

SEXUAL HARASSMENT AT WORKPLACE

Company

Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourage women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth¹. With this idea the legislature formulated the

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

The need for such legislation was observed first time by the Supreme Court, in *Vishaka v State of Rajasthan*². In the absence of any law at that time providing measures to check the evil of sexual harassment of working



“Sexual harassment is using what Nature gave us to take what isn't ours. It's an act of violence not only against an individual, but the group—and it inevitably meets with the wrath of the group.”

women, the Supreme Court, in exercise of power available under Article 32 of the Constitution, framed guidelines to be followed at all workplaces or institutions, until a legislation is enacted for the purpose.

After 16 years of **Vishaka**, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 ("the Act") was enacted with the objective to provide protection against sexual harassment of women at workplace and for prevention and redressal of complaints of sexual harassment and for matters connected therewith incidental thereto.

The Act defines sexual harassment as unwelcome acts or behavior (whether directly or by implication) namely, physical contact and advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, any other unwelcome physical, verbal or non-verbal conduct of sexual nature³. Any act of unwelcome and sexual nature shall be considered as sexual harassment. The Delhi High Court in **Shanta Kumar vs CSIR** held that "undoubtedly, physical contact or advances would constitute sexual harassment provided such physical contact is a part of the sexually determined behaviour. ...a physical contact which has no undertone of a sexual nature and is not occasioned by the gender of the complainant may not necessarily amount to sexual harassment."

THE ACT ALSO PROVIDES THE CIRCUMSTANCES UNDER WHICH AN ACT MAY AMOUNT TO SEXUAL HARASSMENT. THESE ARE:

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(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

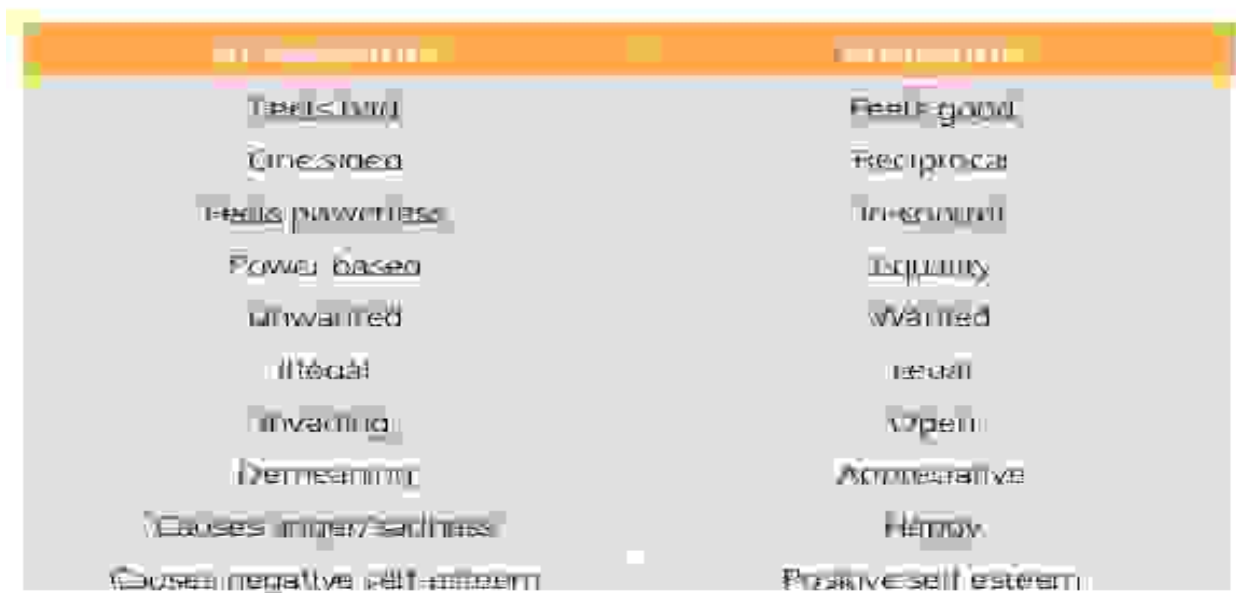
(v) humiliating treatment likely to affect her health or safety.

To enable prevention of sexual harassment at the workplace, it is critical to recognize and differentiate between welcome and unwelcome sexual behaviour. Listed are some examples of how “unwelcome” and “welcome” behaviour is experienced.



BEHAVIOUR

Behaviour



The important feature of the Act is that it envisages the setting up of Internal Complaints Committee at every office of the organisation or institution, having more than 10 employees, to hear and redress complaints pertaining to sexual harassment⁷. Where the number of employees are less than 10, the Act provide for setting up of Local Committee in every district by the District Officer. The committee while inquiring into such complaint shall have the same power as vested in a civil court. The Delhi High Court in its judgment in *Ruchika Singh Chhabra vs M/s Air France India and Anr.* "...directed that the ICC should be *constituted* in strict compliance with the requirements under law...".

APPLICABILITY

The Sexual Harassment laws apply to all Employers (viz. individuals, partnerships, LLPs or Companies) in India irrespective of the size, scale, nature of industry or location. It covers employee harassment in the workplace for women employees.

Compliances under Sexual Harassment Laws

- Constituting an **Internal Complaints Committee (ICC)** under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;
- The ICC needs to have an external representation from an NGO or a Lawyer or a person having knowledge and experience in such areas.
- Drafting of the **Sexual Harassment Policy** and approval of the same by the Board.

WHAT'S NOT SEXUAL HARASSMENT:

Within limits, following are acceptable and not considered as instances of sexual harassment: - Performance counselling

- Social interaction
- Showing concern
- Encouragement
- Polite compliment
- Friendly conversation



WHO IS AGGRIEVED PERSON UNDER POSH ACT?



WHO SHOULD INVESTIGATE SEXUAL HARASSMENT COMPLAINTS?

- ✓ Internal Committee formed under POSH Law will handle and investigate workplace sexual harassment

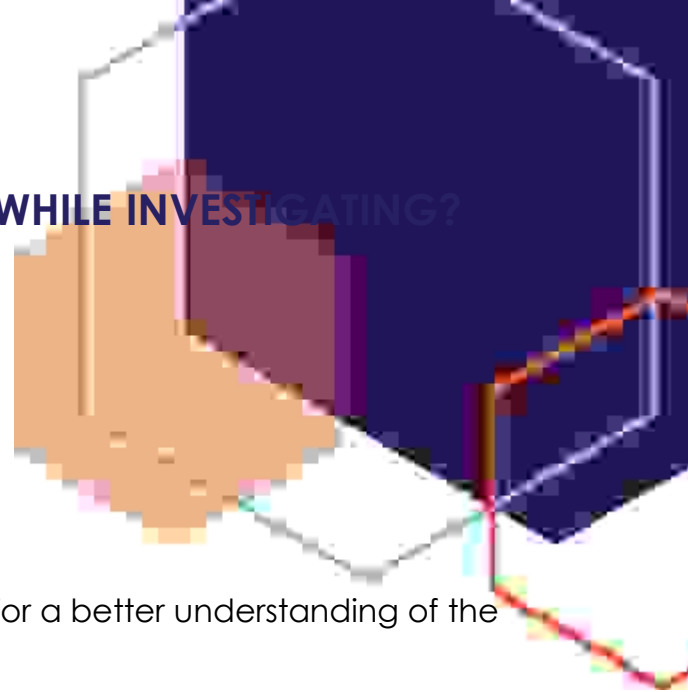
WHAT ARE THE POINTS TO BE KEPT IN MIND WHILE INVESTIGATING?

A. The Scope of Sexual Harassment Investigation

- What should you investigate?
- Is there any witness?
- Where should you begin?

B. Although resolving the below-mentioned queries for a better understanding of the sexual harassment case is important.

- Nature of the complaint
- Know what the victim wants
- Pursuing new incidences



C. Tackle False Sexual Harassment Reports

Sexual harassment has been a tragic truth of the corporate world. But every now and then, we witness false sexual harassment reports filed to take down the harasser.

A thorough investigation is required to know whether a complaint is true or false. For this, you need a detailed written document from the complainant and the harasser. You need both perspectives about when the incident took place, what happened, and who was present.

Once done, verify their testimony with the mentioned witnesses. Do not entirely rely on witnesses while investigating the case. There are chances of false witnesses that might change the direction of your investigation.

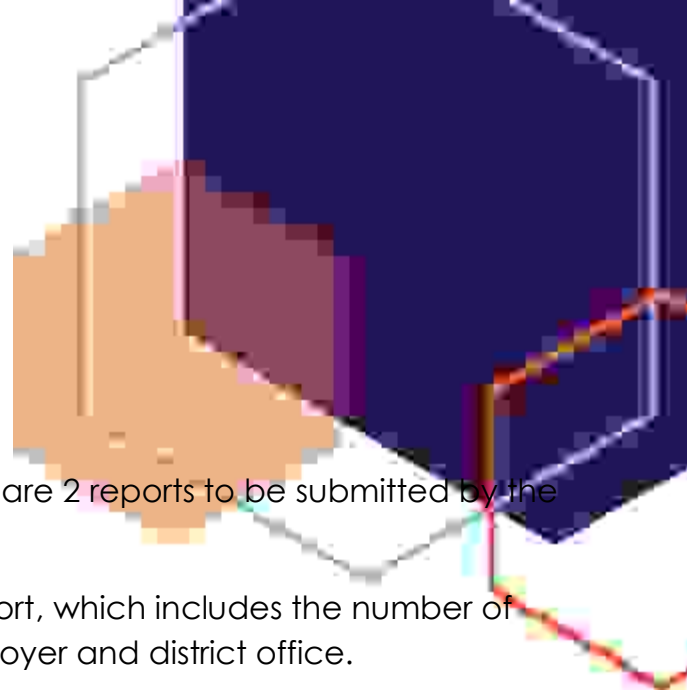
Verify the document submitted to you from other sources too before you come to a conclusion. These may include complainant and the harasser's behavior to other employees in the workplace, and their involvement in any other sexual harassment incidents in the past. If you find it difficult to come to a conclusion and need more insights, you could even consult the complainant and the harasser's previous organization to gather more information about them.

D. External IC Member Helps in Just Decisions

In order to make the right decisions, hiring an external IC member would be a smart move. External IC members are experts who have been professionally trained for handling and investigating sexual harassment in the workplace. They are well-versed with the PoSH law and have experience solving and preventing sexual harassment.

REPORTING UNDER ANNUAL REPORT:





As per Prevention of Sexual Harassment Act, 2013, there are 2 reports to be submitted by the employer:

- 1. It is the duty of the ICC to submit an annual report, which includes the number of cases filed/disposed of every calendar year to the employer and district office.
- 2. The employer has a statutory obligation to ensure this report is included in the annual report of the organization filed to the Registrar of companies.

PART-I

Section 21 – Internal Committee to submit annual report:

As per the Act – “(1) The Internal Committee or the Local Committee shall in each calendar year prepare, in such form and when may be prescribed, an annual report and submit the same to the employer and the District Officer.

PART-I

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

1. No. of complaints received;
2. No. of complaints disposed of;
3. No. of cases pending for more than 90 days;
4. No. of workshops/awareness programmes carried out;
5. Nature of action taken by the employer/DO;

WHO IS A DISTRICT OFFICER (DO)?

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

Reporting under Directors Report:

The Ministry of Corporate Affairs, through a Notification dated July 31, 2018, amended the Companies (Accounts) Rules 2014, in accordance with the request made by the Ministry of Women and Child Welfare.

By this amendment, it is now mandatory to disclose that the company has implemented the provisions of the Sexual Harassment Act.

It is now compulsory for a company to make a statement in the Director's Report that it has complied with the provisions regarding the constitution of the Internal Complaints Committee (ICC).

This amendment comes as a major step towards making the workplaces in the private sector safer for women, thereby casting higher responsibility on the Board of Directors to ensure compliance under the POSH Laws. Penal provisions that ensue in case of non-disclosure under Section 134 of the Companies Act will now be levied in the matters of non-disclosure of the implementation of the Sexual Harassment Act as well

PENALTY PROVISIONS:

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

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.

WHERE AN EMPLOYER REPEATS A BREACH UNDER THE ACT, THEY SHOULD BE SUBJECT TO:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

CASES:



Data, collected by ComplyKaro services, shows that the 100 BSE registered companies have witnessed a 14% rise in the reports of sexual harassment complaints at the workplace. On 2019, these companies have registered 823 cases of sexual harassment, compared to 722 last year.

ComplyKaro Services, which is an end-to-end advisory service that helps companies comply with "Prevention of Sexual Harassment (PoSH)" in India, was founded by Vishal Kedia, Ashish Singhania, Prem Rajani and Sangeeta Lakhin 2014.

The report names IT major Wipro for reporting the highest number of complaints, that too with a rise of 41 cases. Last year, Wipro had reported 101 cases, compared to 142 this year. ComplyKaro, in the report, clarified that the high number of reportage also means that

people are getting more aware of the sexual harassment and coming out to report such incidents.

In addition, there has also been a growth of women's representation in these companies, registering 33% in 2019 from 25% in 2016.

Kedia told ET that the increased focus and importance given to the Prevention of Sexual Harassment (PoSH) has ensured compliance with regulations, heightened awareness and greater employee empowerment. "Greater awareness of PoSH law in light of the MeToo movement and the corresponding reputational risk involved for corporates in case efficacious internal redressal mechanism is not provided," he added.

MeToo movement, which began in the US in 2017, caught fire in India in 2018, after Bollywood actress Tanushree Dutta accused actor Nana Patekar of sexual harassment during a shoot. TVF CEO Arunabh Kumar, ScoopWhoop cofounder Suparn Pandey have been accused of sexual misconduct as well.

Meanwhile, ICICI bank, on the other hand, has cut its sexual harassment complaints by 40 cases. Another IT major Infosys has also cut its sexual harassment complaints by 8 cases.

Another data published by the Ministry of Women and Child Development states the number of cases of sexual harassment in the workplace registered in India increased from 54% from 371 cases in 2014 to 570 in 2017. According to the ministry, 533 cases have already been reported in the first seven months of 2018.

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