working for the cause of sexual harassment at workplace, legislators, judicial officers and other stakeholders.

¹⁸⁰ Sharvari Kothawade, *Sexual Harassment at the Workplace: What Kind of Change Do Internal Committees Need?* EPW Engage (August 26, 2019) <https://www.epw.in/engage/article/sexual-harassment-workplace-what-kind-change-do>

Literature Review

To review and analyze available national as well as international research works for carrying out the research has been a daunting task. The team had to filter the unnecessary, unauthenticated, and irrelevant data from the most necessary, relevant, and reliable data on the subject. The available legal research resources, websites, journals, articles, books and other literature on the subject were thoroughly studied to find out the issues flagged by other researchers and writers. A few of the most relevant *inter alia* of these have been mentioned in this chapter under the headings of International and national perspectives respectively.

i. International Perspective

In Malaysia and Lebanon, **Siti et al. (2015)**¹⁸¹ and **Hussin (2015)**¹⁸² respectively reported the occurrence of sexual harassment in hospitality workplaces. The presence of sexual harassment in the Republic of Kosovo was also established by **Kamberi and Ramiqi (2017)**¹⁸³ and Kamberi and Gollopeni (2015)¹⁸⁴ respectively in the in-depth interviews conducted among 47 interviewees from private/public sectors, and occurrences are 60% higher in the private sectors. **The Manchester Centre for Regulations and Governance [MCRandG] (2013)**¹⁸⁵ observed the rampage of sexual harassment among uniformed officers, especially police officers. **Castro et al. (2015)**¹⁸⁶ emphasized the pervasive occurrence of sexual harassment and assault within the USA military services. Of the 200 women managers from various organisations of India surveyed by **Sahgal and Dang (2017)**¹⁸⁷, it was also found that 15% experienced sexual

¹⁸¹ Siti et al., *The effects of sexual harassment in workplace: Experience of employees in hospitality industry in Terengganu, Malaysia*, 6(4S2) Mediterranean Journal of Social Sciences, 1–8 (2015).

¹⁸² Hussin, J., *Sexual harassment in the workplace: An exploratory study from Lebanon*, 7(1) Journal of Management Research, 107–121 (2015).

¹⁸³ Kamberi, F. & Ramiqi, M., *Sexual harassment in Kosovo—Causes and consequences*, Centrum, 364.633(497.115), 112–134 (2017).

¹⁸⁴ Kamberi, F. & Gollopeni, B., *The phenomenon of sexual harassment at the workplace in Republic of Kosovo*, 3(12) International Journal of Social Sciences, 580–592 (2015).

¹⁸⁵ Ellen, D et al., *Disproportionality in the professions: Working together to understand and respond to discrimination and prejudice*, (UMRIPP-Report-28112013) The Manchester Centre for Regulations and Governance (2013).

¹⁸⁶ Castro, C. A. et al., *Sexual assault in the military*, 17(54) Current Psychiatry Reports, 1–13 (2015).

¹⁸⁷ Sahgal, P. & Dang, A., *Sexual harassment at workplace: Experiences of women managers and organisations*, 3(22) Economic and Political Weekly, 49–57 (2017).

harassment. Likewise, in the Indian educational sphere, the occurrence of sexual harassment is a fact (**Aina and Kulshrestha 2017¹⁸⁸; Anju 2015¹⁸⁹; Das and Pratap 2015¹⁹⁰**).

A Canadian study conducted by **Brockman (1992)¹⁹¹**, revealed that 57.7% of 600 females and 25.3% of 1798 males experienced unwanted sexual advances by other British Columbia lawyers. The 1990–2002 longitudinal survey of Ontario lawyers revealed that subtle sexual harassment and gender bias exist in all sectors of the profession despite the 1991–1996 policy initiatives of the law society of Upper Canada on harassment (**Kay et al. 2004**).¹⁹² Out of the 1178 respondents surveyed by the Women’s Legal Education and Action Fund (LEAF), 60% had experienced gender harassment, 30% experienced sexual harassment, 21% experienced violence, and 3% experienced sexual violence in the workplace (Government of Canada 2017). In another Canadian survey conducted among 451 participants, 54% experienced sexual harassment while pursuing their career, 30% experienced conducts of a sexual nature that could be perceived as a ground for promotion or training at their workplace, and the majority did not report because of low expectations for significant action from the Management or Authority in charge (Insights West 2017).

In Australia, **Victorian Equal Opportunity and Human Rights Commission [VEO&HRC] (2012)¹⁹³** conducted a survey that showed that 23.9% of 100 respondents experienced sexual harassment while working as lawyers or legal trainees in Victoria. **Mundy and Seuffert (2017)** reported that ingrained sexual harassment is still a challenge in the Australian legal profession. The survey conducted by the International Bar Association among lawyers from Europe, Africa, Asia, America, and Oceania revealed that 27% women and 7% men of 114 respondents

¹⁸⁸ Aina, A. D. & Kulshrestha, P., *Sexual harassment in educational institutions in Delhi’ NCR, (India): Level of awareness, perception, and experience*, 21(3) Sexuality and Culture, 106–126 (2017).

¹⁸⁹ Anju, T., *Incidents of sexual harassment at educational institutions in India: Preventive measures and grievance handling*, 02(03) International Journal of Recent Advances in Multidisciplinary Research, 0317–0322 (2015).

¹⁹⁰ Das, M. P. & Pratap, K. R., *The low level of awareness and impact of intervention about sexual harassment*, 3(4) International Journal of Social Science and Humanities, 283–286 (2015).

¹⁹¹ Brockman, J., *Gender bias in the legal profession: A survey of members of the law society of British Columbia*, 17 Queen’s Law Journal, 91–146 (1992).

¹⁹² Kay, F. M. et al., *Turning points and transitions: Women’s careers in the legal profession*, A longitudinal survey of Ontario lawyers 1990–2002 (a report to the Law Society of Upper Canada) (2004).

¹⁹³ *Changing the rules: the experiences of female lawyers in Victoria*, Victorian Equal Opportunity and Human Rights Commission (2012).

experienced sexual harassment, and 67% women and 10% men experienced gender discrimination in various jurisdictions (Ellis and Buckett 2017).¹⁹⁴

ii. Indian Perspective

Anju Thomas had conducted empirical research¹⁹⁵ in 10 educational institutions in Kerala, with respondents from age 18 to 50, and found that women are in some way or the other, subjected to sexual harassment in institutions as they are deemed to ignore these issues due to their lack of confidence to fight against the situation. Factors such as victim-blaming and shaming have a huge role to play in women reporting instances of sexual harassment in educational institutions. What was striking was the fact that women did not find the normalized offensive sexist jokes by colleagues and classmates as sexual harassment. However, women who did not report direct sexual harassment instances were relatively less than the ones who did. Most of them were satisfied with the way their grievances were dealt with by the complaints committee in their institution.

However, it has been asserted that a third of Indian Corporations and a fourth of global companies surveyed in the country were not compliant with the Sexual Harassment Act 2013. Further, it has been quoted that number of sexual harassment complaints at workplace raised to 526 in the year 2014 as compared to 249 cases in the year 2013.¹⁹⁶ Nonetheless, the Supreme Court's guidelines for the prevention of sexual harassment at workplace came in the year 1997, i.e., almost two decades ago but the incidences of sexual harassment are still prevailing. The prevalence of sexual harassment is a lot more than what it appears in Indian society.¹⁹⁷ The clandestine *modus operandi* from the perpetrator in conservative society gives confidence to the potential offender. The tendencies to remain silent due to the fear of stigmatization make such instances even worse for submissive and introverted victims. This silently affects the lives

¹⁹⁴ Ellis, J., & Buckett, A., *Women in commercial legal practice*, International Bar Association, Research and Legal Unit (2017).

¹⁹⁵ Anju, T., *Incidents of sexual harassment at educational institutions in India: Preventive measures and grievance handling*, 02(03) International Journal of Recent Advances in Multidisciplinary Research, 0317–0322 (2015).

¹⁹⁶ Sangwan, D. & Thakre, A., *Sexual Harassment at the Workplace in Public and Private Sectors in National Capital Region of Delhi, India: An Empirical Study*, 13(1) International Journal of Criminal Justice Sciences 29-43 (2018).

¹⁹⁷ Sangwan, D. & Thakre, A., *Sexual Harassment at the Workplace in Public and Private Sectors in National Capital Region of Delhi, India: An Empirical Study*, 13(1) International Journal of Criminal Justice Sciences 29-43 (2018).

of many innocent employees and instills irreversible abnormalities in behavior that would further hamper their relations with others.

A study conducted by **Adetutu Deborah Aina, M.C. Mehanathan & Pradeep Kulshrehsta**¹⁹⁸, examined the level of awareness of sexual harassment in educational institutions in Delhi (NCR). This paper grouped the results of all respondents into two categories, i.e., private and state institutions, wherein a total number of 430 respondents were selected from ten private and state universities by simple random sampling from their respective law faculties. The statistical tools used in analyzing the data collected were frequency and chi-square which revealed that the level of awareness of private or individually owned institutions is relatively high but lacks clarity and boils down to a lower level of awareness as compared with state or government-owned institutions. The findings also revealed that private universities experience sexual harassment just like state universities. Based on these results, the author recommended the augmentation of awareness programs in all universities, especially private ones. They also advocated the need for compulsory sexual education courses for new intakes.

The legal systems were put in place in 2013, but they are still so new that their social impact can be understood only after the passage of time. Sufficient data is not yet available to study the repercussions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. However, there are some areas where it has made a significant impact. It has succeeded in creating awareness in society about the alternative legal recourse available to women in distress in their workplaces. Previously, many women preferred to suffer in silence than to go through the torture of a criminal justice system with its accompanying complicated and delayed procedures. Now, women have the option of pursuing legal recourse through simple and time-bound processes. Help is provided to the victim. Perhaps its most significant success has been the development of an awareness of the Act's existence. Companies have become more compliant with this and they have done their bit to create workplace awareness.

¹⁹⁸ Adetutu et al., *Indian Legal Profession and the Sexual Harassment of Women at Workplace Act*, 24 (1) Sexuality & Culture 248-272 (2020).

Women have become more confident and the environment in the workplace has become significantly more women friendly.¹⁹⁹

A survey was conducted by **The Indian National Bar Association**²⁰⁰ on sexual harassment at workplace between April and October 2016. Around 6,047 participants, both male and female, and 45 victims responded to their questionnaire. Most of the respondents were from sectors like IT, media, education, legal, medical, and agriculture. The respondent victims were mainly from Delhi, Mumbai, Bengaluru, Kolkata, Hyderabad, Lucknow, and other areas. Around 38 percent of the respondents said they faced sexual harassment in the workplace. The survey revealed that most of the women victims dealt with it on their own instead of lodging a formal complaint with the management.²⁰¹

In India, **Mishra** (2016a, b)²⁰² and **Mahapatra** (2014)²⁰³ reported that sexual and nonsexual harassment is the hidden dirty secret of the Indian legal profession, and it is experienced by female lawyers and judges. In December 2012, an intern female law student was sexually harassed by a Judge of the Supreme Court (Kothari 2013).²⁰⁴ Gender harassment is also a major challenge in the Indian legal profession. Some clients prefer women to draft their court proceedings, but to be argued by men in court (Mishra 2016a, b)²⁰⁵, implying that women do not possess the aggressive skills like men to handle litigation.

¹⁹⁹ Singh, T., *Prevention of Sexual Harassment of Women in the Workplace: Seeking Gender Equality at Work in India*, 18(1) Journal of International Women's Studies, 104-113 (2016).

²⁰⁰ INBA's 2nd edition of Sexual Harassment Survey-2018, Indian National Bar Association (January 2, 2018) <https://www.indianbarassociation.org/events/inbas-2nd-edition-of-sexual-harassment-survey-2018/>.

²⁰¹ *Sexual harassment at workplace: 69% victims did not complain to management, says survey*, Firstpost (January 05, 2017 19:48:41 IST) <https://www.firstpost.com/india/sexual-harassment-at-workplace-69-victims-did-not-complain-to-management-says-survey-3189524.html>.

²⁰² Mishra, S., *I was sexually harassed in the corridors of the Supreme Court*, The Week (November 13, 2016) <http://www.theweek.in/theweek/cover/interview-Indira-jaising-senior-lawyer.html>.

²⁰³ Mahapatra, D., *Gwalior additional judge says she was sexually harassed by HC judge, quits*, The Times of India (August 4, 2014) <http://timesofindia.indiatimes.com/india/Gwalior-additional-judge-says-she-was-sexuallyharassed-by-HC-judge-quits/articleshow/39569700.cms>.

²⁰⁴ Kothari, J., *Sexual harassment in the Indian legal profession*, Oxford Human Rights Hub (December 9, 2013) <http://ohrh.law.ox.ac.uk/sexual-harassment-in-the-indian-legal-profession/>.

²⁰⁵ Mishra, S., *I was sexually harassed in the corridors of the Supreme Court*, The Week (November 13, 2016) <http://www.theweek.in/theweek/cover/interview-Indira-jaising-senior-lawyer.html>.

Bhat and Deshpande (2017)²⁰⁶ posit that the major causes of sexual harassment are: male domination of the workplace, the masculine gender role, sex-role stereotypes, and tolerance of sexual harassment by victims. However, in India, there are other covert causes of sexual harassment in the legal profession, ranging from; traditional gender inequalities rooted in most male advocates and even among the judges (Mishra 2016a, b)²⁰⁷, imbalanced sex ratio due to sex selection in the society (Aina-Pelemo and Saluja 2018)²⁰⁸, patriarchal structure of the society (Kohli 2017²⁰⁹; Tukaram 2016²¹⁰; Schultz et al. 1999²¹¹), cultural norms (Hills and Marshall 2018)²¹², caste system, to religious identity (Mishra 2015)²¹³.

Ernst & Young (EY) conducted a survey with **FICCI** in 2016-17, ‘**Reining in sexual harassment at workplace in India**’²¹⁴, to understand corporate India’s readiness to manage sexual harassment at the workplace. The report helps us understand the level of compliance required with the law, actual management of complaints, and measures undertaken to ensure women’s safety in organizations.

Girija Borker, an economist at Brown University in her work ‘**Safety First: Perceived Risk of Street Harassment and Educational Choices of Women**’²¹⁵, attempts to quantify the economic consequences of sexual harassment on the streets. She has found that female students

²⁰⁶ Bhat, R. A., & Deshpande, A, *An overview of sexual harassment of women at workplace in India: An analytical study*, 6(7) International Journal of Innovative Research in Science, Engineering, and Technology, 14361–14369 (2017).

²⁰⁷ Mishra, S., *I was sexually harassed in the corridors of the Supreme Court*, The Week (November 13, 2016) <http://www.theweek.in/theweek/cover/interview-Indira-jaising-senior-lawyer.html>.

²⁰⁸ Aina-Pelemo, A. D., & Saluja, S, *Comparative analysis of sex-selection in Nigeria and India*, 4(6) International Journal of Humanities and Social Science Studies, 70–88 (2018).

²⁰⁹ Kohli, A., *Female education changes and continuation of gender roles in Urban India*, 52(8) Economic and Political Weekly, 61–66 (2017).

²¹⁰ Tukaram, S., *Place of the woman in Indian Society: A brief review*, 21(9) IOSR Journal of Humanities and Social Science, 21–25 (2016).

²¹¹ Schultz, V., et al, *Current controversies: Chapter 2-causes of sexual harassment* 80–141 (Green Haven Press Inc., 1999).

²¹² Hills, S. & Marshall, T. C., *Beliefs about sexual assault in India and Britain are explained by attitudes toward women and hostile sexism*, 79(7–8) Sex Roles, 421–430 (2018).

²¹³ Mishra, S. K., *Women in Indian courts of law: A study of women legal professionals in the district court of Lucknow, Uttar-Pradesh, India*, 24 E-cadernos CES, 78–101 (2015).

²¹⁴ FICCI and EY, *Fostering safe workplaces, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*; <https://ficci.in/spdocument/20672/Fostering-safe.pdf>

²¹⁵ Girija Borker, *Safety First: Perceived Risk of Street Harassment and Educational Choices of Women*, Job Market Paper (15 January 2018) https://data2x.org/wp-content/uploads/2019/11/PerceivedRiskStreetHarassmentandEdChoicesofWomen_Borker.pdf

of Delhi University were more likely than their male counterparts to choose a college that had a perceived safer travel route, even if that college was of significantly lower quality.

The legal systems were put in place in 2013, but they are still so new that their social impact can be understood only after the passage of time. Sufficient data is not yet available to study the repercussions of the Act. However, there are some areas where it has made a significant impact. It has succeeded in creating awareness in society about the alternative legal recourse available to women in distress in their workplaces. Previously, many women preferred to suffer in silence than to go through the torture of a criminal justice system with its accompanying complicated and delayed procedures. Now, women have the option of pursuing legal recourse through simple and time-bound processes. Help is provided to the victim and conciliation is also possible. Perhaps its most significant success has been the development of an awareness of the Act's existence. Companies have become more compliant with the law and they have done their bit to create workplace awareness. Women have become more confident and the environment in the workplace has become significantly more women-friendly.

While scholars have tried to study the impact of this legislation at workplaces in India, regionally, there's still no extensive literature on the subject to indicate the real trend. However, these studies do signify the growing issues of implementation, constitution of the committees as specified in the Act, and its powers and duties. There is still a need for a full-fledged empirical study of the correct trends, real experiences of the stakeholders in the Act, taking in the ambit our commitment to various international conventions to prevent atrocities on women. Also, the literature survey indicates that there's a possibility that not all organizations understand the procedure/model to intimate a proceeding. Therefore, there is a need to also formulate a model of the procedure from the act which is understandable for everyone.

As far as the development of the written report is concerned, a thorough review of literature on the subject has been done. A focused research design has been formulated for carrying out the research on this issue. An operative model procedure for the IC has been suggested in sync with the provisions of the Act.

Research Methodology

The major project uses both the doctrinal as well as empirical research methods as part of the research methodology.

The study in its doctrinal research has taken a very wide approach. The landmark Vishaka judgment and major judicial trends post-Vishaka judgment has been discussed in detail.

The empirical research is limited to the region of Delhi (NCR) with focus on the working of ICs and the perspective of victims. For the purposes of inquiry, both the organized sector (public as well as private organizations) and the unorganized sector has been covered-

A. Government Departments-

- a. Central Government Department- Police, NCW
- b. Delhi Government Department-DCW
- c. SC/HC/District Courts

B. Private Sectors (Organized sector)

- a. IT Companies (Big, Medium, Small)
- b. Hospitals with special focus on nurses and contractual workers
- c. Educational Institutions- Universities/Schools/Colleges
- d. Aviation Sector

C. Unorganized Sector

- a. Construction sites
- b. Sports stadium
- c. Call Centers
- d. Domestic Workers
- e. Any other

Sampling Techniques

The survey methodology of the study chosen was Simple Random sampling and Convenient Sampling. The NHRC (National Human Rights Commission) is a heterogeneous organization being diverse in geographical, socio-cultural, and economic factors, and this technique could reflect the characteristics of the Indian population as a whole. Convenient sampling has been followed because some organizations were reluctant in sharing information. The objective was to gather adequate information from employees who are willing to share information on the topic.

People from both organized and unorganized sectors, both rural and urban areas were interviewed so that data from a variety of socio-economic and family backgrounds can be collected, and the study can be made more comprehensive and diverse. Opinions and experiences of people varying from various professions like doctors, professors, bank employees, workers belonging to the unorganized sector like construction sites, house maids, etc. were taken for the study.

Research Design

Both doctrinal and empirical research has been undertaken.

A. **Doctrinal research-** The available literature along with the precedents of the Apex Courts and the High Courts has been analyzed to see the judicial discourse in the present study. We have also analyzed the principles and context of the present law and have formed a critique of it.

B. **Empirical research-** As discussed previously, field work has generated primary data, therefore this is partially empirical research.

The research is **Qualitative** in nature since the field study is being done to understand the implementation of the present Act and the experiences of stakeholders with it.

Techniques and Tools Used to Collect Data

The following tools were used for data collection:

- A. **Interview Schedule-** Interview schedules were used to collect data from the Organised Sector and Unorganised Sector as well.
- B. **Questionnaires-** They were used to collect data from the organized sector institutions like companies, banks, hospitals, etc.
- C. **Focused Group Discussion-** A Focused Group Discussion was organized in National Law University Delhi wherein many eminent resource persons were invited for a closed discussion. Data collected from the report of that discussion is also used.

D. **Conference-** A National Conference was organized at National Law University Delhi which comprised of various academicians, students, advocates, and judicial officers who gave their valuable opinions and inputs regarding sexual harassment at workplace.

E. **Observation Method-** The observation method was also used to collect data.

F. **Literature Review** - Secondary data collection involved assessing the laws on sexual harassment laws in India – their origin, and civil and criminal remedies they provide. It covers the analysis of various case laws as well.

G. **Data Analysis-** Data was analyzed using pie charts and diagrams to illustrate and explain the data collected and their results in a simple manner.

Sample size for the study

A. Organized Sector

Total no. of organizations visited = 75

Total no. of participants = 450

No. of HR/Admin/IC Participated = 49

No. of employee participants = 401

B. Unorganized Sector

No. of places visited/ individuals interviewed = 157

Total no. of participants = 350

Total no. of participants forming the universe of the study = 800

The detailed information has been provided in the next chapter.

CHAPTER IV

EMPIRICAL RESEARCH: DATA COLLECTION AND ANALYSIS

INTRODUCTION

This chapter seeks to analyze the results and findings of the empirical research conducted, to ascertain the implementation of the Sexual Harassment of Women (Prevention, Prohibition and redressal) Act, 2013 in various institutions across private and public sectors throughout Delhi (NCR).

This component of the research undertaken was the most important. The earlier chapters were doctrinal and analytical in nature since the existing legal framework and the precedents were examined in detail. In this chapter, the results and the findings of the empirical research would be collated and analyzed so as to ascertain the implementation of the Act in private and public sectors throughout Delhi (NCR).

The data was collected from various institutions of both organized (Table 1) and unorganized sectors. (Table 2)

The organized sector included factories, hospitals, banks, travel agencies, and private offices. The unorganized sector included construction site workers, street hawkers, and domestic workers.

For the purpose of this survey, data was collected by way of a Questionnaire in the organized sector and by way of semi-structured interviews in the unorganized sectors.

Every organization has employee grievances of various kinds, but one of the most important and unreported forms of such grievance is the sexual harassment at workplace of women employees. It is a form of gender disparity that is present in many workplaces today. It is a part of gender-based violence which is a lived reality of women as discussed in detail in the earlier chapters.²¹⁶

²¹⁶ Kakoti Borah, “A Study on Protection of Women from Sexual Harassment at Workplace in Different Sectors: A situational Analysis of Workplace in Bhubaneswar City”, Institute of Social Development, 2018.

A survey was conducted to understand the level of awareness and comprehension of the provisions of the Act among various employees in the organized and the unorganized sector. A total of 450 people were surveyed from the organized sector and 350 people from the unorganized sector and the analysis of the same has been done to arrive at some conclusion. Certain recommendations have been made in the last chapter in view of the findings and observations of this chapter.

ORGANIZED SECTOR

Table 1: Data collected from the Organized Sector

S.NO.	TYPE OF ORGANISATION		NO. OF ORGANISATIONS VISITED	NO. OF PARTICIPANTS		TOTAL NO. OF PARTICIPANTS
				HR/ADMIN/IC PARTICIPATED	NO. OF EMPLOYEE PARTICIPANTS	
1.	Central Government department- National Commission for Women (NCW)		10	2	74	76
2.	Police		2	0	6	6
3.	Delhi Government- Delhi Commission for Women (DCW)		1	2	18	20
4.	Courts	Supreme Court	1	0	3	15
		High Court	1	0	4	
		District Court	6	0	8	
5.	Private Sector (IT Companies)	Big	7	7	80	250
		Medium	13	13	96	
		Small	9	9	45	
6.	Private Hospitals		12	12	60	72
7.	Private Educational Institutions	Universities/ Colleges	4	3	3	6
		Schools	6	1	4	5
8.	Aviation*		3	0	0	0

* None of the mentioned persons/officers responded to the questionnaire. Due to the ongoing 2019 pandemic, there was no other option to collect the data.

Table 2: Data Collected from the Unorganized Sector

S.NO.	TYPE OF PLACE VISITED/ INDIVIDUAL INTERVIEWED	NUMBER OF PLACES VISITED/ INDIVIDUALS INTERVIEWED	NO. OF PARTICIPANTS
1.	Construction Sites	7	175
2.	Sports Stadium	2	0
3.	Call Centres	2	29
4.	Domestic workers	32	32
5.	Street Hawkers	59	59
6.	Temporary daily wage workers	55	55
TOTAL		157	350

Conclusion: Data was collected from 450 persons working in various organizations of the organized sector and 350 persons working in the unorganized sector. Collecting data from the organized sector was relatively easier due to the level of awareness and literacy among employees. However, different kinds of difficulties were faced few of which are as follows:

- Covid-19 pandemic made it almost impossible to approach the participants in person and convince them to participate.
- Apprehension on part of the employees to answer truthfully due to fear of losing the job or pressure from colleagues and seniors.
- Most of the respondents from the unorganized sector were not even aware of what exactly constitutes sexual harassment at workplace what to talk of the law applicable.

It was only after the same was explained to them, that they were in the position to answer the questions. A questionnaire had been circulated to the participants and there responses were collected.

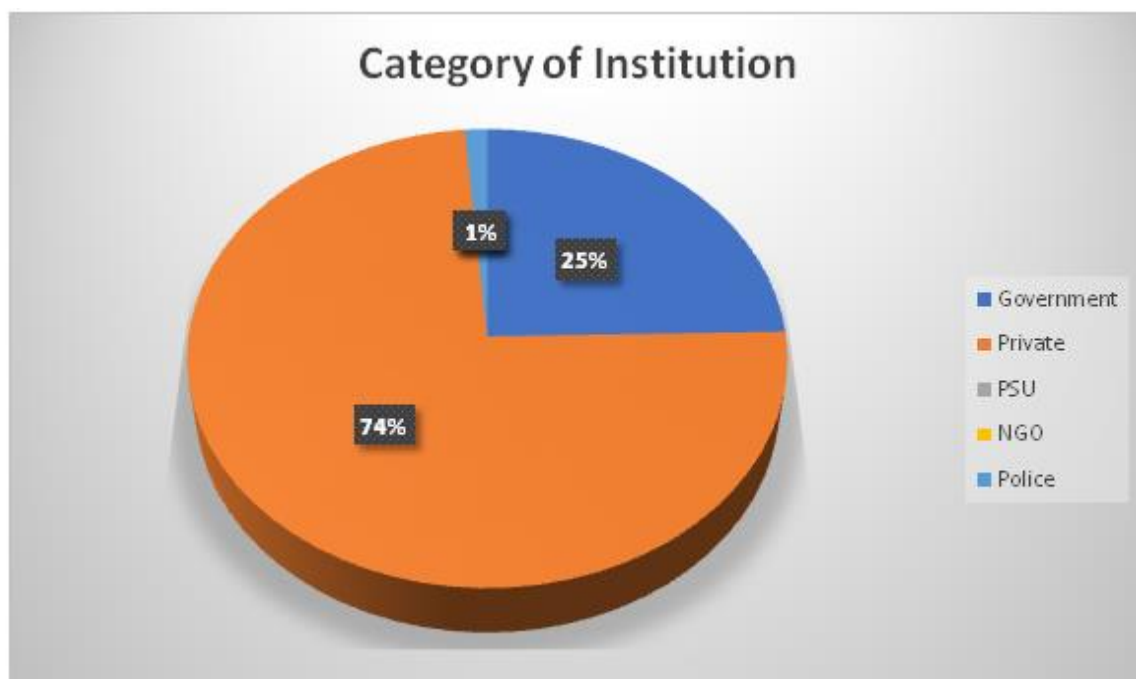
Findings gathered from the Questionnaires administered to Respondents in various institutions in the Organized Sector

Question 1. Under which category of institutions does your organization fall?

Table 3: Category of the institution from which the Participants belong

Category of Institution	Number of Participants
Government (NCW+DCW+Courts)	76+20+15=111
Private (IT Companies+Hospitals+ Educational Institutions)	250+72+11=333
PSU	0
NGO	0
Police	6
Total	450

Graph 1: Category of Institution



Conclusion: The above data represents the category of the organizations visited for collection of the data in the organized sector. These organizations have been categorised as Government, Private, Public-Sector Undertaking (PSU), Non-Government Organization (NGO) and Police.

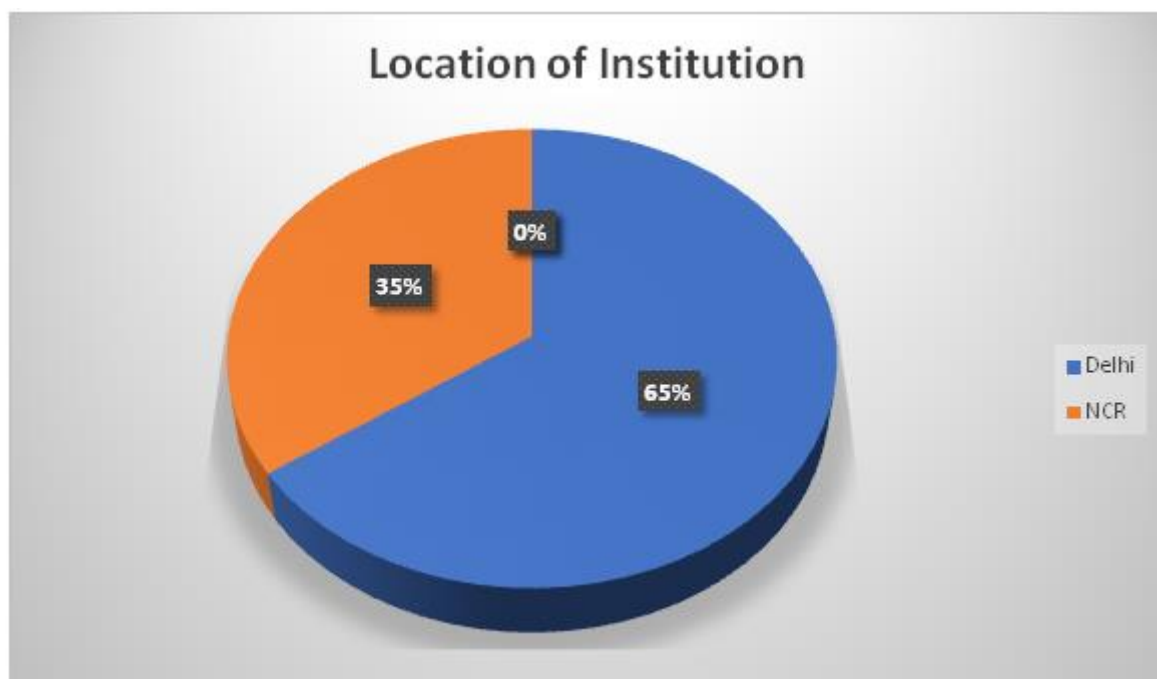
The researcher wanted to collect the information from a mixed but balanced group of participants working at various institutions to find out the implementation of various provisions of the Act.

Question 2. Where is your organization located?

Table 4: Location of the Institution

Location of Institution	Number of Institution
Delhi	49
NCR	26
Total	75

Graph 2: Location of Institution



Conclusion: Since the research was to be conducted in Delhi (NCR) as proposed in the project, the above data shows the location of the organizations surveyed for data collection. Out of the institutions surveyed, 65% were in Delhi while the rest 35% were located in the NCR region.

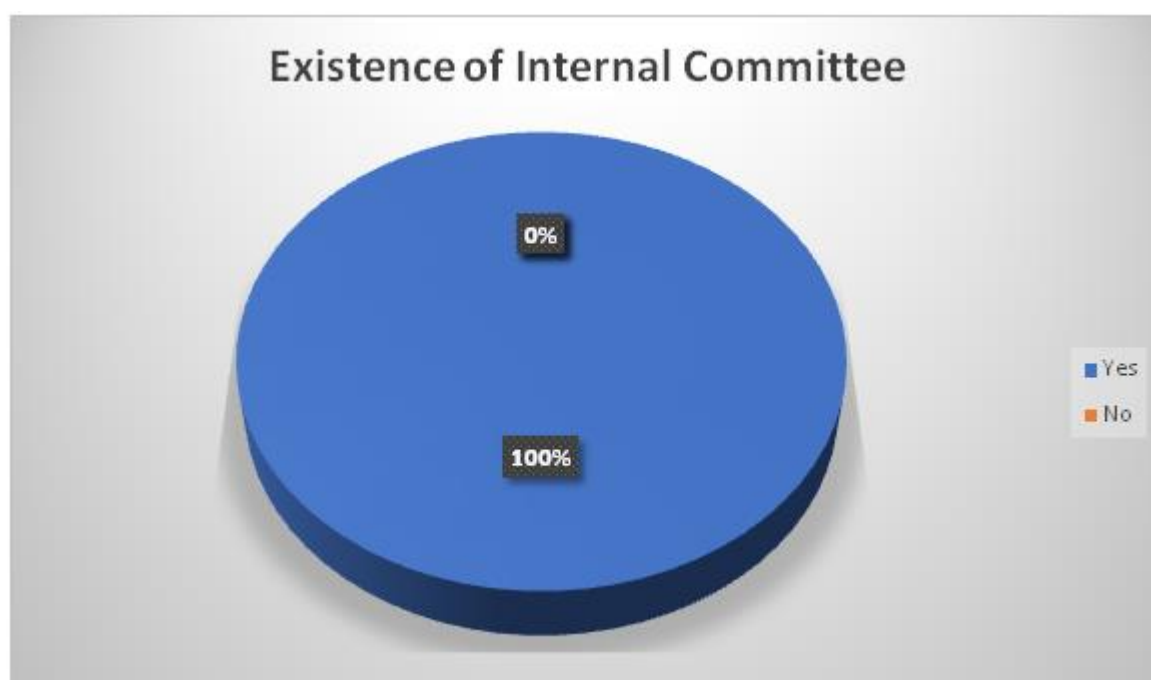
This location has been chosen intentionally since the PI is based in Delhi. The NCR area can be accessed easily from Delhi.

Question 3. Does your institution has an Internal Committee?

Table 5: Constitution of IC in the Institution

Existence of Internal Committee	Number of responses
Yes	450
No	0
Total	450

Graph 3: Constitution of IC in the Institution



Conclusion: 100% of the participants answered in affirmative about the constitution of an IC in their organization. It is again a very important finding that the objective of the Act has been achieved to the extent that the organizations have constituted an IC as per the provisions of the Act.

Question 4. Is there any complaint mechanism/procedure followed in your department regarding cases of sexual harassment of women at workplace?

Table 6: Existence of a complaint mechanism/procedure to deal with cases of sexual harassment of women at workplace

Existence of complaint mechanism/procedure	Number of responses
Yes	405
No	45
Total	450

Graph 4: Existence of a complaint mechanism/procedure to deal with cases of sexual harassment of women at workplace



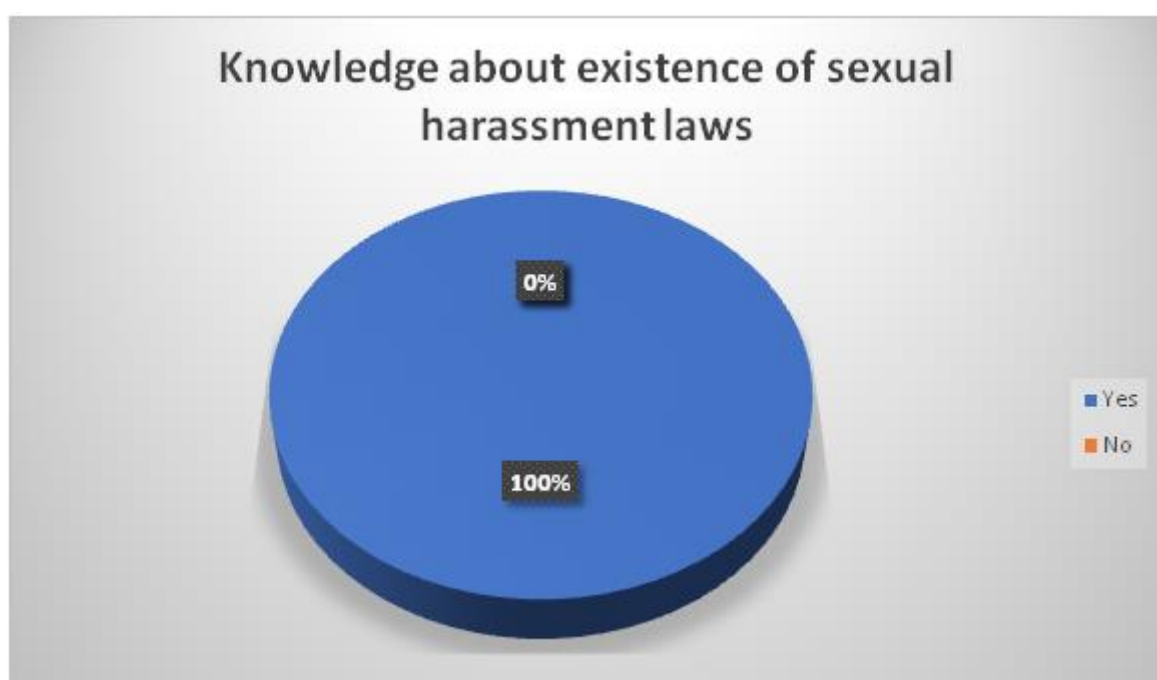
Conclusion: 90% of the participants are aware of the complaint mechanism/procedure which is in place in the organization to deal with cases of sexual harassment of women at workplace, and 10% are not aware of the same.

Question 5. Do you know about any law that exists to protect employees in your organization from sexual harassment?

Table 7: Knowledge of existence of the law

Knowledge about existence of sexual harassment laws	Number of responses
Yes	450
No	0
Total	450

Graph 5: Knowledge of existence of the law



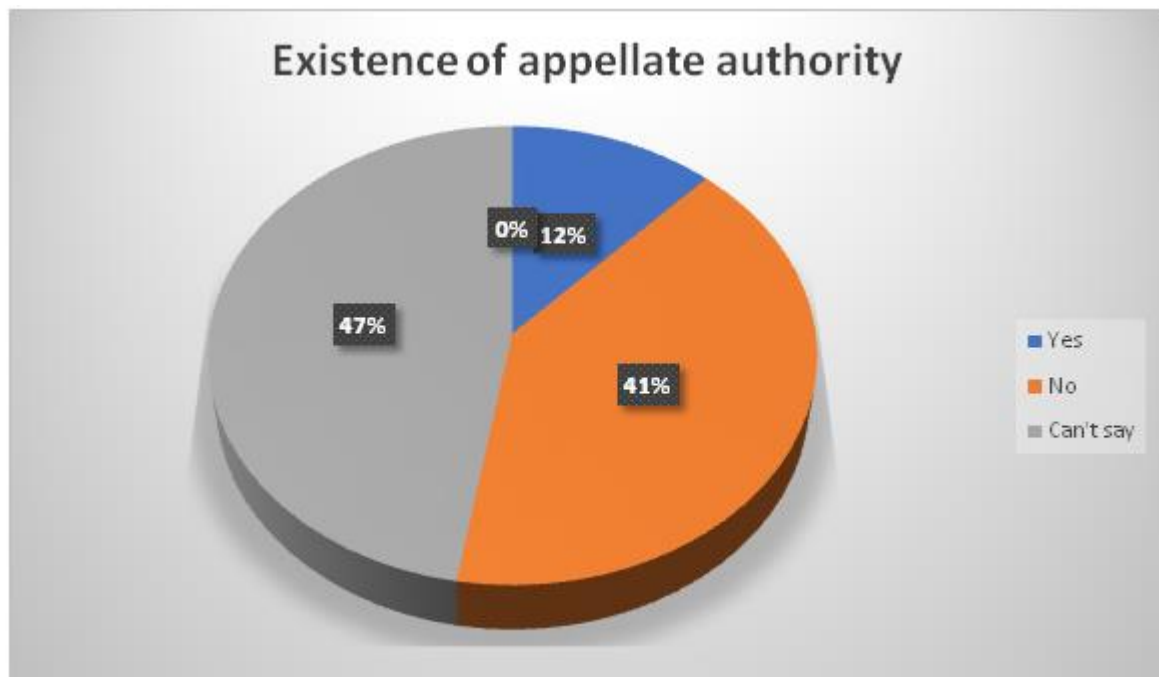
Conclusion: All respondents answered in affirmative about having knowledge of law which seeks to protect women from sexual harassment at workplace, i.e. the Act. This finding is very important and conveys the high level of awareness of the participants about the legislation relating to workplace sexual harassment.

Question 6. Whether there is any designated appellate authority in your institution for dealing with the appeals in matters of sexual harassment at workplace?

Table 8: Existence of an appellate authority for dealing with the appeals of sexual harassment at workplace

Existence of appellate authority	Number of Responses
Yes	54
No	183
Can't say	213
Total	450

Graph 6: Existence of an appellate authority for dealing with the appeals of sexual harassment at workplace



Conclusion: While 12% of the participants are aware of the existence of appellate authority in their organization for dealing with the complaints of sexual harassment at workplace, 41% are not aware of it, and a majority of the participants, i.e. 47% can't say.

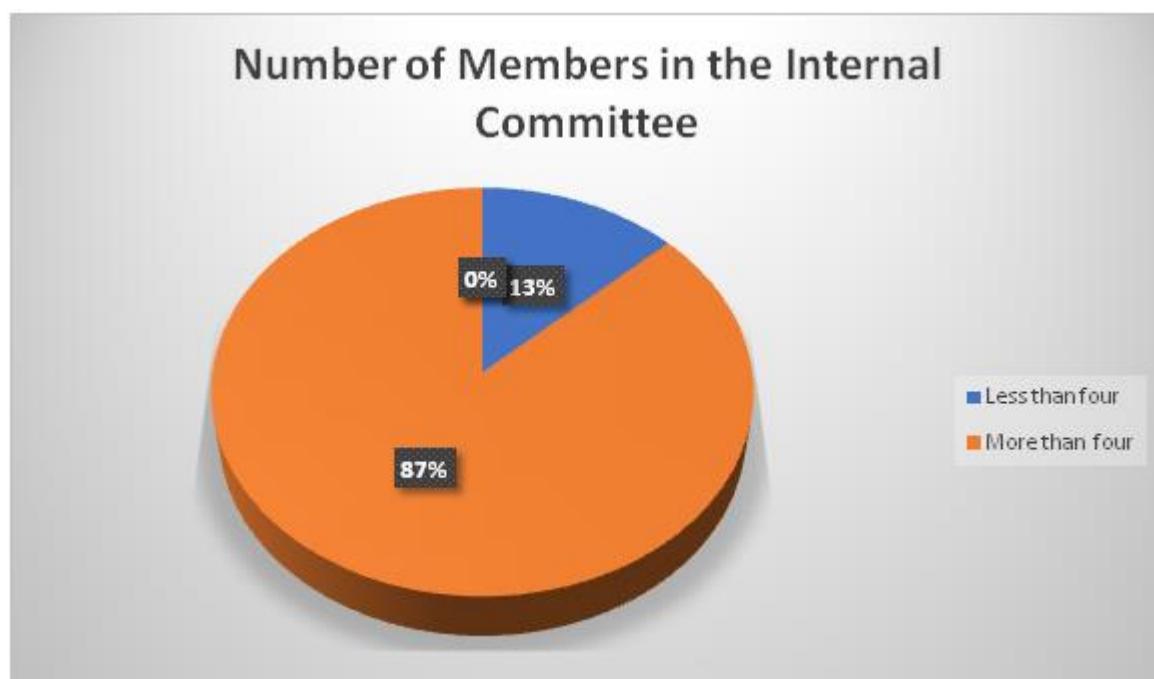
The findings are very important, and it can be concluded that the issue of appellate authority needs further deliberations by the legislature. The employers should be made accountable for this also.

Question 7. How many members are there in the Committee?

Table 9: Number of members in the IC

Number of Members in the Internal Committee	Number of responses
Less than four	59
More than four	391
Total	450

Graph 7: Number of members in the IC



Conclusion: The objective behind this question has been to see whether the IC has been constituted with the minimum number of members as specified in the Act. This is also very relevant to establish compliance with the existing provisions of the Act. In none of the organizations, any arbitrariness has been found as far as the constitution of the IC is concerned. Since there is no bar on the upper limit on the members in IC, it has been observed that 87%

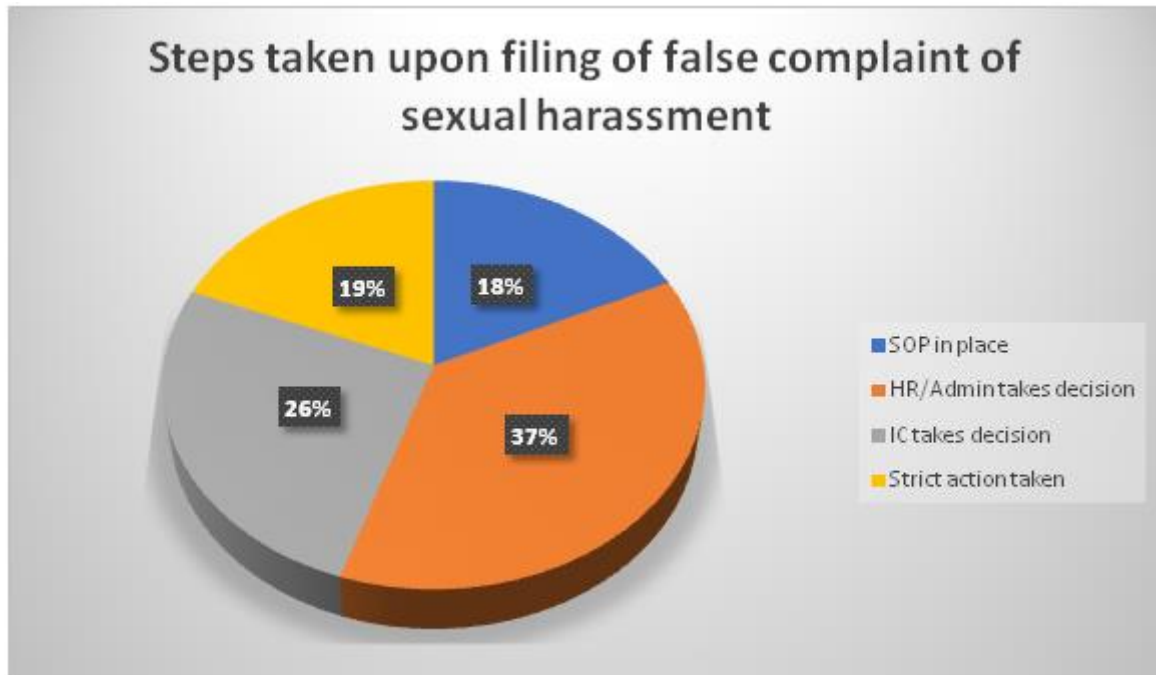
of the organizations have more than four members in their ICs while 13% have less than four members.

Question 8. What are the steps taken by the IC if there is a false complaint of sexual harassment?

Table 10: Steps taken in case of false complaint of sexual harassment

Steps taken upon filing of false complaint of sexual harassment	Number of responses
SOP in place	81
HR/Admin takes decision	167
IC takes decision	117
Strict action taken	85
Total	450

Graph 8: Steps taken to handle cases of false complaint of sexual harassment



Conclusion: Nearly all the participants answered that in case of proven false complaint of sexual harassment at workplace, a Standard operating Procedure (SoP) is followed. If after the inquiry conducted by IC, it is found that the complaint is false, the HR/IC decides the further course of action in compliance with the Act, 2013.

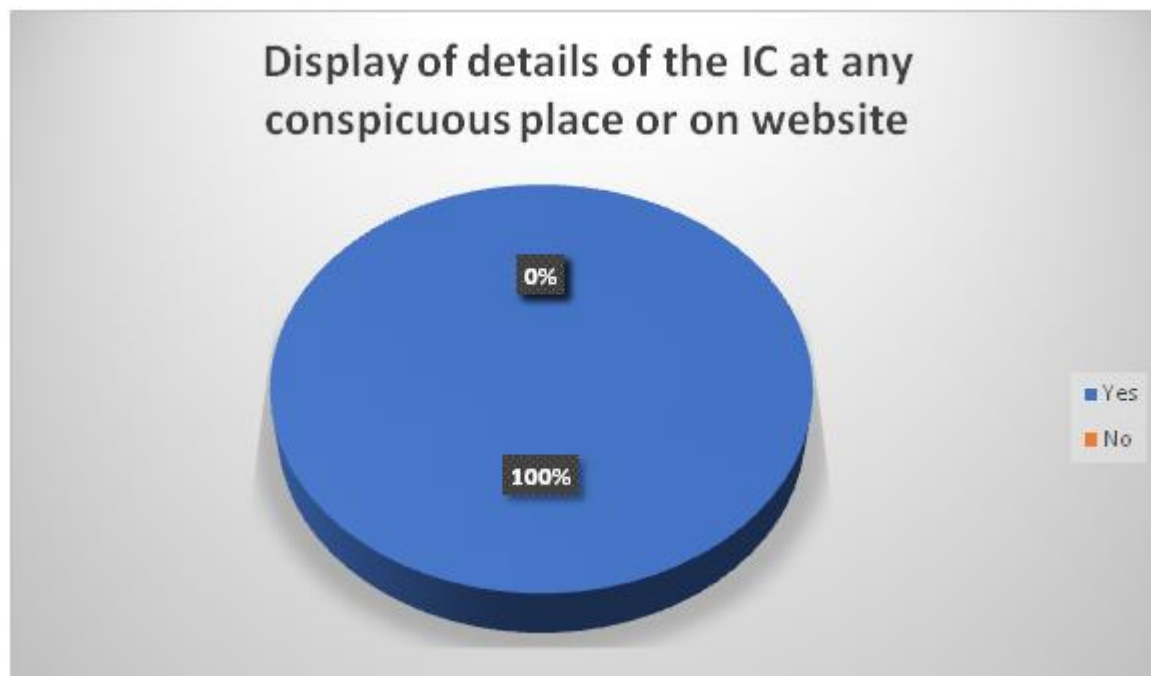
During the workshops, lectures and the conferences on this topic, the PI has observed that the male employees have been keen to know this provision. This is one provision that would deter the women employees from abusing the provisions of the 2013 Act.

Question 9. Are the details of the IC on display at any conspicuous place or website so one knows whom to approach and how in your organization?

Table 11: Details of IC on display

Display of details of the IC at any conspicuous place or on website	Number of responses
Yes	450
No	0
Total	450

Graph 9: Details of IC on display



Conclusion: All participants answered in the affirmative that their organization has taken initiatives to display the details of the IC at conspicuous places or on the website to make employees aware as to where and how the complaint is to be filed. This is again a significant observation, showing the compliance of the provisions of the Act by the employers. The dissemination of the information is very relevant in helping achieve the objectives of the Act. The aggrieved woman or the victim knows whom to approach for redressal of the grievance.

Usually, it is displayed on the website of most of the organisation. Posters/ banners have also been put up in many organisations. Doordarshan, for example, at Mandi House²¹⁷ has displayed outside the lift at the ground floor which makes it very convenient for anyone to access the information.

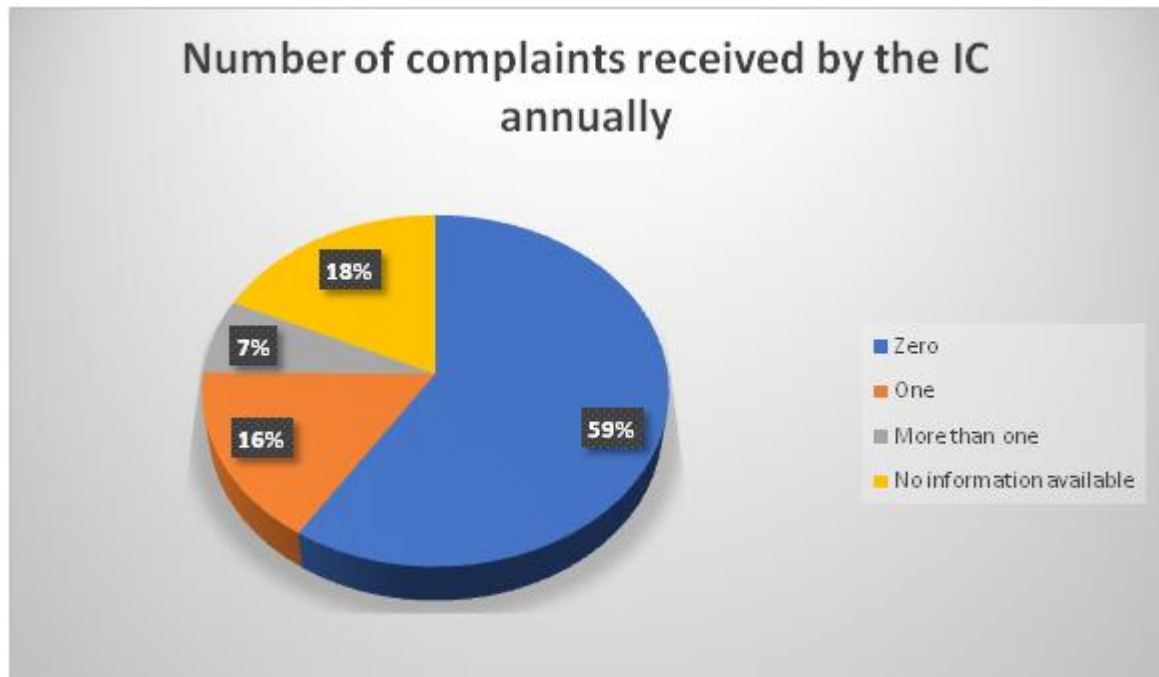
Question 10. How many complaints does the Committee receive annually?

Table 12: Number of complaints of sexual harassment made annually

Number of complaints received by the IC annually	Number of Responses
Zero	266
One	72
More than one	31
No information available or can't say	81
Total	450

²¹⁷ The PI has visited the said office multiple times, and this is a first hand observation in sync with the findings here.

Graph 10: Number of complaints of sexual harassment made annually



Conclusion: As per the graph above, 59% of the participants have answered that there are zero complaints of sexual harassment in their respective organization. 16% said that one complaint was received in a given one year, while 7% said that more than one complaint is received in their organization every year. 18% expressed ignorance or unawareness about the data.

The non-awareness in 18% of participants may be due to their new jobs or recent association with the ICs of their department. Lack of any complaint in the departments as told by 59% of the participants may be interpreted in the following ways:

- c. The workplace is safe for women employees for this type of harassment.
- d. The victims didn't have faith in the system or their IC and chose to maintain silence due to fear of stigma or loss of employment.

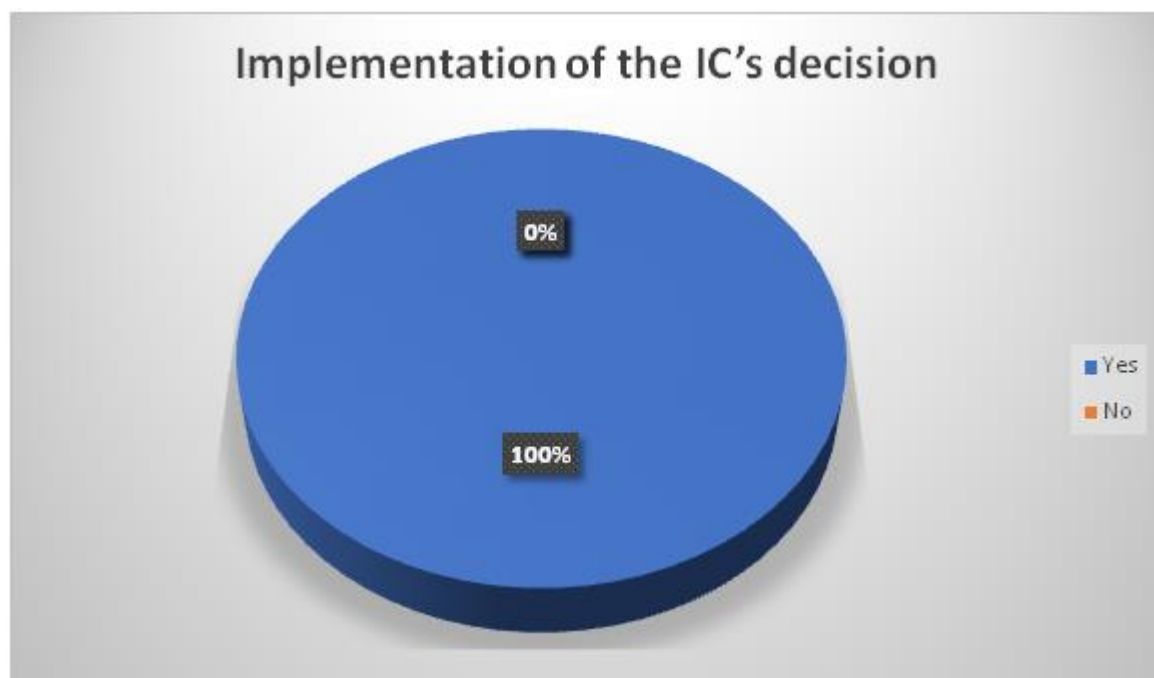
In such situations, it is recommended that employers should create more awareness programmes on such issues so as to develop the confidence in the women employees.

Question 11. Is the decision made by the Internal Committee implemented?

Table 13: Decision of IC implemented

Implementation of the IC's decision	Number of responses
Yes	450
No	0
Total	450

Graph 11: Decision of IC implemented



Conclusion: As Graph 11 suggests, 100% of the Participants have said that the decision of IC was properly implemented in their organization. This is again a very relevant finding which depicts provisions of the Act which entrust the employers with the responsibility of establishing

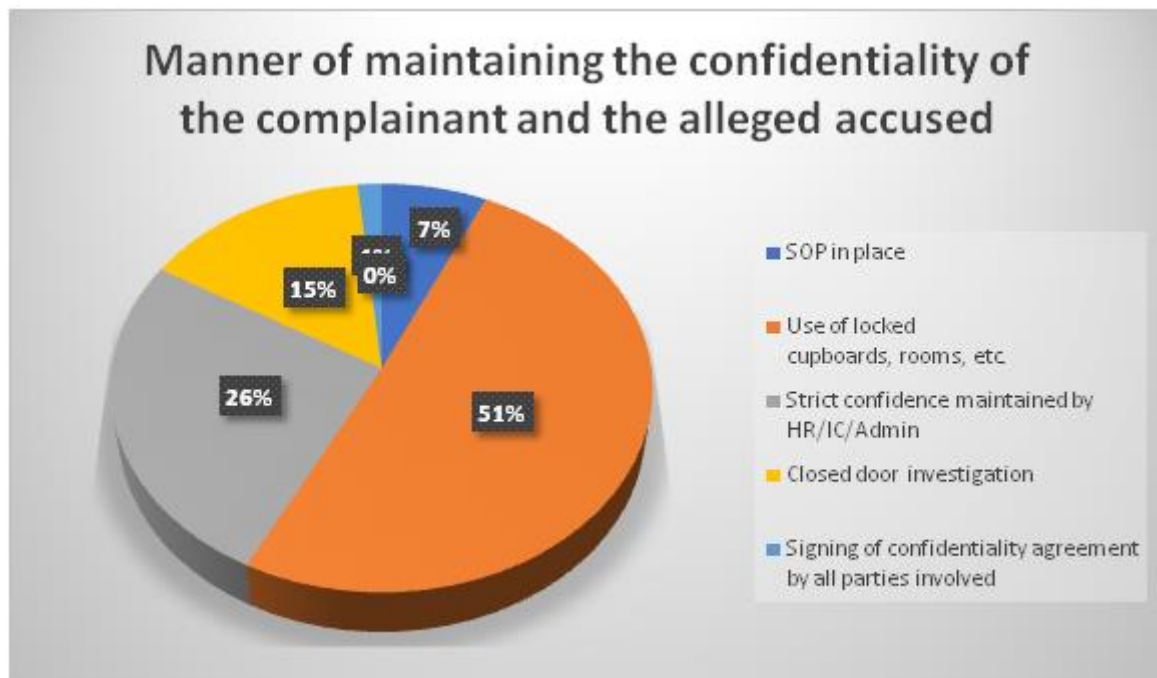
an IC and implementing its decision has helped, and the ICs have been able to recommend the measures to be taken as per the findings in a given case.

Question 12. How is the confidentiality of both the complainant and the alleged accused maintained by your IC/ LC?

Table 14: Manner of maintaining the confidentiality of the complainant and the alleged accused

Manner of maintaining the confidentiality of the complainant and the alleged accused	Number of Responses
SoP in place	31
Use of locked cupboards, rooms, etc.	228
Strict confidence maintained by HR/IC/Admin	117
Closed-door investigation	67
Signing of confidentiality agreement by all parties involved	7
Total	450

Graph 12: Manner of maintaining the confidentiality of the complainant and the alleged accused



Conclusion: The participants gave varied answers to this question. Some responded that they take care of files of the complaint very carefully, which no one has access to except the members of the IC members. Some said that they have special almirahs where such confidential documents are stored, the keys of which are with designated and trustworthy people. In conclusion, it was unanimously answered that confidentiality was dealt with very seriously.

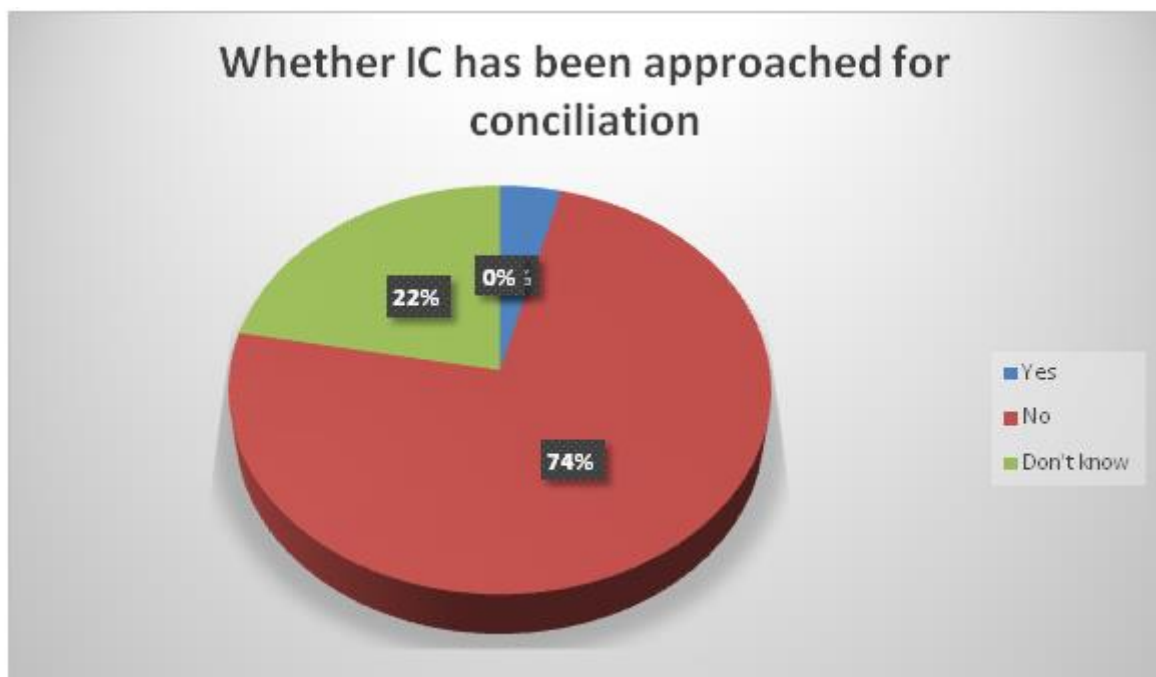
The compliance of the confidentiality clause with seriousness is again an achievement of the Act. By whatever mechanism, the ICs are trying to comply with the provision so as to avoid any stigma or fear in the minds of the victims of such unwelcome behaviours at the workplace. However, the confidentiality clause, to some extent, deprives fellow employees of avoiding such acts as they are not aware of the outcomes, or the punishments imparted to the perpetrator of such violence. This may be looked into, and some solution may be found that without compromising the confidentiality of the parties, only the punishments may be put in public domains so as to deter others.

Question 13. Have there been any cases where the complainant has approached you for conciliation?

Table 15: IC approached for conciliation

Whether IC has approached for conciliation	Number of responses
Yes	18
No	333
Don't know	99
Total	450

Graph 13: IC approached for conciliation



Conclusion: Conciliation is an important provision under the Act which may be invoked only at the request of the victim. The data collected indicates that 22% of the participants were

unaware of the existence of such a provision. 74% of the participants answered that the victims in their organizations never made such a request for conciliation. Only in 4% of the cases, the victims have approached their respective ICs for conciliation.

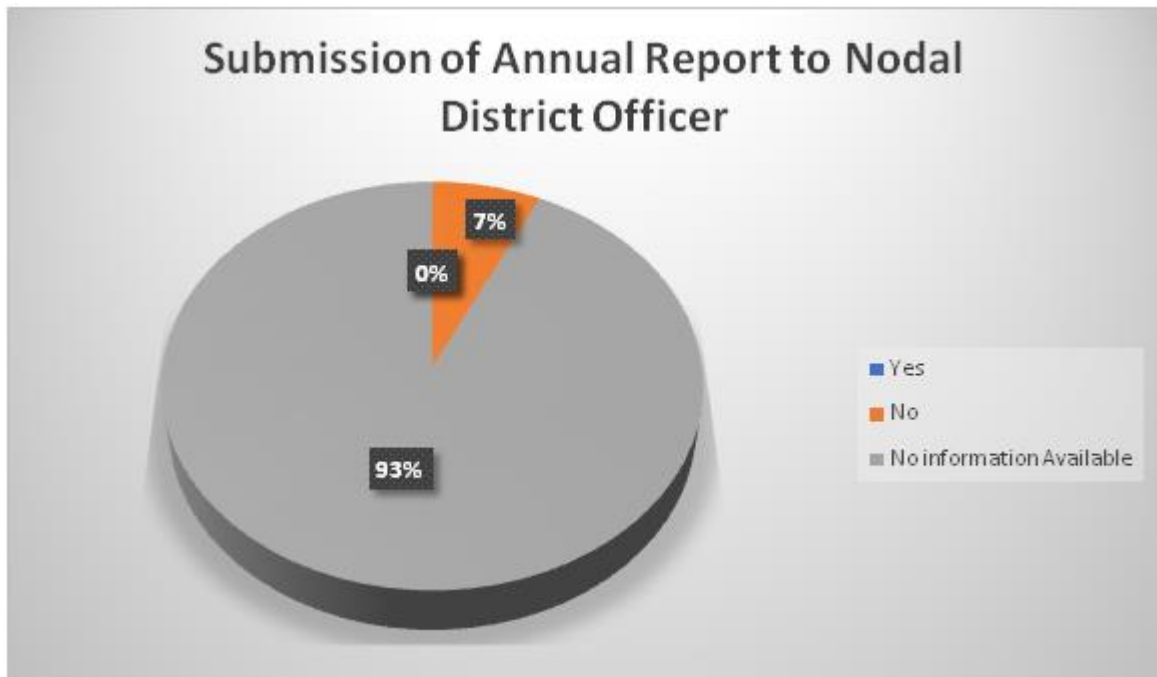
It is submitted after this observation that the provision should be told to the employees at the workplaces and the IC should create awareness about it. Sometimes, there may be some misunderstanding that may compel the victim to file the complaint but later on, it may be settled, and the complaint may be withdrawn. There is no need for the victim even to divulge the details of reasons for opting for conciliation. Moreover, if the terms and conditions of the conciliation are not complied with by the accused, the victim has again a right to approach IC.

Question 14. Does your organization submit annual report regarding sexual harassment cases in each calendar year to the nodal district officer?

Table 16: Annual Reporting

Submission of Annual Report to Nodal District Officer	Number of responses
Yes	0
No	32
No information Available	418
Total	450

Graph 14: Annual Reporting



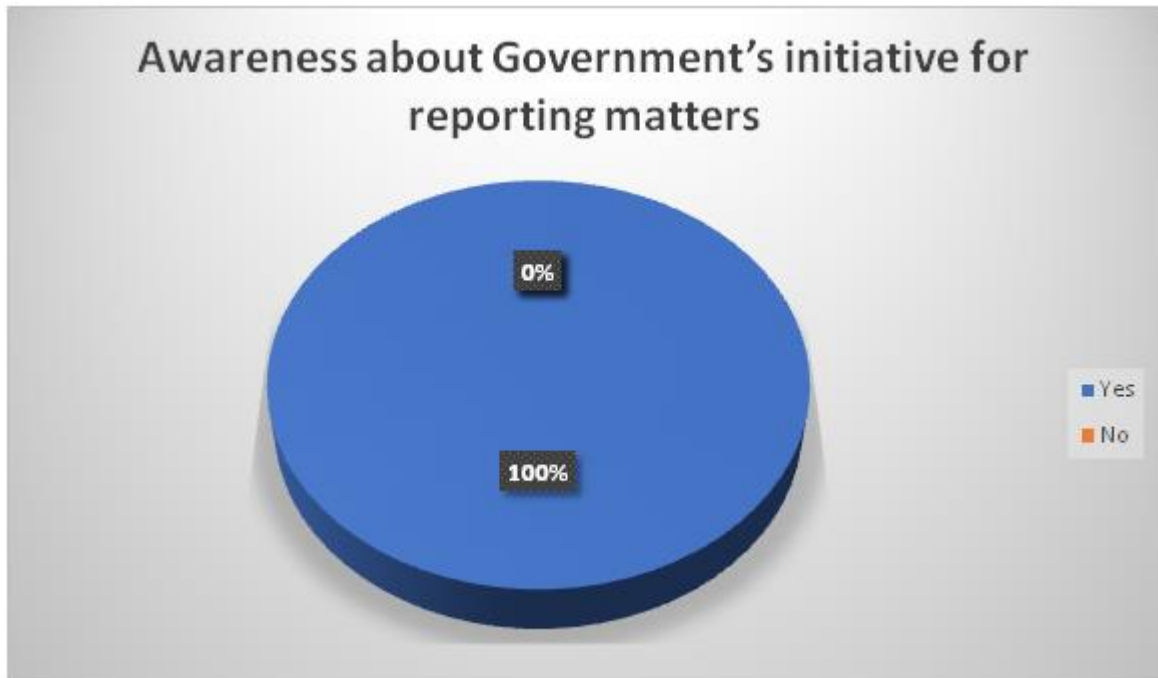
Conclusion: 93% of the participants were unaware of the filing of annual reports by their respective department or organization while 7% stated that no annual audit report is filed by their respective department. This finding is significant and in view of this, some action should be taken by the governments to make it mandatory which is not so as of now. Only then the real purpose of the provision shall be achieved.

Question 15. Are you aware of any government initiative for reporting of matters relating to sexual harassment of women at workplace?

Table 17: Awareness about the government's initiative about reporting

Awareness about Government's initiative for reporting matters	Number of responses
Yes	450
No	0
Total	450

Graph 15: Awareness about the government’s initiative about reporting



Conclusion: All the participants were aware of the Government’s initiative for reporting matters. This observation is quite comforting. The Government is taking all possible steps to implement the different provisions of the legislation.

Question 16. Are you aware of any penalty if you don’t comply with the provisions of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?

Table 18: Awareness about penalty for non-compliance with sexual harassment laws

Awareness about penalty for non-compliance	Number of responses
Yes	450
No	0
Total	450

Graph 16: Awareness about penalty for non-compliance



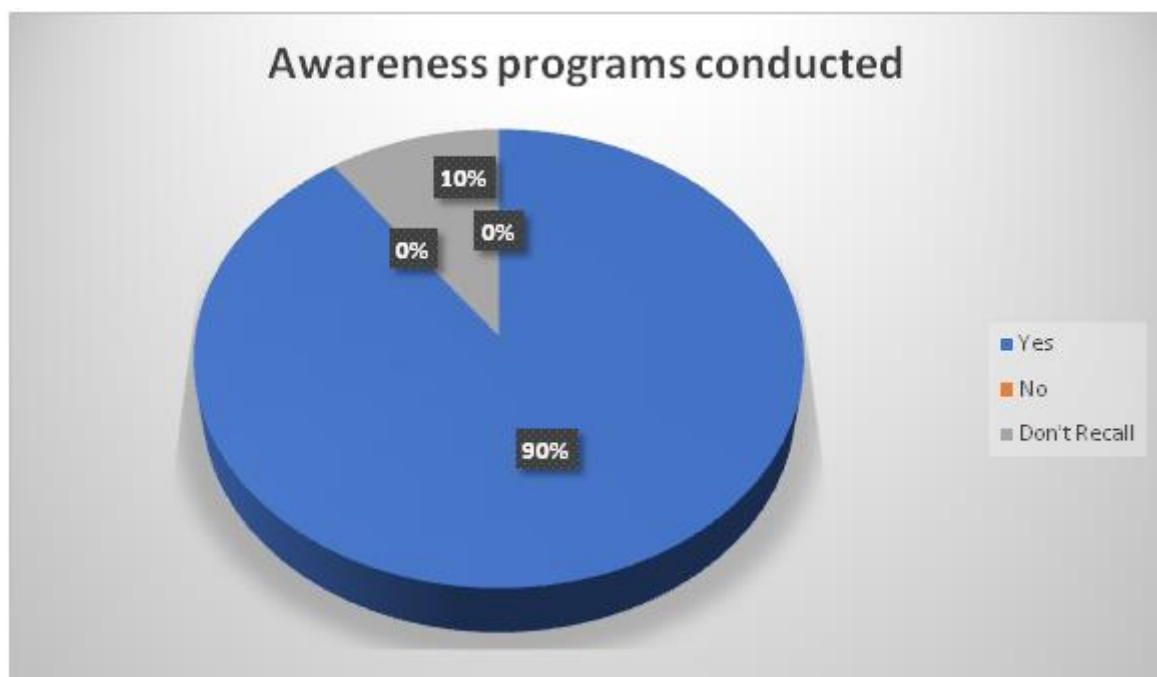
Conclusion: 100% of the participants answered in affirmative that they were aware that penalties can be imposed if they fail to comply with the provisions of the Act. This is a very important finding. The fear of punishment would help in the success of the Act and serve the purpose of enacting this legislation.

Question 17. Has your organization conducted any orientation/awareness programs regarding sexual harassment at the workplace and gender sensitization programs?

Table 19: Awareness program conducted

Awareness programs conducted	Number of Responses
Yes	405
No	0
Don't recall	45
Total	450

Graph 17: Awareness program conducted



Conclusion: 90% of the participants answered that they had attended orientation and awareness programs conducted in their workplace while only 10% answered that they could not recall whether any such program was organized. No participant answered in the negative. This finding is also important as it speaks volumes about the success of the Act. In nearly eight years of its existence, reasonable awareness of various provisions has been found.

Question 18. Does your organization have a zero-tolerance policy for sexual harassment?

Table 20: Zero tolerance policy for sexual harassment

Zero tolerance policy for sexual harassment	Number of responses
Yes	450
No	0
Total	450

Graph 18: Zero tolerance policy for sexual harassment



Conclusion: 100% of the participants believe that their organization is a zero-tolerance zone for any kind of such act of sexual harassment. The purpose of the legislature has been achieved reasonably.

In some cases, it took time to appraise the participant about the meaning of the question. Once they understood, they could respond that their respective organisation has taken initiative in some form to declare that any form of sexual harassment of women at workplace shall not be tolerated.

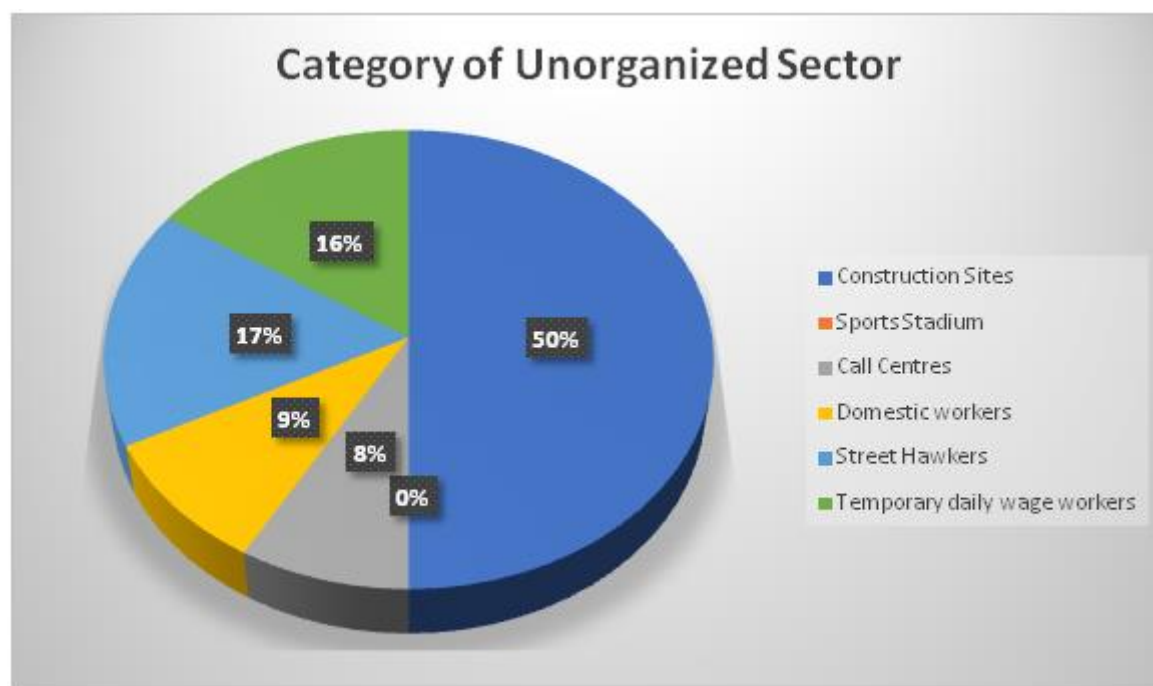
UNORGANISED SECTOR

Findings gathered from the Interview Schedule administered to Participants in the Unorganized Sector

**Table 21: Number of Participants surveyed from each category of the Unorganized
Sector**

Category of Unorganized Sector	Number of Participants
Construction Sites	175
Sports Stadium	0
Call Centres	29
Domestic workers	32
Street Hawkers	59
Temporary daily wage workers	55
Total	350

Graph 19: Number of Participants surveyed from each category of the Unorganized Sector

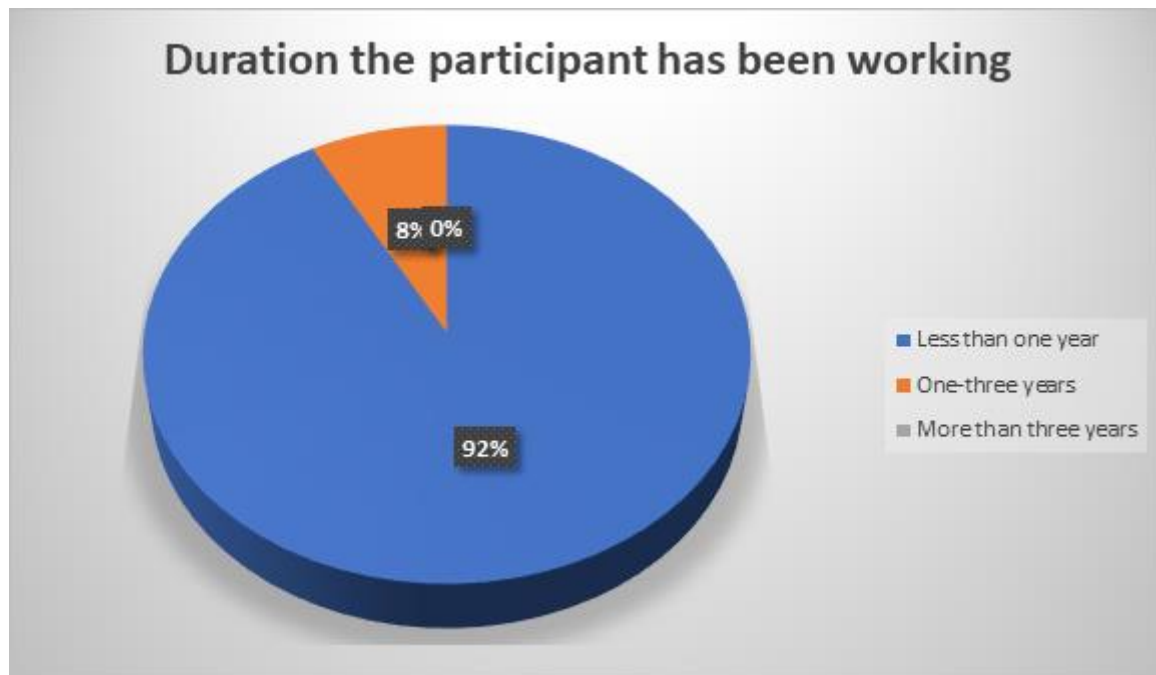


Question 1. How long have you been working in this organization?

Table 22: Duration the has been working in the organization

Duration the participant has been working	Number of Responses
Less than one year	322
One-three years	28
More than three years	0
Total	350

Graph 20: Duration the Participant has been working in the organization



Conclusion: In the Unorganised sector, most employees (92%) have been working for less than one year and only 8% have been working for one to three years. Not even a single employee has been working for more than 3 years as most of them work on a contractual basis.

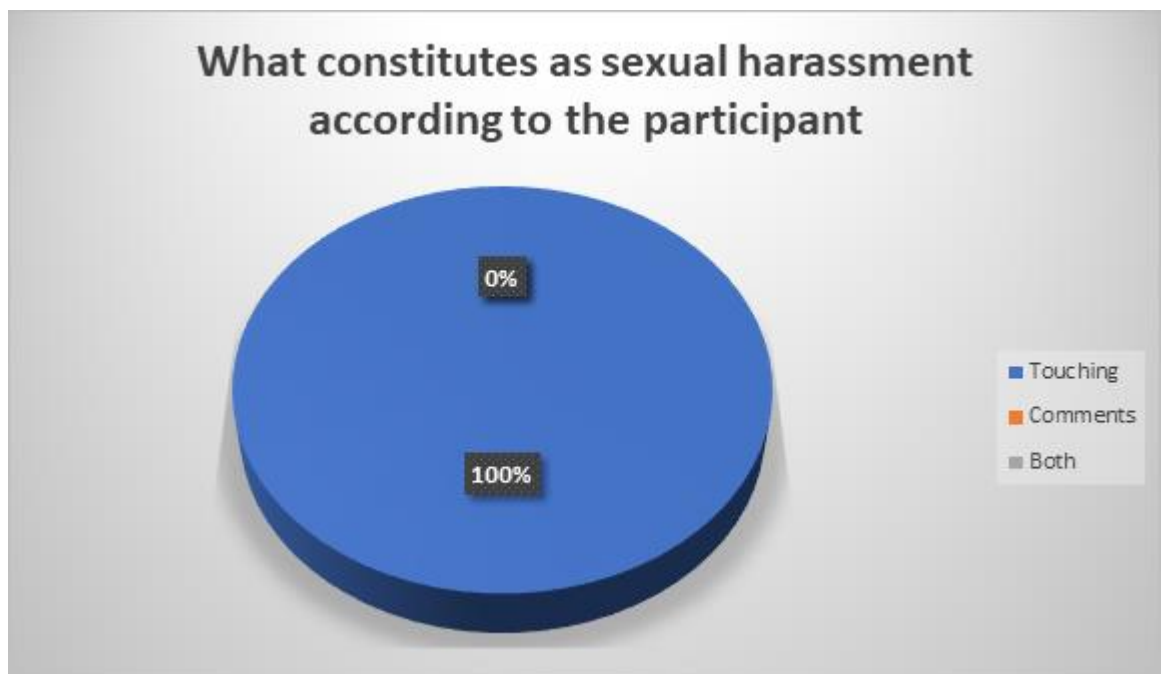
This point is relevant in finding out the awareness level of the employees about their organisation.

Question 2. What according to you constitutes as sexual harassment at workplace?

Table 23: What constitutes sexual harassment as per the Participant

What constitutes as sexual harassment according to the participant	Number of Responses
Touching	350
Comments	0
Both	0
Total	350

Graph 21: What constitutes sexual harassment as per the Participant



Conclusion: This is a very important and relevant question as it tells a lot about what the participants feel about what constitutes sexual harassment. The participants from the unorganized sector were not aware of the term ‘Sexual Harassment’. They had only heard the term ‘Rape’ (“*Balaatkar*” as they call it) and they answered that for them, rape is the only form of Sexual Harassment and thus 100% of them considered ‘touching’ as sexual harassment. It shows that more awareness is to be spread in this aspect as people are not aware of what all constitutes sexual harassment.

Question 3. Have you ever experienced any such harassment at your workplace?

Table 24: Personal experience of Participant regarding sexual harassment at workplace

Whether the participant has experienced sexual harassment at workplace	Number of Responses
Yes	194
No	156
Total	350

Graph 22: Personal experience of Participant regarding sexual harassment at workplace



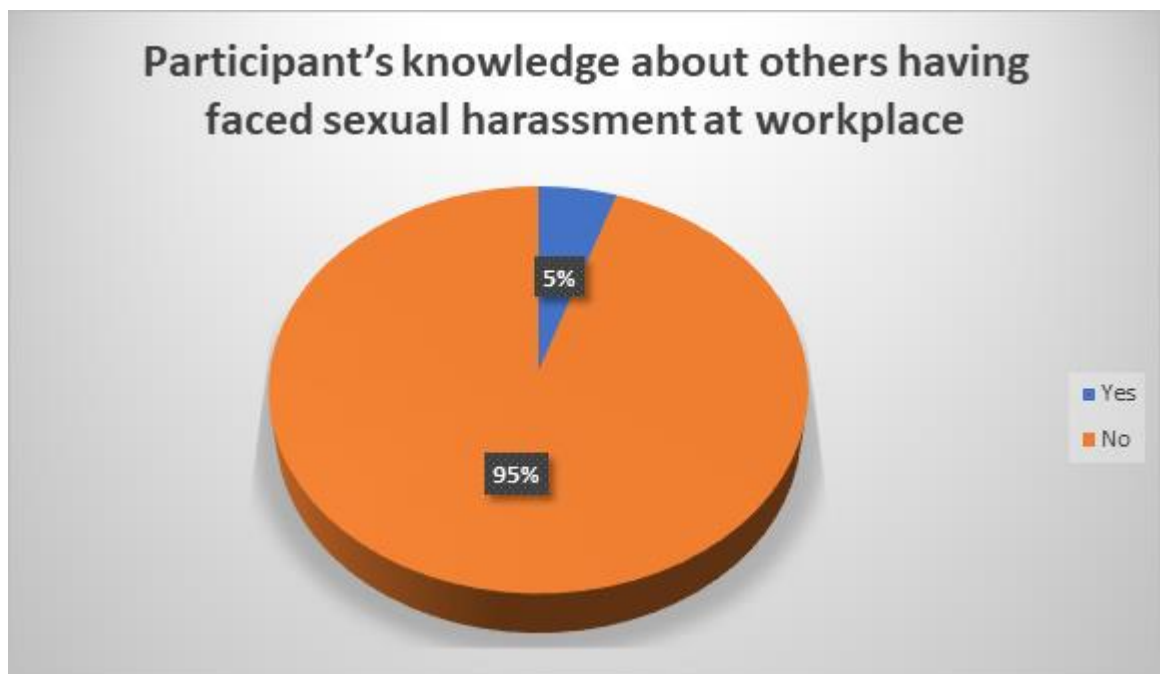
Conclusion: It is observed that 55% of the participants faced some sort of sexual harassment at workplace. Mostly the women were the ones who were harassed by their superiors or people in power. The other 45% didn't face such a problem. Another inference which can be drawn from this question is that the participants who answered 'no' were reluctant to share the details. The participants took long to respond to the question. They feared loss of jobs or any other punishment at the hand of employer if their identities were revealed.

Question 4. Do you know anyone else in your organization who has suffered the same?

Table 25: Participant's knowledge regarding others having faced sexual harassment at workplace

Participant's knowledge about others having faced sexual harassment at workplace	Number of Responses
Yes	18
No	332
Total	350

Graph 23: Participant's knowledge regarding others having faced sexual harassment at workplace



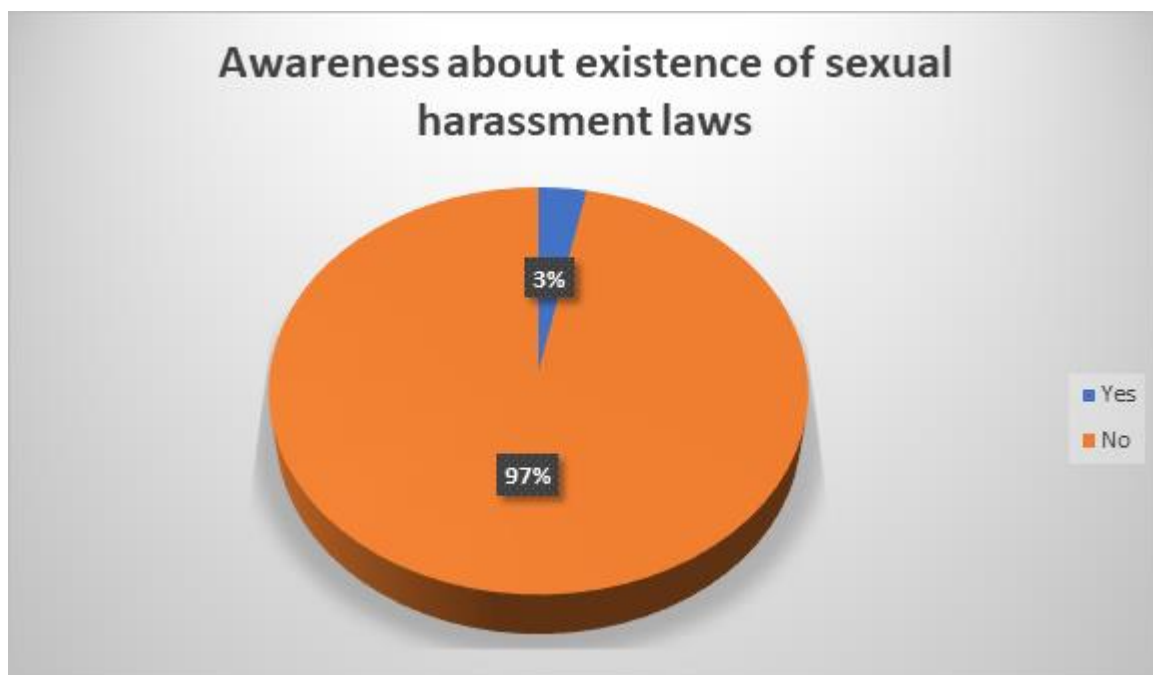
Conclusion: 95% of the respondents said that they do not have any such knowledge. This shows that either they were not aware of any such person suffering from sexual harassment at workplace, or they are too apprehensive to share such details. Sharing of such incidents with the co-workers is a big NO. Also, raising voice on these sensitive issues would mean that they would lose job forever also since no other employer would employ them.

Question 5. Are you aware of any sexual harassment laws at workplace?

Table 26: Awareness of Participant regarding sexual harassment at workplace laws

Awareness about existence of sexual harassment laws	Number of Responses
Yes	11
No	339
Total	350

Graph 24: Awareness of Participant regarding sexual harassment at workplace laws



Conclusion: 97% of the participants have answered that they are not aware of the laws on sexual harassment at workplace, which is a worrisome situation. Only 3% knew about the existence of such laws. The poor women at workplace are not allowed to interact with fellow co-workers.

Question 6. Does your organization conduct or has conducted in the past, any awareness program regarding sexual harassment?

Table 27: Awareness program on sexual harassment conducted by the organization

Awareness programs conducted	Number of Responses
Yes	11
No	320
Don't recall	19
Total	350

Graph 25: Awareness program on sexual harassment conducted by the organization



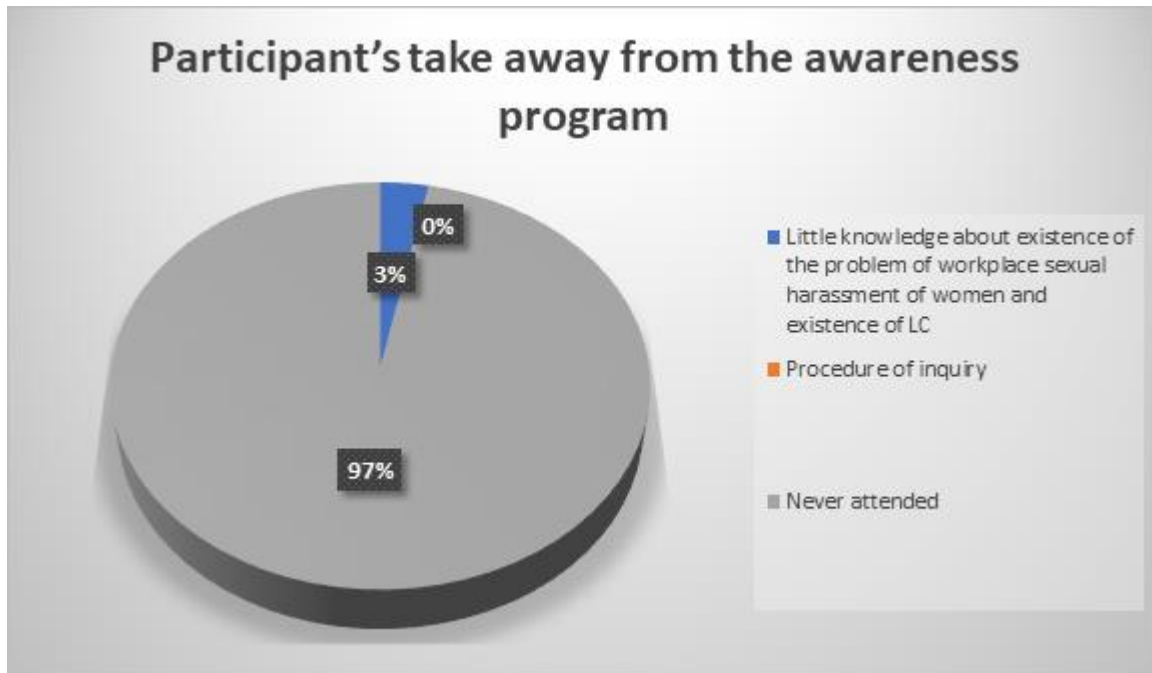
Conclusion: 92% of the participants said that they've never come across any such awareness program conducted by their superiors or during their employment period. 5% could not recall such a program being conducted at their workplace. Only 3% of the participants responded in affirmative but this only shows that the objective of the act is far from successful when it comes to the unorganized sector.

Question 7. If yes, what did you understand from these programs?

Table 28: Participant's takeaway from the awareness program

Participant's take away from the awareness program	Number of Responses
Little knowledge about existence of the problem of workplace sexual harassment of women and existence of LC	11
Procedure of inquiry	0
Never attended	339
Total	350

Graph 26: Participant's takeaway from the awareness program



Conclusion: 97% of the participants answered that they never attended any such program conducted for spreading awareness about workplace sexual harassment of women. Only 3% answered in affirmative and shared their quite basic takeaways like the problem of sexual harassment at workplace and the existence of LCs.

SUMMARY

The study of the above data highlights the real state of affairs about how well the Act has been implemented in the Organized and Unorganized sectors.

A clear distinction can be seen in the implementation of the Act in both sectors.

The Organized sector shows a more successful implementation, with 90% of the participants having a complaint mechanism in place in their organization²¹⁸ and all organizations having constituted an IC²¹⁹. The employees of the organized sector are better informed about the existing laws governing sexual harassment at the workplace²²⁰, are more aware of the

²¹⁸ See Graph 4.

²¹⁹ See Graph 6.

²²⁰ See Graph 5.

provisions of the Act, and have knowledge about its implementation in their respective organizations.²²¹ Most of the employees are acquainted with the procedure to file a complaint of sexual harassment²²², the existence and functioning of the IC²²³, and the consequences of non-compliance with the procedure laid down in the Act.²²⁴ The workers of the unorganized sector, on the other hand, are neither well aware of the laws governing sexual harassment at the workplace nor about the procedure established thereunder.²²⁵

Graph 17 clearly depicts that 90% of the participants belonging to the Organised sectors had been a part of an awareness program conducted by their organization regarding sexual harassment at the workplace and gender sensitization programs,²²⁶ while Graph 25 depicts 92% of the participants of the Unorganised sector had never been a part of any such awareness program.²²⁷

²²¹ See Graphs 3, 4, 6, 7, 8.

²²² See Graph 4.

²²³ See Graph 6.

²²⁴ See Graph 16.

²²⁵ See Graph 24.

²²⁶ See Graph 17.

²²⁷ See Graph 25.

CHAPTER V

FINDINGS, OBSERVATIONS AND SUGGESTIONS

“As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity, and disrespect at all places (in their homes as well as outside), prevent all forms of violence – domestic violence, sexual assault, sexual harassment at the workplace, etc; — and provide new initiatives for education and advancement of women and girls in all spheres of life. After all, they have limitless potential. Lip service, hollow statements, and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women.”²²⁸

As discussed in the previous chapters, the Sexual harassment at workplace creates a hostile work environment for the women employee and hampers her productivity at work. It creates a sense of discomfort and reduces her ability to deliver up to her potential. It not only affects her professional life but also affects her mentally and thereby creates problems in her personal life as well. It obstructs her overall growth and personality development.

The courts had time and again reiterated a need for a comprehensive legislation for curbing this menace. Finally, in 2013, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted. It was considered as an important measure to deal with the issue and to provide the women employees a forum to put forward their complaints.

However, the implementation of the Act requires proper reinforcement to be able to fully accomplish its purposes. This major research project envisages to highlight the grey areas in the Act and map the challenges in its implementation.

²²⁸ Medha Kotwal Lele v. Union of India, AIR 2013 SC 93.

I. FINDINGS OF THE RESEARCH

A. The constitution of Internal Committees in Organised sectors

In the Organised sector, it was observed that 100% of the organizations had constituted an IC as required under the provisions of the Act²²⁹. This is an important finding because it depicts the fulfilment of an essential objective of the Act, i.e., establishing an effective mechanism to address grievances of women employees relating to sexual harassment at workplace. It is also seen that the number of members in the IC is more than four in 87% of the organizations²³⁰ and therefore in compliance with Section 4 of the Act²³¹.

B. Filing of the complaint

Section 9 of the Act enables an aggrieved to file a complaint of sexual harassment to the IC or LC, as the case may be²³².

The survey shows that 90% of the participants were aware of the complaint mechanism which is established in their organization to deal with complaints of sexual harassment, whereas the rest 10% were not aware of the same²³³.

It was also seen in the survey that in 59% of the organizations, there were no cases reported, while in 18% of the organizations, there was no information available regarding the number of sexual harassment complaints filed²³⁴. However, in 16% of the organizations, there was one complaint filed annually, and in the rest 7%, there were more than one complaint of sexual harassment filed annually²³⁵.

²²⁹ See Graph 6.

²³⁰ See Graph 7.

²³¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 4 [Annexure-A].

²³² The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 9 [Annexure-A].

²³³ See Graph 4.

²³⁴ See Graph 10.

²³⁵ See Graph 10

It can clearly be seen that in 23% of the organizations, the aggrieved decided to file a complaint. This is an indication of the Act's success in these organizations, as it shows that the aggrieved woman has confidence in the established procedure for handling complaints. Zero cases reported in 59% of the organizations could either mean that the organization is a safe space for women, or that despite being sexually harassed at the workplace, women have decided against filing a complaint due to lack of trust in the mechanism established to handle such grievances. In such a scenario, the organization/employer should take initiatives and organize awareness programmes to foster the trust of the women employees and encourage them to report any incident of sexual harassment which they might face. This data, therefore, also shows the fulfilment of another purpose of the Act, i.e., reporting of cases of sexual harassment at workplace

C. Implementation of the decision of the Internal Committee

The findings of the survey show that in 100% of the organizations, the decision of the IC was properly implemented²³⁶. This is indeed a great achievement and this survey, as it indicates that the complaint mechanism for dealing with sexual harassment complaints is operative and effective, even with regard to the implementation of the IC's decision.

D. False complaints

To prevent misuse of the Act by any female employee by way of a false or malicious complaint, the Act provides for punishment for such false complaints and evidence²³⁷. Upon the investigation of the complaint, if the IC finds that it is a false one, it can take appropriate action against the complainant. All the surveyed organizations have a procedure established to deal with a false complaint of sexual harassment. While 18% of the organizations have a standard operating procedure in place to deal with such complaints, the HR/Administration takes the decision in 37% of the organizations.²³⁸ The IC takes a decision in 26% of the organizations, and in the rest 19% of organizations, strict administrative action is taken²³⁹. Therefore, with

²³⁶ See Graph 11

²³⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 14 [Annexure-A].

²³⁸ See Graph 8.

²³⁹ See Graph 8.

regard to dealing with false complaints, all the organizations are in compliance with the provision laid down under the Act.

E. Submission of annual reports to the State Government, etc. in these departments

Section 21 of the Act requires the IC or the LC, as the case may be, to submit an annual report to the employer and the District Officer, which is to be further forwarded by the District Officer to the State Government²⁴⁰. Section 22 of the Act goes on to provide that the employer should include the number of cases filed, and their disposal under the Act in such annual report²⁴¹.

According to the survey, 7% of the organizations do not file an annual report, while the rest 93% do not have any information about the same²⁴². This means that there is no such organization surveyed wherein the annual report is filed as per the provisions of the Act. This indicates a very sad state of affairs as the purpose of the Act in this regard is not being fulfilled. Steps should be taken by the Government to make it mandatory to file the annual report at the end of every calendar year within the stipulated time, and penalty should be imposed upon those organizations who fail to comply with the same.

F. Procedure adopted by the departments/employers including awareness, training and sensitization of its employees

Section 24 of the Act directs the appropriate government to take measures to publicise the Act²⁴³. The survey shows that in the organized sector, 100% of the employees are aware of the government's initiative for reporting matters²⁴⁴. 100% of the employees also have knowledge about the existence of laws relating to sexual harassment at workplace²⁴⁵. This is

²⁴⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; §21 [Annexure-A].

²⁴¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; §22 [Annexure-A].

²⁴² See Graph 14.

²⁴³ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; §24 [Annexure-A].

²⁴⁴ See Graph 15.

²⁴⁵ See Graph 5.

an essential finding and shows the high level of awareness among the employees working in the organized sector.

However, things are not quite the same in the unorganized sector, as the survey depicts that only a small 3% of the participants working in the unorganized sector have knowledge about the existing sexual harassment laws, while the rest 97% have no knowledge of the same²⁴⁶.

A low level of literacy in this sector leads to a lack of awareness and knowledge about the sexual harassment laws. Clearly, in this regard, the government is successful in communicating the relevant information under the Act to the employees of the organized sector but has failed miserably in doing so in the unorganized sector.

Section 19(c) of the Act makes it a duty of the employer to organize workshops and awareness programmes for the employees at regular intervals²⁴⁷. In the organized sector, 90% of the participants had been a part of an orientation/awareness/gender sensitisation programme conducted in their organization regarding sexual harassment at the workplace²⁴⁸. The impact of this is reflected in 100% of the employees stating that there exists a zero-tolerance policy for sexual harassment at their workplace²⁴⁹. This finding shows the successful implementation of the Act in this regard in all the organizations which have been surveyed.

On the contrary, in the unorganized sector, 92% of the participants had never attended any awareness programme conducted by the employer on sexual harassment at workplace while only 3% of the participants had attended the same²⁵⁰. This sadly depicts the failure on the part of the employers to perform their duty of educating the workmen about laws relating to sexual harassment at the workplace. The survey shows that 3% of the participants who had attended an awareness programme now had some knowledge about the existence of the problem of workplace sexual harassment of women and the existence of LC²⁵¹. This shows the effectiveness of conducting awareness programmes, and it should therefore be encouraged, more so in the Unorganised Sector.

²⁴⁶ See Graph 24.

²⁴⁷ See Graph 24

²⁴⁸ See Graph 17.

²⁴⁹ See Graph 18.

²⁵⁰ See Graph 25.

²⁵¹ See Graph 26.

Conclusion

The majority of the above findings relate to the organized sector. Having a formal structure in the organization, it is easier to enforce the Act and ensure its observance in organizations that belong to this sector. This has also been reflected in this survey, which sees compliance to the provisions of the Act to a great extent in organizations of the organized sector.

However, this is not the case in the unorganized sector. Due to lack of a formal structure, it is not possible to implement provisions of the Act such as constituting an IC and conducting inquiry into a complaint of sexual harassment. Lack of initiatives by the employer, illiteracy of the employers as well as the employees, and no fixed duration or tenure of work, further add to the hurdles in enforcing the Act. Therefore, it becomes necessary to encourage spreading awareness about laws relating to sexual harassment at workplace in the unorganized sector and informing the employees about the laws which are in place to protect them.

Lack of general understanding about the provisions of the Act creates impediment in the proper execution of the Act. The aim and the objectives of the Act get defeated and the efforts of the legislature as well as various stakeholders do not get adequate recognition. Therefore, it is suggested that emphasis of the Government should be to create awareness and conduct capacity building programs so as to achieve the desired purpose.

II. OBSERVATIONS MADE WHILE CONDUCTING THE RESEARCH

While conducting the empirical research, the researchers had certain observations for which any data could not be collected.²⁵²

A. Lack of proper understanding of the Act

During the surveys conducted, most of the participants in the unorganized sector had little understanding of the objectives of this law. Even in the organized sector, few viewed it as a hindrance to the established work environment. Few others took this to be a new tool in the hands of women to victimize men.

²⁵² These observations are not part of the research as such but are very peculiar and are relevant in achieving the purpose of the Act.

Most of the participants had their personal bias taint the primary motivation of this law, which is protection from, and prevention of unwelcome sexual advances faced in the employment sphere. As per the researcher, the hostility towards the Act is primarily due to it being seen as an unwelcome encroachment into the existing workplace. Rather than seeing it as a solution to an existing problem, it is being taken as a new problem entirely unto itself. The fear of being accused unnecessarily is greater than the belief that this will deter harassment.

B. Awareness about Sexual Harassment at Workplace

As the list of high-profile men being accused of sexual harassment or assault grows, a cultural shift demanding increased accountability for workplace sexual harassment may occur in the public domain. But it appears, many companies and institutions have done little to address sexual harassment or raise levels of awareness about the same amongst their employees. More often than not, the employees are woefully unaware of the existence of any dispute resolution mechanism or anything being present to help them but at the same time, almost all of them complied with the provisions of the Act.

In the Unorganized sector, the results were completely different. Most of the units did not have mechanisms to deal with the complaints and the concept of sexual harassment was foreign and they only knew of making complaints (in extreme cases) to the police as they believed making an internal complaint was useless and detrimental to their employment as most of them were day-labourers.

C. False or malicious complaints

The greatest fear amongst almost all interviewed men was of being falsely accused. There was a general feeling that if they (men) said anything to the women related to work then it would invite a reciprocal complaint. The fear of a false complaint was so entrenched that it automatically tainted all complaints in this light that if any complaint is made it has a high probability of being false.

This led to a generalized perception that all complaints are false and that they have been made because the complainant does not want to work and only draws a salary. This has led to the fear of working with or even hiring women, so rather than creating equal opportunity it has further regressed the right to work for women.

D. Conciliation process

The conciliation process is probably the most abused part of the legislation (especially in the private sector). All complaints made are forced towards conciliation as they (the respective organization) do not have to report cases that have reached their conclusion through this mechanism and therefore, their records look clean. This has a very demoralizing effect on the complainant. Most of the time, conciliation does not award any punitive action against the offending party, and this has twin negative effects:

- Firstly, it emboldens the perpetrator and
- Secondly, it humiliates and dehumanizes the complainant.

E. Lodging of FIR

More often than not, it has been observed that a complainant lodges an FIR in parallel to raising a complaint with the IC.

Sometimes, there is an attempt to protect either the perpetrator or the complainant in order to publicly save face for the organization at large and any hope for an unbiased conclusion to the problem is now moot.

F. Correct Annual Reporting

The IC is required to prepare an annual mandatory report that must include details of the number of cases received and resolved, number of cases pending for more than 90 days and reasons for this delay, actions taken by the employer, and number of awareness workshops conducted.

III. SUGGESTIONS

Based on the empirical research and analysis of the observations, the following suggestions have been made to make the implementation of the act more effective and less ambiguous:

1. Rule 13 (b) and 13 (c) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 provide that every employer shall conduct orientation programmes and seminars for Members of the IC, and employees awareness programmes which may involve various groups like Panchayati Raj Institutions, Gram Sabha women's groups, mothers' committee, adolescent groups, urban local bodies and

other bodies as considered appropriate. However, there are no provisions providing as to how often these programmes are to be conducted. It is therefore suggested that orientation training and route training must be conducted at regular intervals – twice a year at least, so that the issue gets the attention it deserves from all relevant people.

2. The IC is not only responsible for taking cognizance of complaints when a case of sexual harassment is reported, but also to take measures to prevent and prohibit such incidents at their workplace. Thus, there should be a provision mandating the members of IC to hold meetings at regular intervals i.e. at least twice a year. They should discuss measures to be adopted and workshops to be conducted to spread awareness and to prevent cases of sexual harassment.
3. The IC should maintain a separate register wherein the detailed implementation procedure is provided – when the decision was given, and how and within what time period it was implemented.
4. Section 9 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that an aggrieved woman can file a complaint of sexual harassment to the IC or LC within a period of 3 months from the date of the incident, which can be further extended for a period of 3 months if the IC/ LC is satisfied that circumstances were such that prevented the woman from filing the complaint within the stipulated time period. It is suggested that this extended time period of 3 months should be made 9 months as it will give more time to the woman to file the complaint if there are circumstances preventing her to do so. However, if the woman wants to file a complaint beyond this period of 9 months, recourse can be taken under Section 354 A of the Indian Penal Code.
5. Section 16 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that the contents of the complaint, identity, and addresses of the aggrieved woman, respondent and witnesses or information regarding conciliation and inquiry proceedings, recommendations of the IC/ LC shall not be published, communicated or made known to the public, press, and media. Confidentiality must be maintained.

According to the data suggested, all organizations answered that they take the confidentiality of the data very seriously and store the documents very safely. However, this provision should be made more flexible. This is suggested because if certain information, barring personal and sensitive details, is made public especially to the other members of the organization/ institution, it will help everyone understand and be aware of sexual harassment at workplace and its consequences to prevent further such incidents.

6. Section 19 (b) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that the employer shall display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the IC. It is suggested that there shall be penal consequences for an employer who fails to comply with this mandate which is not yet provided in the Act.
7. Section 19 (c) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 provides that there should be workshops or programmes conducted for the members of IC. It is suggested that these workshops should be held at regular intervals of at least twice a year to professionally train them to deal with complaints of sexual harassment at workplace and so that they are equipped to dispose-off the complaints faster and more effectively and provide an appropriate remedy to the aggrieved party.
8. Under Section 21 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 the IC/ LC has to file an Annual Report and submit it to the employer and District Officer. The details which are to be submitted are provided under Rule 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.
It is suggested that strict penal consequences should be there for non-compliance with this provision.
9. A lot of female employees leave their jobs after or during the inquiry of a complaint of sexual harassment. This is rather unfair because women, being victims, are forced to

resign due to an uncomfortable work environment or hostile behaviour from fellow colleagues or the employer. Thus, it is suggested that ‘exit interviews’ can be conducted for such women so that the actual reason for their resignation can be ascertained, and appropriate measures can be taken to solve the issue of the woman leaving the workplace.

10. More warning signs depicting slogans like “Respect the Dignity of Women” should be put up on Notice Boards to provide the issue the attention it deserves.
11. Another grey area is the duty of the employer in case of third-party harassment. The Vishaka Guidelines provide that “*where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.*” However, this provision is very ambiguous and does not clearly state what the employer is supposed to do in case of third-party harassment. Thus, it is suggested that the duties of the employer should be more specifically defined.
12. Every organization/ institution should devise a proper list of DOs and DON'Ts for their employees as well as the employer to prevent cases of sexual harassment.
13. Every hospital, school, college, university, and bank – whether private or government-owned, should have a special ‘Complaint Box’ for complaints regarding sexual harassment at workplace places only. The ‘SHe-Box: Online Complaint Management System’ introduced by the Ministry of Women and Child Development should be promoted on a larger scale.
14. An ‘All Women Cell’ shall be constituted at every hospital, school, college, university, bank – whether private or government-owned, which will solely cater to complaints of sexual harassment at workplace and assist the IC in disposing off cases.
15. Another major suggestion is that the offence of sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 should be made gender neutral. It is not necessary that only women can be victims of this harassment, and thus men should be allowed to file complaints as well. The

judgment of the Calcutta High Court aptly incorporated this suggestion while this research was in progress. The Court has held that the same-gender complaints are maintainable under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, commonly referred to as the POSH Act. The Court further observed that Section 2(m) of the 2013 Act shows that the term "respondent" brings within its fold "a person", thereby including persons.²⁵³

16. Under Rule 3 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 the allowances prescribed for the IC members are too small to attract any person with thorough professional knowledge and expertise which is required to conduct such sensitive proceedings. It is suggested that this amount of allowance should be suitably enhanced.
17. The provision of filing for appeal is provided under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. However, the provisions are ambiguous as to which is the appropriate authority to file an appeal by the aggrieved party. Thus, the provisions must be made clearer and should specifically lay down the authorities which can be approached to file appeals against the recommendations of the IC/ LC.
18. It is also suggested that some provisions must be made to deal with situations where the complainant herself or the respondent himself breach confidentiality or disclose any sensitive information about the case to the media. If this happens, provisions can be made to impose heavy penalties on them, and in extreme cases, penal punishment can also be imposed. This way, the parties will be deterred from sharing personal or sensitive information.
19. The present composition of IC as provided under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 makes it an *ad hoc*

²⁵³ *Same-Gender Sexual Harassment Complaints Maintainable Under POSH Act : Calcutta High Court*, LiveLaw (January 14, 2021), <https://www.livelaw.in/top-stories/same-gender-sexual-harassment-complaints-maintainable-posh-act-calcutta-high-court-168397>.

arrangement. It is recommended that IC should be made a permanent standing body with dedicated infrastructure and resources. There is a need for providing the IC with adequate assistance to ensure timely conduct of proceedings.

20. The evident difference between the level of awareness of employees of the Organised sector and the workers of the Unorganised sector exists due to low literacy levels among the workers of the Unorganised sector. The employer also plays a prominent role in familiarising the employees about the need, importance, and intricacies of laws relating to sexual harassment at workplace. Therefore, to bridge this gap of disparity, it is very essential that employers of the Unorganised sector are mandated and encouraged to create awareness among the workers and inform them about the protections guaranteed to them from sexual harassment in workplace under the Act.

Role of NHRC in Addressing Issues of Sexual Harassment of Women at Workplace

Human beings are rational beings. By virtue of being humans, they possess certain basic and inalienable rights which are known as human rights. These rights are inherent to all human beings irrespective of their caste, creed, religion, sex, and nationality. These rights are quintessential for all individuals since they are consonant with their freedom and dignity and are conducive to physical, moral, social, and spiritual welfare. The primary role of the National Human Rights Commission (NHRC) is the protection of these human rights.

In India, the Protection of Human Rights Act was enacted in 1993 which provides for the constitution of a national body i.e. NHRC, State Human Rights Commission in States, and Human Rights Courts for better protection of human rights.

Section 2(d) of this Act defines human rights as rights relating to life, liberty, equality, and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by the courts in India.

The NHRC is an embodiment of India's concern for the promotion and protection of human rights. Much remains to be done to secure to the women of this country their human rights and their constitutional freedoms. Stereotypes and attitudes need to be changed alongside the forward trends of society. Laws and law enforcement agencies need to be sensitized and a secure society needs to be established where women can work freely, exercise their volition, and contribute to the development of the nation. The NHRC has a difficult yet essential task before it of being the catalyst of this change and help the nation in achieving Sustainable Development Goals.

Webinar/IT Modules Suggestions for Proper Functioning of ICs

A. Webinar for IC Members to Recognize and Prevent Harassment of Women at Workplace

The webinar should be interactive and aimed at training IC members to conduct a formal inquiry, help the victims and respondents understand the procedure, due requirements to accept a case, drawing conclusions, assessing credibility on the basis of evidence, etc. Relevant

aspects like completing inquiry, adhering to timelines, penalties for contravention of provisions, and drafting recommendations should also be covered.

B. Webinar for Employees to Prohibit, Prevent and Redress Sexual Harassment of Women at Workplace

The Sexual Harassment of Women at work place (Prevent, Prohibition and Redressal) Act, 2013 places responsibility on the employer to prevent and address the issues of harassment through internal education. Managers, CEOs/Directors, Vice Chairmen, administrators, and other representatives of the employer, have special responsibilities in this regard. Interactive webinars should be designed so as to create awareness around the subject and comprehensively discuss the nuances around harassment at work so that they understand their roles and responsibilities on this issue. This would enable them to file Audit Reports about the complaints and the cases and would ensure compliance with the provisions of the Act.

C. E-learning Modules for IC Members and Employees to Recognize and Prevent Harassment at work

E-learning modules should be specifically designed to help organizations stay compliant with the mandated awareness as directed by The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The modules should help the learner understand his/her role in creating a safe and respectful workplace. With the help of real-life cases, the learner should be guided through the subject from recognizing sexual harassment to preventing and reporting incidents appropriately.

- a. Effective, easy to understand, and pro victim strategies at workplace would ensure compliance.
- b. Self-paced interactive modules are ideal for large, multi-location organizations.
- c. End-of-session quizzes/tests would ensure understanding.
- d. Electronic tracking of the completion of the course ensures participation and makes it easy to formulate records.

D. Advisory Service to Complaints Committee

External Expert Services can help organizations and the IC's with appropriate strategies in planning their sexual harassment prevention measures as well as managing claims and

investigations as per the required process. From assessing whether a complaint is a workplace harassment issue or an incident of sexual harassment, to how it must be received and closed, expert services can complement the organization's efforts and help create a fair as well as safe workplace for the employees.

Model Code of Conduct

A Model Code of Conduct (hereinafter referred to as 'the Code') is a set of guidelines issued by a supervisory authority or body with an intention to provide guidance and to sync the own internal procedures of different institutions. It is important for every employer to establish an internal procedure for dealing with cases of sexual harassment at the workplace, which is in line with the provisions of the Act. This is because it:

1. Establishes that the employer takes the issue of sexual harassment at workplace very seriously;
2. Ensures that in case any complaint is made, it will be dealt with fairly and in an unbiased manner;
3. Reduces the likelihood of timing court procedures and at the same time redresses the grievance of the complainant.

Objectives

The Code lays down a framework in harmony with the Act that will operate as a guide to employers, employers' organizations, employees, and trade unions for effective implementation of regulations and to prevent as well as address sexual harassment in their workplaces.

It further recommends the development, implementation, and monitoring of a policy on sexual harassment to promote safe and healthy work environments, where all employees irrespective of sex or status are treated with fairness, dignity and respect.

The employer should ensure that the internal procedure established is:

- i. Clearly documented;
- ii. Properly explained to the employees;
- iii. Offer both formal and informal options to the parties;
- iv. Based on principles of natural justice;

- v. Provide useful guidance to the IC members for the effective disposal of complaints.

Thus, the Code aims to be a guiding document to assist employers to develop their procedures for the purpose of grievance redressal, and also assist the ICs of various institutions by providing a model procedure for the effective disposal of the complaints.

Scope of the Code

The Code will apply to all companies, including enterprises and factories belonging to both public and private sectors, irrespective of their size.

For the purpose of the Code, the term ‘workplace’ not only refers to a specific location where the work is done, like an office or factory but also refers to locations where work-related business may be conducted, like:

- i. Work-related social activities, like the reception of clients/staff;
- ii. Conferences/workshops;
- iii. Official business trips;
- iv. Business meals;
- v. Official telephone calls;
- vi. Official online communications.

MODEL PROCEDURE FOR COMPLAINT REDRESSAL

A. Who can file a complaint?

Any aggrieved woman, who has faced sexual harassment at her workplace, can file a complaint under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (hereinafter referred to as ‘the Act’), in the manner as prescribed in the Code.

This aggrieved woman can be:

- a. Woman of any age, whether an employee or not, who claims she has faced sexual harassment by the respondent at the workplace,

- b. Woman of any age, employed in a dwelling place or house who claims she has faced sexual harassment at such dwelling place or house.²⁵⁴

Other points to be noted:

- a. Where the aggrieved woman is unable to make a complaint due to physical incapacity, the complaint can be filed by any:
 - i. Relative/friend;
 - ii. Co-worker;
 - iii. Officer of the National Commission for Woman or State Women's Commission;
 - iv. Any person having knowledge of the incident (with the written consent of the aggrieved woman).
- b. Where the aggrieved woman is unable to make a complaint due to mental incapacity, the complaint can be filed by any:
 - i. Relative/friend;
 - ii. Special educator;
 - iii. Qualified psychiatrist/psychologist;
 - iv. Guardian/authority taking care of/providing treatment to the aggrieved woman;
 - v. Any person having knowledge of the incident jointly with any of the above persons.
- c. If the aggrieved woman is unable to file the complaint due to any other reason, it can be filed by any person who has knowledge of the incident, with her written consent.
- d. If the aggrieved woman is dead, it can be filed by any person who has knowledge of the incident, with the written consent of her legal heir.²⁵⁵

²⁵⁴ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 2(a) [Annexure-A].

²⁵⁵ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 6 [Annexure-B].

B. Where to file the complaint?

The Act mandates every employer having more than 10 employees constitute an IC. Where there is no IC constituted due to having less than 10 employees, the District Officer shall constitute an LC.

The complaint is to be submitted in writing by the aggrieved woman to the IC or LC, as the case may be.

C. Procedure to Handle a Complaint

The procedure to handle a complaint can be divided into the following 3 stages:

STAGE 1: Filing of the complaint

- A. The aggrieved woman will file the complaint in writing to the IC/LC as the case may be, in six copies. Where the complaint cannot be made in writing, the IC/LC shall render reasonable assistance to the aggrieved woman for filing the complaint.
- B. The complaint shall be made within three months of the date of incident, and in case of series of incidents, from the date of the last incident. This time period can be further extended by three months at the discretion of the IC/LC if they have reason to believe that such circumstances existed which prevented the aggrieved woman from filing the complaint in the stipulated time.
- C. After receiving the copies of the complaint, the IC/LC shall send one copy to the respondent within seven days of receipt of complaint.

STAGE 2: Conciliation – An effort for settlement before inquiry is initiated

Once the complaint of sexual harassment is filed by the aggrieved woman before the IC/LC, the following procedure is to be followed:

- A. The IC/LC, as the case may be, before initiating inquiry may, at the request of the aggrieved woman, take steps to settle the matter between her and the respondent through dialogue.
- B. No monetary settlement is permitted between the parties.

- C. When the parties arrive at a settlement through conciliation, the IC/LC shall record the settlement, and forward a copy of the same to the employer or the District Officer to take appropriate action.
- D. When a settlement is arrived at, no further inquiry shall be conducted by the IC/LC.
- E. If the aggrieved woman informs the IC/LC that any terms or conditions of the settlement arrived at have not been complied to by the respondent, the IC/LC shall proceed to make an inquiry into the said complaint, or forward the complaint to the police, as the case may be.

If there is no settlement arrived at between parties through conciliation, then the IC/LC will initiate the inquiry.

STAGE 3: Detailed Procedure for Inquiry

Where the respondent is an employee of the institution, the procedure will be according to the service rules applicable to the employee and where no such service rules exist, in the prescribed manner.

Where both the parties are employees, they will be given an opportunity of being heard and after hearing both sides, the IC/LC will determine whether the offence of sexual harassment took place or not.

In case of a domestic worker, the LC shall, if prima facie case exists, forward the complaint to the police within 7 days for registration under Section 509 of the Indian Penal Code 1860, or any other relevant provision of the Code.²⁵⁶

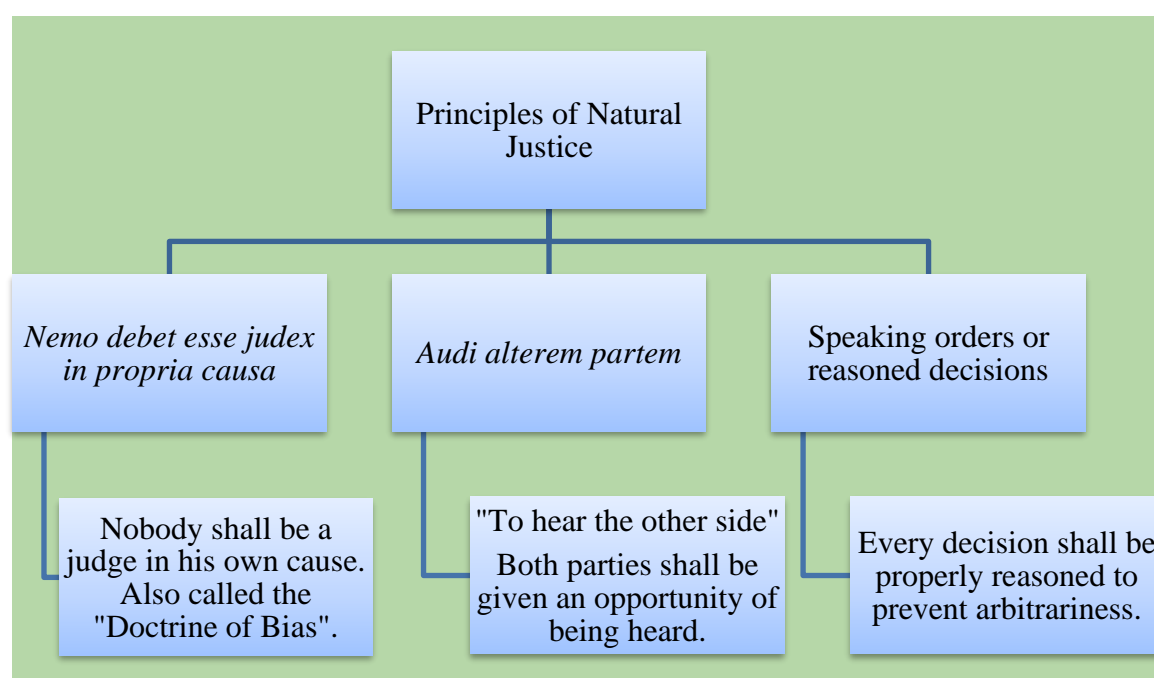
²⁵⁶ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; §11 [Annexure-A].

A. Principles of Natural Justice

Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, and is ranked as fundamental. The purpose of following the principles of natural justice is the prevention of miscarriage of justice.

The IC/ LC shall keep in mind the “Principles of Natural Justice” while dealing with any complaint under the Act. These principles include:

Figure 8: Principles of Natural Justice



B. Inquiry Procedure

After the complaint is submitted successfully, and no settlement was arrived at by conciliation, the IC/ LC shall initiate the inquiry.

Both parties will be given an equal opportunity of being heard.

After hearing both parties, and keeping in mind the principles of natural justice, the IC/ LC will determine whether the offence of sexual harassment actually took place or not.

They will arrive at their findings after the inquiry and will provide both parties with a copy of the same to give them an opportunity to make representations against those findings if they want to.

For the purpose of conducting the inquiry, the IC/ LC shall have the same powers as a Civil Court under the Code of Civil Procedure, including:

- a. Summoning and enforcing the attendance of any person and examining him on oath;
- b. Requiring the discovery and production of documents;
- c. Any other prescribed matter.

The inquiry is to be completed within **90 days**.

C. Inquiry Report

If the accused is guilty:

If the IC/ LC is satisfied that the offence took place and the respondent is guilty, they shall award appropriate remedy to the complainant, like:

- a. Recommend to the employer or District Officer to take action for sexual harassment as a misconduct according to the service rules applicable, and where no such service rules exist, in the prescribed manner.
- b. To deduct from the salary of the respondent the amount of compensation as deemed appropriate to the IC/ LC.

If the IC/ LC decide to award compensation to the aggrieved woman, the amount of compensation will be determined keeping into consideration the following factors:

- a. The mental trauma, pain, suffering, and emotional distress caused to the aggrieved woman.
- b. Loss in career opportunity due to the incident of sexual harassment.
- c. Medical expenses incurred by the woman for physical/ psychiatric treatment.
- d. Income and financial status of the respondent.

- e. Feasibility of payment – whether in lump sum or instalments.²⁵⁷

Apart from these remedies, the IC/ LC shall recommend to the employer/ District Officer to take actions like:

- a. Written apology;
- b. Warning;
- c. Reprimand or censure;
- d. Withholding of promotion;
- e. Withholding of pay rise or increments;
- f. Termination of services;
- g. Undergoing counselling session;
- h. Carrying out community service.²⁵⁸

If the accused is not guilty:

If the IC/ LC arrives at a conclusion that the allegation could not be proved, it shall recommend to the employer/ District Officer that no action is required to be taken in the matter.

After the inquiry is completed, the IC/ LC shall make a report of its findings to the employer or District Officer as the case may be within **10 days** from the date of completion of inquiry. A copy of the report shall also be provided to the parties.

D. Interim Reliefs available to the Complainant

If the aggrieved woman requests in writing, during the pendency of the inquiry, the IC/ LC may recommend to the employer/ District Officer:

- a. Transfer of the aggrieved woman or respondent to another workplace.
- b. Grant leave to the aggrieved woman for up to 3 months (in addition to the leaves she is otherwise entitled to).

²⁵⁷ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; §15 [Annexure-A].

²⁵⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 9 [Annexure-B].

- c. Grant other appropriate relief as prescribed.²⁵⁹

The employer shall then implement them and send a report of the same to the IC/ LC.

Other interim reliefs which the IC/ LC can recommend to the employer are:

- a. Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer.
- b. Restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.²⁶⁰

E. Procedure to be followed when the complaint is false/ malicious or documents are forged

The Code provides for this provision so that the provisions of the Act are not misused in any manner.

Where the IC/ LC is of the opinion that the allegation against the respondent is malicious or the complainant has made the complaint knowing it to be false or has produced misleading or forged documents, it may recommend to the employer or District Officer to take action against such woman. This malicious intent shall be established only after an inquiry into the same.²⁶¹

Appeal

If any party is aggrieved by the recommendations made by the IC/ LC, or non-implementation of the recommendations, he/she may prefer an appeal to the court or tribunal according to the service rules applicable, and if no such rules exist, according to the manner prescribed, within 90 days of the making of recommendations.

²⁵⁹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 12 [Annexure-A].

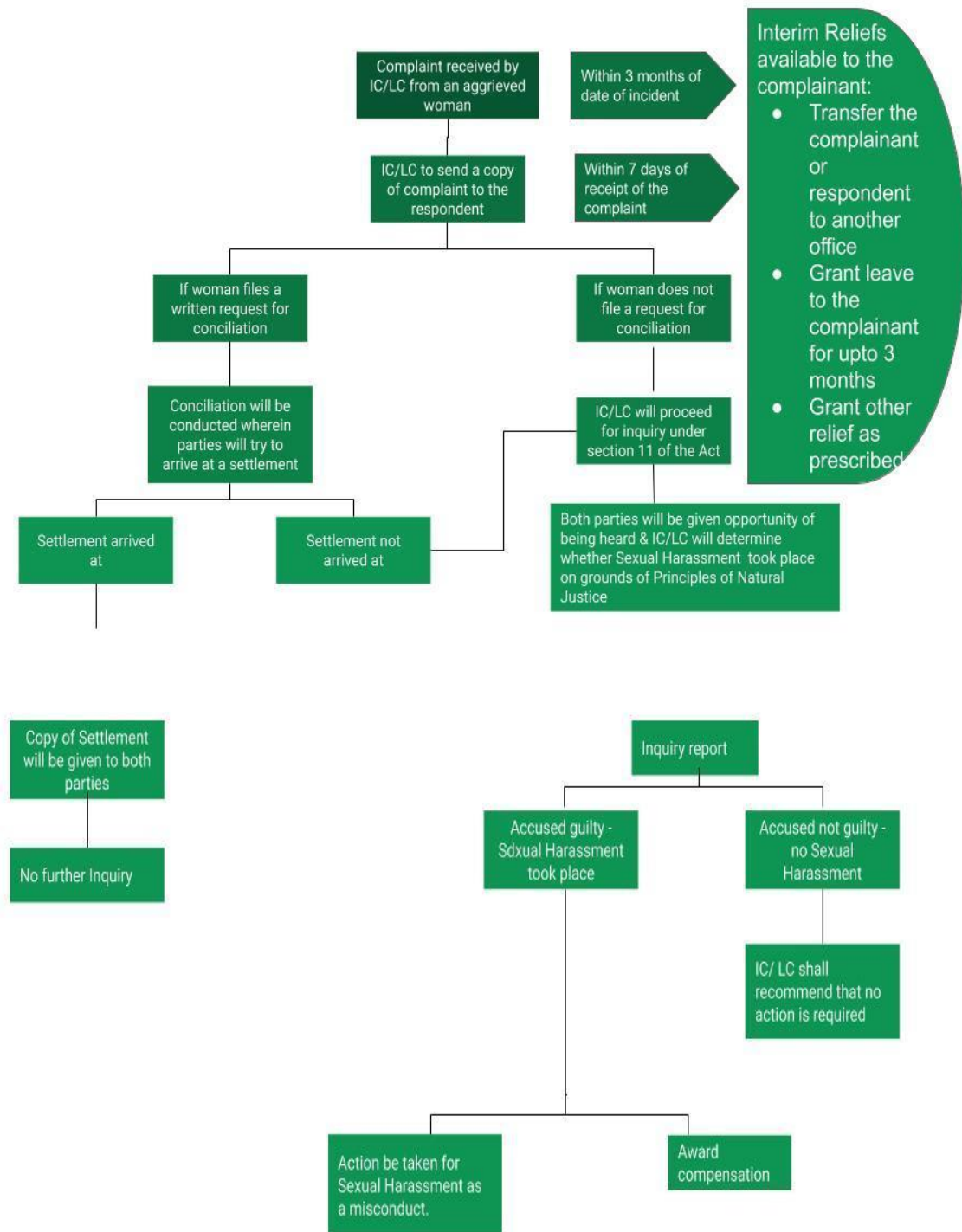
²⁶⁰ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013; Rule 8 [Annexure-B].

²⁶¹ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; § 14 [Annexure-A].

Some Key Points

- A. When the IC/ LC receives a complaint of sexual harassment, and they are of the opinion that the complaint involves criminal conduct, they shall forward the case to the police since the action that the IC/ LC are empowered to take are of civil nature only.
- B. If the complaint is of “harassment”, but not of sexual harassment, *i.e.* the aggrieved woman has been harassed, but it was not of sexual nature, the matter will be transferred to the Human Resource Department or the Administration department of the organization.

Figure 9: Complaint Procedure



Detailed Procedure for Complaint Redressal

CONCLUSION

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has been a catalyst in creating greater awareness of the issue of sexual harassment at the workplace. It has also given huge confidence to female employees to report any adverse incidents. Progressive employers on their part have gone to great lengths to implement the law, not just in form but also in spirit.

The above recommendations are some basic measures that are required to bring both, the organized as well as unorganized sectors, in compliance with statutory norms regarding sexual harassment and with certain best practices globally.

Besides, it is the need of the hour that the existing Statute should be made more robust. The implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a work in progress.

The findings suggest that additional measures are required, to end the sex-based discrimination suffered by women in the form of sexual harassment at workplaces. The steps taken so far have been positive and encouraging for women employees. The journey is difficult but together we hope to succeed.

Every positive effort and action takes the movement of women empowerment a step ahead in the right direction. This work is a part of that movement. In the words of Bhanwari Devi,

"Jo main awaaz uthaun to band nahin honi chahiye, main jinda rahoo ya nahin" [The voice (against injustice) that I raised should never be aquelled, whether I live or die].²⁶²

²⁶² Rekha Dixit, 'Her Loss; Our Laws', The Week, 29 September, 2013, p.4.

FOCUSED GROUP DISCUSSION AND NATIONAL CONFERENCE

2020

on

“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: Its impact, implementation issues and concerns in various Government/PSUs/Private Sectors in Delhi (NCR)”

As part of the ongoing project, the Research Team organized a Focused Group Discussion and National Conference on the aforesaid topic.

The events saw a wide-ranging discussion on various nuances related to sexual harassment at workplace and its laws. The diverse participant pool, which included both academicians and legal practitioners as well as policymakers and grassroots activists brought a broad range of different perspectives to the discussion. We also had participation from law students from various universities all across the country.

Focused Group Discussion on 28th February 2020

This FGD was a closed group discussion which involved eminent personalities as resource persons like Ms. Neetha from the Centre of Women’s Development Studies, Ms. Jyotika Bhasin who is an advocate from Bhasin and Bhasin, Ms. Soumya Baniwal representing Sewa Bhav Foundation, Ms. Sonal Pruthi who is a legal practitioner in the Delhi High Court, and academicians like Dr. Upma Gautam from Guru Gobind Singh Indraprastha University and Dr. Vidhi Madaan Chaddha from TERI School of Advanced Studies. We also had participation from students from Jamia Milia Islamia.

It was an enlightening discussion since there were opinions shared by participants from various legal backgrounds, making the discussion even more diverse and engaging.

National Conference on 29th February 2020:

The National Conference had, as Resource persons, personalities like:

- Ms. Jyotika Kalra, Member, National Human Rights Commission

- Ms. Namrita Aggarwal, Additional Secretary, Delhi State Legal Services Authority
- Ms. Vidhi Gupta Anand, Secretary, Delhi State Legal Services Authority
- Prof. Vibha Tondon, Presiding Officer of the IC at Jawaharlal Nehru University
- Dr. Upma Gautam from Guru Gobind Singh Indraprastha University
- Prof. (Dr.) Harpreet Kaur from National Law University Delhi
- Ms. Soumya Baniwal from Sewa Bhav Foundation
- Ms. Sonal Pruthi, Delhi High Court
- Mr. Rahul Tiwari, Advocate
- Mr. Shobhit Mittal, Advocate

There was participation from law students from various universities like, Delhi University, Guru Gobind Singh Indraprastha University, National Law University Delhi, Jawaharlal Nehru University, Amity Law School, TISS Mumbai, Vivekananda Institute of Professional Studies, and so on.

A lot of facets of sexual harassment at workplace were discussed by way of presentations and discussions with the resource persons and participants. It was very enlightening as a lot of undiscovered points of views were put forward and many opinions were eye-openers for participants, especially students who are new to the legal world.

ANNEXURE-A

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

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

[Act 14 of 2013 as amended up to Act 23 of 2016]

[22nd April, 2013]

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**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal)
Act, 2013¹**

[Act 14 of 2013 as amended up to Act 23 of 2016]

[22nd April, 2013]

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto

Whereas sexual harassment results in violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

And whereas the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

And whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace;

Be it enacted by Parliament in the sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) “aggrieved woman” means—

(i) in relation to a 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;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(b) “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;

(c) “Chairperson” means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of Section 7;

(d) “District Officer” means an officer notified under Section 5;

(e) “domestic worker” means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through

any agency on a temporary, permanent, part time or full-time basis, but does not include any member of the family of the employer;

(f) “employee” means a person 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;

(g) “employer” means—

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace;

Explanation.—For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(h) “Internal Committee” means an Internal Complaints Committee constituted under Section 4;

(i) “Local Committee” means the Local Complaints Committee constituted under Section 6;

- (j) “Member” means a Member of the Internal Committee or the Local Committee, as the case may be;
- (k) “prescribed” means prescribed by rules made under this Act;
- (l) “Presiding Officer” means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of Section 4;
- (m) “respondent” means a person against whom the aggrieved woman has made a complaint under Section 9;
- (n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely—
 - (i) physical contact and advances; or
 - (ii) a demand or request for sexual favours; or
 - (iii) making sexually coloured remarks; or
 - (iv) showing pornography; or
 - (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;
- (o) “workplace” includes—
 - (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
 - (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
 - (iii) hospitals or nursing homes;

- (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- (v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- (vi) a dwelling place or a house;
- (p) “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.

3. Prevention of sexual harassment.—(1) No woman shall be subjected to sexual harassment at any workplace.

(2) 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—

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

4. Constitution of Internal Complaints Committee.—(1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”:

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely—

- (a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

- (b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
- (c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,—

- (a) contravenes the provisions of Section 16; or

- (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
- (d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. Notification of District Officer.—The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

NOTIFICATION

Department of Women & Child Development (Women Empowerment Cell), Noti. No. 60(198)/DWCD/ADWEC/LCC/2014-15/46636-653, dated February 17, 2016, published in the Delhi Gazette, Extra., Part IV, dated 17th February, 2016, p. 1, No. 28.

In exercise of the powers conferred by Section 5. of The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013 (No. 14 of 2013), the Government of National Capital Territory of Delhi hereby nominates the District Magistrate of every District as “District Officer“ to exercise the powers and discharge the functions under this Act in the National Capital Territory of Delhi.

The “District Officer” of every district shall constitute “Local Complaint Committee” under Section 6 of the said Act to receive complaints of sexual harassment from establishment where the “Internal Complaint Committee” has not been constituted due to having less than ten workers or if complaint is against the employer himself.

The District Officer shall designate one nodal officer in every ward/municipality to receive complaints and forward the same to the concerned Local Complaint Committee within a period of seven days.

The jurisdiction of Local Complaint Committee shall extend to the areas of the district where it is constituted.

The District Officer will discharge all the functions and powers in accordance with the Act.

6. Constitution and jurisdiction of ³[Local Committee].—(1) Every District Officer shall constitute in the district concerned, a committee to be known as the “⁴[Local Committee]” to receive complaints of sexual harassment from establishments where the ⁵[Internal Committee] has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned ⁶[Local Committee] within a period of seven days.

(3) The jurisdiction of the ⁷[Local Committee] shall extend to the areas of the district where it is constituted.

7. Composition, tenure and other terms and conditions of ⁸[Local Committee].—(1) The ⁹[Local Committee] shall consist of the following members to be nominated by the District Officer, namely—

- (a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- (b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- (c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(3) Where the Chairperson or any Member of the ¹⁰[Local Committee]—

(a) contravenes the provisions of Section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

8. Grants and audit.—(1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of Section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of Section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed

and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

9. Complaint of sexual harassment.—(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

10. Conciliation.—(1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under Section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. Inquiry into complaint.—(1) Subject to the provisions of Section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under Section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of Section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in Section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of Section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

CHAPTER V

INQUIRY INTO COMPLAINT

12. Action during pendency of inquiry.—(1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

(a) transfer the aggrieved woman or the respondent to any other workplace; or

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

13. Inquiry report.—(1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

- (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
- (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of Section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

14. Punishment for false or malicious complaint and false evidence.—(1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of Section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. Determination of compensation.—For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of Section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to—

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;
- (c) medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) the income and financial status of the respondent;
- (e) feasibility of such payment in lump sum or in instalments.

16. Prohibition of publication or making known contents of complaint and inquiry proceedings.—Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under Section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Penalty for publication or making known contents of complaint and inquiry proceedings.—Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of Section 16, he shall be liable for penalty in accordance with the

provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

18. Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clause (i) or clause (ii) of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

CHAPTER VI

DUTIES OF EMPLOYER

19. Duties of employer.—Every employer shall—

- (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee under sub-section (1) of Section 4;
- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of Section 9;

- (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
- (h) cause to initiate action, under the Indian Penal Code (45 of 1860) 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;
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) monitor the timely submission of reports by the Internal Committee.

CHAPTER VII

DUTIES AND POWERS OF DISTRICT OFFICER

20. Duties and powers of District Officer.—The District Officer shall,—

- (a) monitor the timely submission of reports furnished by the Local Committee;
- (b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

CHAPTER VIII

MISCELLANEOUS

21. Committee to submit annual report.—(1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

22. Employer to include information in annual report.—The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

23. Appropriate Government to monitor implementation and maintain data.—The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

24. Appropriate Government to take measures to publicise the Act.—The appropriate Government may, subject to the availability of financial and other resources,—

- (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;
- (b) formulate orientation and training programmes for the members of the ¹¹[Local Committee].

25. Power to call for information and inspection of records.—(1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,—

- (a) call upon my employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;
- (b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

26. Penalty for non-compliance with provisions of Act.—(1) Where the employer fails to—

- (a) constitute an Internal Committee under sub-section (1) of Section 4;
- (b) take action under Sections 13, 14 and 22; and
- (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to—

- (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

- (ii) cancellation, of his licence 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.

27. Cognizance of offence by courts.—(1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.

28. Act not in derogation of any other law.—The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

29. Power of appropriate Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

- (a) the fees or allowances to be paid to the Members under sub-section (4) of Section 4;
- (b) nomination of members under clause (c) of sub-section (1) of Section 7;
- (c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of Section 7;

- (d) the person who may make complaint under sub-section (2) of Section 9;
- (e) the manner of inquiry under sub-section (1) of Section 11;
- (f) the powers for making inquiry under clause (c) of sub-section (2) of Section 11;
- (g) the relief to be recommended under clause (c) of sub-section (1) of Section 12;
- (h) the manner of action to be taken under clause (i) of sub-section (3) of Section 13;
- (i) the manner of action to be taken under sub-sections (1) and (2) of Section 14;
- (j) the manner of action to be taken under Section 17;
- (k) the manner of appeal under sub-section (1) of Section 18;
- (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of Section 19; and
- (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of Section 21.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (4) of Section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

30. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

¹. Received the assent of the President on April 22, 2013 and published in the Gazette of India, Extra., Part II, Section 1, dated 23rd April, 2013, pp. 1-12, No. 18.

². December 9, 2013 [*Vide* Noti. No. S.O. 3606(E), dated 9-12-2013].

³. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

⁴. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

⁵. *Subs.* for “Internal Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

⁶. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

⁷. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

⁸. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

⁹. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

¹⁰. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

¹¹. *Subs.* for “Local Complaints Committee” by Act 23 of 2016, S. 3 and Sch. II.

ANNEXURE-B

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE
(PREVENTION, PROHIBITION AND REDRESSAL) RULES, 2013

**SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION,
PROHIBITION AND REDRESSAL) RULES, 2013¹**

[9th December, 2013]

In exercise of the powers conferred by Section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely—

1. Short title and commencement.—(1) These rules may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions.—In these rules, unless the context otherwise requires,—

(a) “Act” means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);

(b) “complaint” means the complaint made under Section 9;

(c) “Complaints Committee” means the Internal Committee or the Local Committee, as the case may be;

(d) “incident” means an incident of sexual harassment as defined in clause (n) of Section 2;

(e) “section” means a section of the Act;

(f) “special educator” means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;

(g) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Fees or allowances for Member of Internal Committee.—(1) The Member appointed from amongst non-government organisations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. Person familiar with issues relating to sexual harassment.—Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of Section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following—

(a) a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;

(b) a person who is familiar with labour, service, civil or criminal law.

5. Fees or allowances for Chairperson and Members of Local Committee.—(1) The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.

(2) The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of Section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).

6. Complaint of sexual harassment.—For the purpose of sub-section (2) of Section 9,—

(i) where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by—

(a) her relative or friend; or

(b) her co-worker; or

(c) an officer of the National Commission for Women or State Women's Commission; or

(d) any person who has knowledge of the incident, with the written consent of the aggrieved woman;

- (ii) where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by—
 - (a) her relative or friend; or
 - (b) a special educator; or
 - (c) a qualified psychiatrist or psychologist; or
 - (d) the guardian or authority under whose care she is receiving treatment or care; or
 - (e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
- (iii) where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;
- (iv) where the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

7. Manner of inquiry into complaint.—(1) Subject to the provisions of Section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule (1).

(4) The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex-parte decision on the complaint, if the complainant or respondent fails, without

sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present.

8. Other relief to complainant during pendency of inquiry.—The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to—

(a) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;

(b) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

9. Manner of taking action for sexual harassment.—Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

10. Action for false or malicious complaint or false evidence.—Except in cases where service rules exist, where the Complaints Committee arrives at the conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or District Officer, as the case may be, to take action in accordance with the provisions of Rule 9.

11. Appeal.—Subject to the provisions of Section 18, any person aggrieved from the recommendations made under sub-section (2) of Section 13 or under clauses (i) or clause (ii)

of sub-section (3) of Section 13 or sub-section (1) or sub-section (2) of Section 14 or Section 17 or non-implementation of such recommendations may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

12. Penalty for contravention of provisions of Section 16.—Subject to the provisions of Section 17, if any person contravenes the provisions of Section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

13. Manner to organise workshops, etc.—Subject to the provisions of Section 19, every employer shall—

- (a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;
- (b) carry out orientation programmes and seminars for the Members of the Internal Committee;
- (c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;
- (d) conduct capacity building and skill building programmes for the Members of the Internal Committee;
- (e) declare the names and contact details of all the Members of the Internal Committee;
- (f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

14. Preparation of annual report.—The annual report which the Complaints Committee shall prepare under Section 21, shall have the following details—

- (a) number of complaints of sexual harassment received in the year;
- (b) number of complaints disposed off during the year;
- (c) number of cases pending for more than ninety days;

(d) number of workshops or awareness programme against sexual harassment carried out;

(e) nature of action taken by the employer or District Officer.

¹. Ministry of Women and Child Development, Noti. No. G.S.R. 769(E), dated December 9, 2013, published in the Gazette of India, Extra., Part II, Section 3(i), dated 9th December, 2013, pp. 4-6, No. 593.

ANNEXURE-C

QUESTIONNAIRE FOR ORGANIZED SECTOR

QUESTIONNAIRE FOR ORGANIZED SECTOR

**RESEARCH PROJECT, NATIONAL LAW UNIVERSITY DELHI AND THE
NATIONAL HUMAN RIGHTS COMMISSION**

ON

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: A Study to assess its impact, implementation issues and concerns in various Government/PSUs/Private Sectors in Delhi (NCR)

We are from National Law University Delhi, Dwarka, New Delhi. We're working with the National Human Rights Commission on a project to study the impact of the Sexual Harassment at workplace Act, 2013 along with the working/constitution of the IC as stipulated in the Act and implementational A Study to assess its impact, implementation issues and concerns in various Government/PSUs/Private Sectors in Delhi (NCR).

In this connection, we would like to interact with you and would like you to share your experience on the issue with us. Your inputs and suggestions would help us to arrive at the right conclusion. It will take only about 10 minutes. The information we gather will be treated as confidential and will be used only for academic purposes.

We thank you for all the help and cooperation in advance.

Questionnaire for Organized Sector

1. Under which category of institutions does your organization fall?
 - a) Government
 - b) Private
 - c) PSU
 - d) NGO
 - e) Police
2. Where is your organization located?
 - a) Delhi
 - b) NCR
3. Is there any complaint mechanism/ procedure followed in your department regarding cases of sexual harassment of women at workplace?
 - a) Yes, if yes what kind of procedure
 - b) No
4. Do you know about any law that exists to protect employees in your organization from sexual harassment?
 - a) Yes
 - b) No
5. Do you have an Internal Committee?
 - a) Yes
 - b) No
6. Whether there is any designated appellate authority in your institution for dealing with the appeals in matters of sexual harassment at workplace?
 - a) Yes
 - b) No
 - c) Can't say
7. How many members are there in the Committee?
 - a) Less than four

- b) More than four
8. What are the steps taken by your organization's IC if there is a false complaint of sexual harassment in your department?
- a) SOP in place
 - b) HR/Admin takes decision
 - c) IC takes decision
 - d) Strict action taken
9. Are the details of the IC on display at any conspicuous place or website so one knows whom to approach and how in your organization?
- a) Yes
 - b) No
10. How many complaints does the Committee receive annually?
- a) Zero
 - b) One
 - c) More than one
 - d) No information available
11. Is the decision made by the Internal Committee implemented?
- a) Yes
 - b) No
12. How is the confidentiality of both the complainant and the alleged accused maintained by your IC OR LC?
- a) SOP in place
 - b) Use of locked cupboards, rooms, etc.
 - c) Strict confidence maintained by HR/IC/Admin
 - d) Closed door investigation
 - e) Signing of confidentiality agreement by all parties involved
13. Have there been any cases where the complainant has approached you for conciliation?
- a) Yes
 - b) No

c) Don't know

14. Does your organization submit annual report regarding sexual harassment cases in each calendar year to the nodal district officer?

a) Yes

b) No

c) No information available

15. Are you aware of any government initiative for reporting of matters relating to sexual harassment of women at workplace?

a) Yes

b) No

16. Are you aware of any penalty if you don't comply with the provisions of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013?

a) Yes

b) No

17. Has your organization conducted any orientation/awareness programs regarding sexual harassment at the workplace and gender sensitization programs?

a) Yes

b) No

c) Don't recall

18. Does your organization have a zero-tolerance policy for Sexual Harassment?

a) Yes

b) No

19. Would you like to give any other suggestions/feedback on this issue?

ANNEXURE-D

**SURVEY FORM FOR UNORGANIZED SECTOR (THROUGH SEMI-
STRUCTURED INTERVIEWS)**

**SURVEY FORM FOR UNORGANIZED SECTOR (SEMI-STRUCTURED
INTERVIEWS)**

**RESEARCH PROJECT, NATIONAL LAW UNIVERSITY DELHI AND THE
NATIONAL HUMAN RIGHTS COMMISSION**

ON

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: A Study to assess its impact, implementation issues and concerns in various Government/PSUs/Private Sectors in Delhi (NCR)

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In this connection, we would like to interact with you and would like you to share your experience on the issue with us. Your inputs and suggestions would help us to arrive at the right conclusion. It will take only about 10 minutes. The information we gather will be treated as confidential and will be used only for academic purposes.

We thank you for all the help and cooperation in advance.

1. How long have you been working in this organization?
 - a) Less than one year
 - b) One to three years
 - c) More than three years
2. What according to you constitutes as sexual harassment at workplace?
 - a) Touching
 - b) Comments
 - c) Both
3. Are you aware of any sexual harassment laws at workplace?
 - a) Yes
 - b) No
4. Does your organization conduct or has conducted in the past, any awareness program regarding sexual harassment?
 - a) Yes
 - b) No
5. Are you aware of any sexual harassment laws at workplace?
 - c) Yes
 - d) No
6. Does your organization conduct or has conducted in the past, any awareness program regarding sexual harassment?
 - c) Yes
 - d) No

- e) Don't recall
7. If yes, what did you understand from these programs?
- a) Little knowledge about existence of the problem of workplace sexual harassment of women and existence of LC
 - b) Procedure of inquiry
 - c) Never attended
8. What are your suggestions to improve implementation of prevention of sexual harassment at your workplace?
- a) More training
 - b) CCTV
 - c) Transparency
 - d) More women in the workforce

Note: These options have been made to analyse the responses of the participants and thus, are not exhaustive in nature.