



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

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Indian Express 31st May 2016

Survey by ActionAid UK

- Nearly four out of five women (**79** per cent) in India have experienced some form of harassment or violence in public.
- Every **three out of four** women in the western states of the country, including Rajasthan, have experienced some form of harassment.
- **84** per cent of the women who experienced harassment were in the age group of 25 to 35 years,
- **82** per cent of them were full-time workers and
- **68** per cent were students.

(survey was conducted online with 502 women aged 18 and above from major cities across India between May 3 and May 11).

Indian Express 31st May 2016

- Respondents from north Indian states polled the highest percentages for “situations of harassment”, such as on way to/from work (60 per cent), college or school (50 per cent), on public transport (74 per cent), walking the streets (70 per cent) and so on.
- 92 per cent women in this age group responded with yes when asked if they have felt at risk of harassment in their city.
- Women aged between 25 and 35 years reported highest instances of harassment, compared to other age groups, on public transport (70 per cent);
- Among “forms of harassment”, 44 per cent said they have been wolf-whistled and have had sexual comments passed at them.

Sexual harassment charge: HR manager told to pay Rs 50,000 for 60 months to ex-employee

TNN | Jan 7, 2017, 10.57AM IST

BENGALURU: The state labour department has imposed a monthly penalty of Rs 50,000 for five years on a senior manager of a software company who is facing charges of sexual harassment. The department also directed the company not to promote him or give him any hike for the next three years.

The additional labour commissioner, who is the appellate authority, has held the company responsible for the violation and asked it to pay monetary compensation to the woman.

The complainant, a former employee of I P Infusion Software India Private Limited in Mahadevapura, had said she was sexually harassed by Bharat Chandrashekhar, senior manager (HR), while she was in service. She appealed to the labour department after the company's internal complaints committee quashed her petition.

In his December 27, 2016 order, T Srinivas, additional labour commissioner, directed the company to hold back Chandrashekhar's annual salary increment and other monetary benefits for three years from January 1, 2017. He directed the company to deduct Rs 50,000 from Chandrasekhar's salary every month for 60 months, and pay the same to the complainant.

In case Chandrashekhar leaves the company, then the amount should be deducted from the money payable by the company to him and the same should be paid to her. And if the company fails to do so, then it has to pay the amount to the petitioner on its own, said the order, a copy of which is with TOI.

Holding the company guilty of creating an atmosphere conducive for sexual harassment, the appellate authority ruled that under the provision of Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, the company management has to pay her Rs 4,80,000 towards her monthly salary between September 2015 and December 2016.

The complainant was drawing a monthly salary of Rs 30,000 when she was relieved of her duties in 2015.

Indian Law on Sexual Harassment



Points to be covered

- ☐ Historical Background
- ☐ Preamble
- ☐ Main Definitions
- ☐ Important Sections
- ☐

History of Law on Sexual Harassment



Singing lewd songs directed at women in public spaces is considered sexual harassment under **IPC Section 294**. The offenders could be jailed up to 3 months, or be fined, or both.

Making unwanted physical contact against a woman's will is a crime under **IPC Section 354 (A)**. The man can face jail term which may extend to three years.

Demanding sexual favours despite indication of disinterest is a crime under **IPC Section 354 (A)**. The accused can either face jail time ranging from 1 - 3 years or fine or both.

Watching, capturing or sharing images of a woman engaging in a private act without her CONSENT is voyeurism and is punishable under **IPC Section 354 (C)**. The man faces jail term ranging from 1 - 3 years in addition to fine. If the man is convicted the second time, then he faces jail term ranging from 3 - 7 years along with fine.

Following someone with or without their knowledge is stalking and is an act of sexual harassment. The man can face jail term ranging 3 - 5 years coupled with fine as per **IPC Section 354 (D)**.

Morphing pictures of a woman and sharing them with an intent to harass and defame her is a crime as per **IPC Section 499**.

The punishment may include jail time upto 2 years or fine or both.

Abusing a woman with sexually coloured remarks on social media is a crime under **IPC Section 509**. The man may face jail time of 3 years and fine.

If a woman's clear refusal to someone's sexual advances is met by threats to harm her physically or her reputation and property, it is a crime under **IPC Section 503**. The man can either face jail time of 2 years or fine or both.

Making sexually coloured remarks against a woman in a public space is a crime under **IPC Section 509**. The man can either face jail time of 3 years and fine.

**Vishaka and others
vs.
Govt. of Rajasthan and others
JT 1997 (7) SC 384**



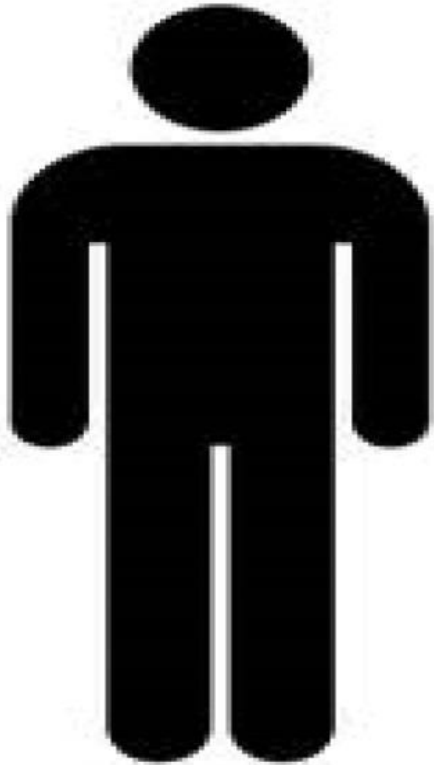
The Vishaka Judgment - 1997

Supreme Court acknowledged that:

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

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

Object: Prevention + Prohibition + Redressal



Implementation:
An important
responsibility of
the Employer

It applies to the whole of India

PREAMBLE

Sexual harassment results in violation of

- a. The fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India.
- b. Her right to life and to live with dignity under article 21 of the Constitution.
- c. Her 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;

PREAMBLE

Protection against sexual harassment and the right to work with dignity are universally recognized 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

The “workplace”



The extended workplace ...

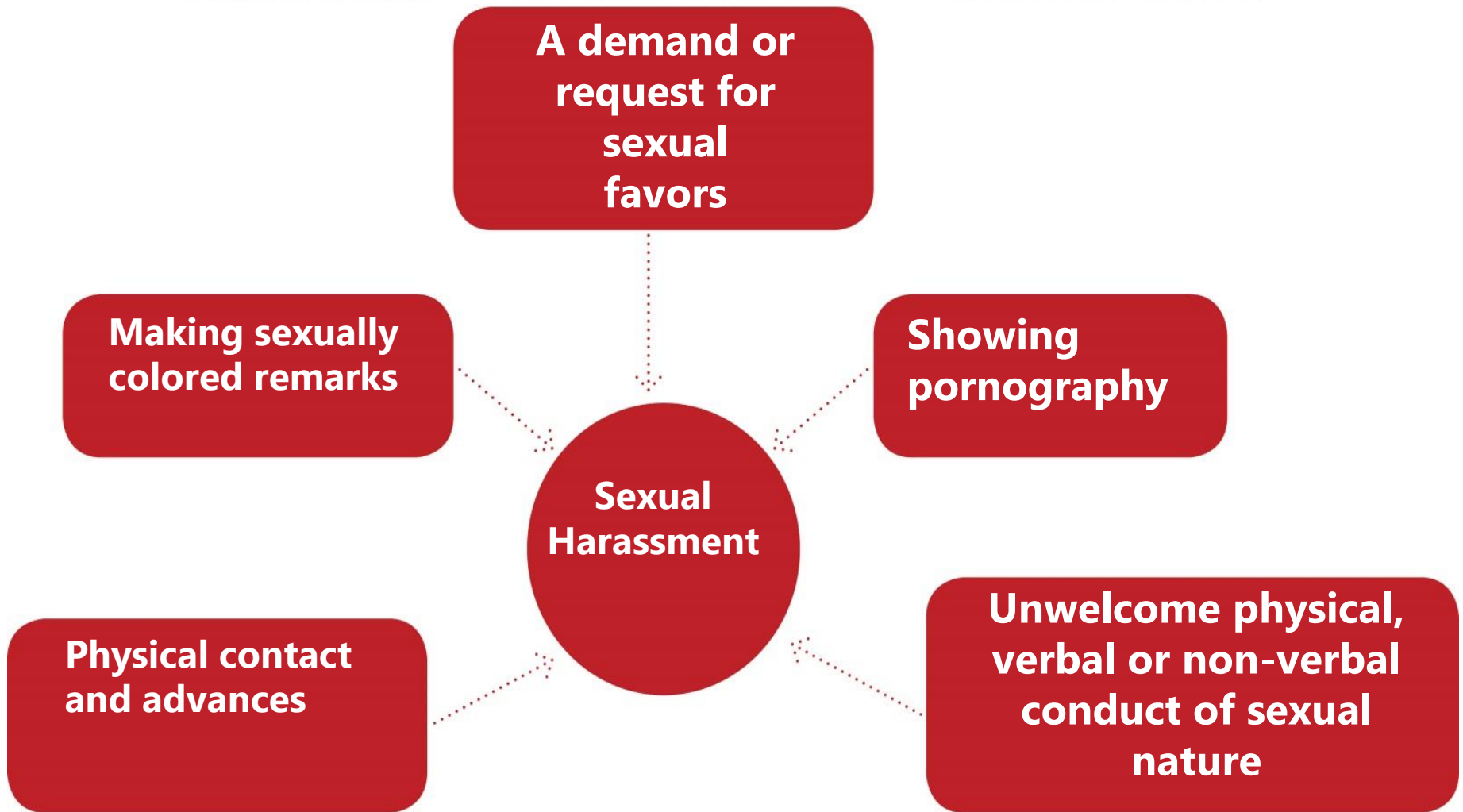


Any place visited by the employee

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



"Sexual Harassment" under the new law



Extended Definition

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 also 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.

Aggrieved woman

“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;

Employer

“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.

Workplace

"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;

Workplace

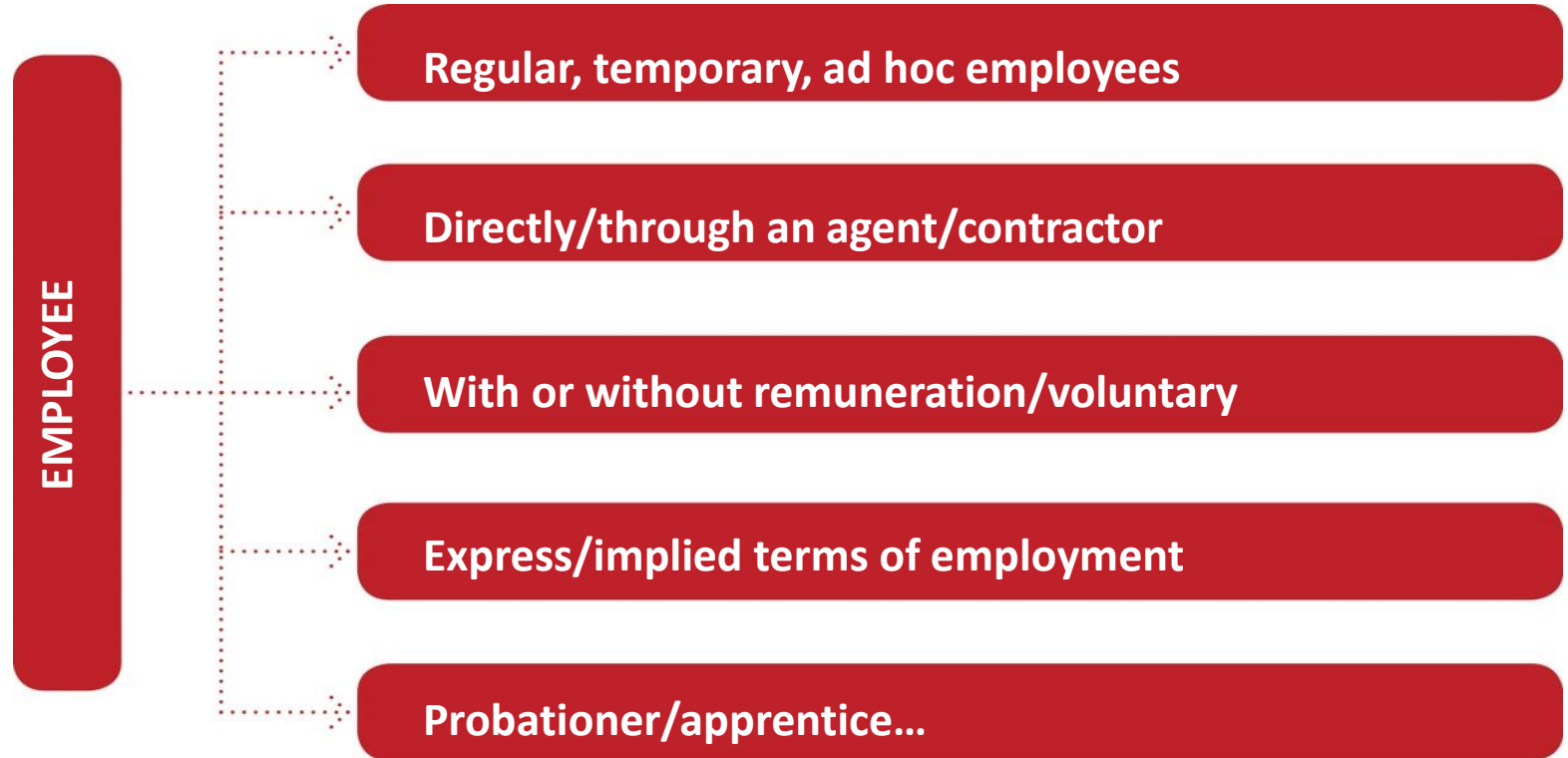
"workplace" includes-

(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;

Workplace

- (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;

Who is an “Employee”?



Complaint Committees

Every employer of a workplace shall, by an order in writing, constitute Committee to be known as **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.

Every District Officer shall constitute in the district concerned, a committee to be known as the "**Local Complaints Committee**"
: to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Making complaint

Section 9 -

(1) Any aggrieved woman may make, in writing, a complaint 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:

- If 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 .

- ICC or LCC may, for the reasons to be recorded in writing, extend the time limit not exceeding three months.

(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.

Conciliation

Section 10 - Conciliation

(1) The ICC or LCC 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 ICC/LCC 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 ICC or LCC 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 (7), no further inquiry shall be conducted

Action during pendency of inquiry

Section 12 -

(1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the ICC/LC 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 have.

(3) ICC/LC 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.

Enquiry Report

Section 13 -

(1) ICC/LCC 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.

(2) Where the ICC/LCC 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.

When Allegation proved

ICC/LC 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 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.

(iii) It may direct to the respondent to pay such sum to the aggrieved woman:

(iv) In case the respondent fails to pay the sum 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.

False/Malicious Complaint

Section 14 - Punishment

ICC/LC 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 shall be established before any action is recommended.

Prohibition of publication

Section 16 -

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 ICC/LC

shall not be published, communicated or made known to the public, press and media in any manner:

(information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity etc.)

Important provisions

- 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.
- 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.
- Every offence under this Act shall be non-cognizable.
- 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.

An **FIR (First Information Report)** is basically a complaint document and the first step of the criminal process.

Posting any obscene or defamatory material on a public online platform intending to harass a woman is a crime under **Section 67 of the IT Act**.

The accused can face jail time of 2 years coupled with a fine.



THANK YOU