



# TRAINING MODULE ON PREVENTION OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

**Shashi Bala**

V.V. GIRI NATIONAL LABOUR INSTITUTE



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**V.V. GIRI NATIONAL LABOUR INSTITUTE**  
(An Autonomous Body of Ministry of Labour and Employment, Government of India)  
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## Preface

Sexual Harassment is a hazard encountered in workplaces across the world that reduces the quality of working life, jeopardizes the well-being of women, undermines gender equality and imposes costs on firms and organizations. Sexual harassment results in violation of the fundamental rights of a women to equality under article 14 & 15 of the constitution of India and her right to life and to live with dignity under article 24 of the constitution and right to practice any profession or to carry on any occupation, trade, or business which includes a right to safe environment free from sexual harassment. The protection against sexual harassment and the right to work with dignity are universally recognized human rights by various international conventions and instruments.

Over the last decade, there has been a growing awareness worldwide of the existence and extent of sexual harassment in the workplace. Governments, employers' and workers' organizations in both industrialized and developing countries have introduced a range of laws, policies and procedures aimed at preventing and combating it. In 2013 the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was brought into force by the Ministry of Women and Child. Despite these efforts, the benefits of these laws do not, often, percolate down to the beneficiaries. The main cause of this deficiency is the lack of awareness of the main stakeholders, like the women workers, the beneficiaries themselves, and sometimes, the implementers. While imparting training at various workplaces, it was felt that there is a need to develop a training manual which should include comprehensive information on different aspects of sexual harassment policies. The module will be extremely useful to different stakeholders who are engaged in the area of disseminating information on sexual harassment laws, policies and procedures. The present module is designed, keeping in view the concept of Sexual Harassment, Global and National level Initiatives to Prevent Sexual Harassment, Effective working of Internal Complaints Committees / Local Complaints Committees, Creating Sustainable Inclusive Environment in the World of Work along with good practices from Indian scenario. This training module consists of group exercises and related handouts on gender issues and sexual harassment at workplace. The exercises are designed to be interactive, participatory and experiential to maximise learning. Entire module has been developed to assist facilitators to introduce and explore gender issues and sexual harassment at the workplace.

**Manish Kumar Gupta**  
(Director General, VVGNLI)



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*Special thanks to research team, including Research Associate Dr. Puja Singhal, Computer Operator- Ms. Parul Mallah who assisted at various stages of the research and provided their expertise to complete this module. I acknowledge with thanks Ms. Valsamma B. Nair, Stenographer Gr. II for her time to time interventions towards this study and taking care of administrative responsibilities for smooth conduct of the study. I would also like to thank Mr. Harsh Singh Rawat, Administrative Officer, Mr. S.K. Verma, Assistant Library and Information Officer, Mr. Rajesh Kumar Karn and Mr. Vikesh Kumar from Publication Section for their valuable support.*

**(Shashi Bala)**



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**MODULE 1**  
**UNDERSTANDING OF SEXUAL HARASSMENT**



# Module I

## Understanding Sexual Harassment

*“There would be nothing to frighten you if you refused to be afraid.”*

*- Mahatma Gandhi*

### 1.1 Understanding of Gender Issues at Workplace

#### 1.1.1 Meaning of Gender

“Gender is a socially constructed notion. It is not the same as sex which is about biological characteristics of women and men. It is also not synonymous with women. Gender is determined by the conception of tasks, functions and roles attributed to women and men in society and in public and private life”.

[Gender in practice.  
Swiss Agency for Development and Cooperation(2003)]

The gender approach is distinct in that it focuses on women and men and not on women in isolation. It highlights:

- the differences between women’s and men’s interest even within the same household and how these interact and are expressed.
- the conventions and hierarchies which determine women’s and men’s position in the family, community and society at large where by women are usually dominated by men
- the differences among women and among men, based on age, wealth, ethnic background and other factors
- the way gender roles and relations change, often quite rapidly, as a result of social, economic and technological trends

[Wijk and Francis, 1999]

#### 1.1.2 Meaning and importance of Gender Equality at Workplace

Gender equality is achieved when people are able to access and enjoy the same rewards, resources and opportunities regardless of whether they are a woman or a man.

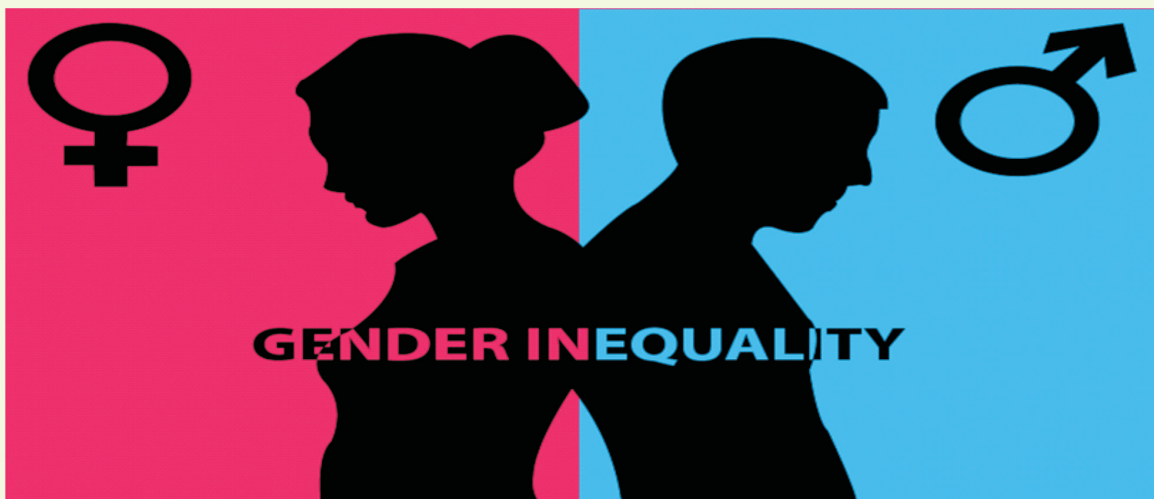
The aim of gender equality in the workplace is to achieve broadly equal outcomes for women and men, not exactly the same outcome for all individuals. To achieve this requires:

- workplaces to provide equal pay for women and men for work of equal or comparable value
- the removal of barriers to the full and equal participation of women in the workforce
- access to all occupations and industries, including leadership roles, for women and men
- elimination of discrimination on the basis of gender, particularly in relation to family and caring responsibilities for both women and men.

Achieving gender equality is important for workplaces not only because it is 'fair' and 'the right thing to do', it is also vitally important to the bottom line of a business and the productivity of our nation.

### 1.1.3 Concept of Gender Inequality at Workplace

Gender Inequality, in simple words, may be defined as discrimination against women based on their sex. Women are traditionally considered by the society as weaker sex. They have been accorded subordinate position to men. They are often exploited, degraded, violated and discriminated both in the homes and in the outside world. This peculiar



Source:[http://az616578.vo.msecnd.net/files/2016/03/07/6359291542315826711975686250\\_genderequality.png](http://az616578.vo.msecnd.net/files/2016/03/07/6359291542315826711975686250_genderequality.png)

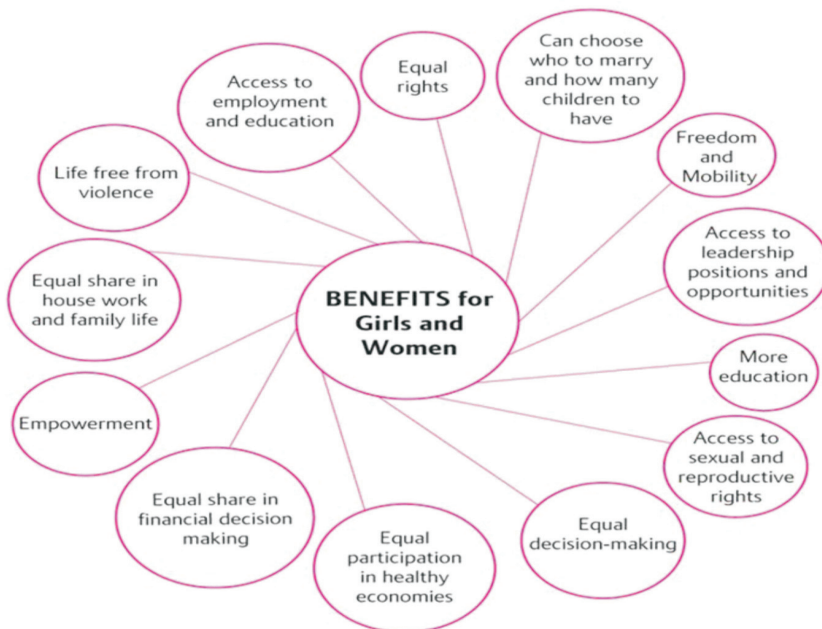
type of discrimination against women is prevalent everywhere in the world of work and more so in the Indian society.

Gender inequality needs to be addressed at all levels because women as a group suffer discrimination in all spheres of their lives. Discrimination is hard to define and detect, but its effects are clear. It impacts the well-being of individuals, of their families as well as of enterprises, of the labour market and society as a whole.

Patriarchal relations determine the base for gender discrimination. These patriarchal values have perpetuated women's dependence on men, who are considered to be more powerful than them. The most brutal discrimination against women is the form of harassment they have to face at workplace.

Gender differences involve both physical and emotional factors. They are essentially the characteristics that influence male and female behavior in the workplace. These influences may stem from psychological factors, such as upbringing, or physical factors, such as an employee's capability to perform job duties. Differences may also stem from gender stereotypes related to men and women. For instance, a stereotypical assessment is that women belong in the home while men work and provide support. Stereotypes often lead to sex discrimination in the workplace.

## Benefits of Gender Equality for Girls and Women



Source: [http://images.slideplayer.com/23/6878403/slides/slide\\_10.jpg](http://images.slideplayer.com/23/6878403/slides/slide_10.jpg)

### 1.1.4 Benefits of Workplace Gender Equality

#### a) Gender equality attracts top talent

A workplace that is equally appealing for women and men will provide employers with access to the entire talent pool. As women are increasingly more highly educated than men, a workplace that is not attractive to women risks losing the best talent to competitors.

#### b) Gender equality can reduce expenses

Replacing a departing employee can cost 75 per cent or more of their annual wage. As both women and men are more likely to remain with an organisation they view as fair, employee turnover for an organisation offering gender equality can be reduced, thereby decreasing the high expense of recruitment.

#### c) Companies with gender equality perform better

A considerable body of research suggests a link between gender equality and better organisational performance. While there are a range of reasons to explain this link, one contributing factor is that diversity brings together varied perspectives, produces a more holistic analysis of the issues an organisation faces and spurs greater effort, leading to improved decision-making.

#### d) Gender equality improves national productivity and competitiveness

The World Economic Forum has found a strong correlation between a country's competitiveness and how it educates and uses its female talent. It states: *"...empowering women means a more efficient use of a nation's human talent endowment and... reducing gender inequality enhances productivity and economic growth. Over time, therefore, a nation's competitiveness depends, among other things, on whether and how it educates and utilizes its female talent."*(World Economic Forum, "The Global Gender Gap Report," (2011): p.27).

In the Australian context, the Grattan Institute has argued that removing disincentives for women to enter the workforce should be an economic reform priority. It has found that increasing female workforce participation by 6% has the potential to add \$25 billion each year to the Australian economy.

By balancing the scales of equality, women and men will have an equal chance to contribute both at home and in the workplace, thereby enhancing their individual wellbeing, and that of society.





## 1.2 Defining Sexual Harassment

### 1.2.1 What is harassment?

A dictionary definition of *harassment*: “vex by repeated attacks; trouble, worry”, makes it clear that such behaviour towards colleagues is undesirable and can undermine productivity and morale. If one adds the sexual dimension, with its personal, psychological, moral and marital implications, the problem becomes much more complex.

Definitions vary – from verbal harassment by sexist, crude or suggestive remarks, the display of sexually offensive pictures, through casual touching or open advances, to the extremes of coercion or blackmail if a manager has the power to threaten a subordinate’s job if she (or he) doesn’t “play along”, to attempted or actual rape. Pinpointing the problem is difficult: sometimes the more “innocent” forms of harassment – a stare making the woman feel uncomfortable, the too-personal comment, or “friendly” touching – may mean the man is testing her reaction and will move further if not clearly repelled.

### 1.2.2 Sexual Harassment

Sexual harassment is a legal term, created for the purpose of ending harassment and discrimination against women in the workplace. The term is constantly being redefined and extended in legislation and court decisions. However, not all sexual behavior in the workplace is harassment, and the laws against sexual harassment do not extend to situations outside the workplaces or schools.

The basic definition of sexual harassment comes from the United States Equal Employment Opportunity Commission (EEOC), which is as follows:

Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.

### **This definition has been further elaborated in the following manner:**

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

## Understanding of Sexual harassment in India

Sexual harassment in India is termed “Eve teasing” and is described as: unwelcome sexual gesture or behaviour whether directly or indirectly as sexually coloured remarks; physical contact and advances; showing pornography; a demand or request for sexual favours; any other unwelcome physical, verbal/non-verbal conduct being sexual in nature. The critical factor is the unwelcomeness of the behaviour, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator. According to India’s constitution, sexual harassment infringes the fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution. Although for long there was no specific law against sexual harassment at workplace in India, but many provisions in other legislations are aimed at protecting against sexual harassment at workplace, such as Section 354, IPC deals with “assault or criminal force to a woman with the intent to outrage her modesty, and Section 509, IPC deals with “word, gesture or act intended to insult the modesty of a woman.

During 2013 new amendments were carried out in Indian Penal Code for acts relating to sexual harassments against women. Section 354A, 354B, 354C, 354D was newly inserted in Indian penal code, especially for the acts which shall be treated as sexual harassments.

According to the section 354A, the following activities by a man shall be treated as sexual harassment against women.

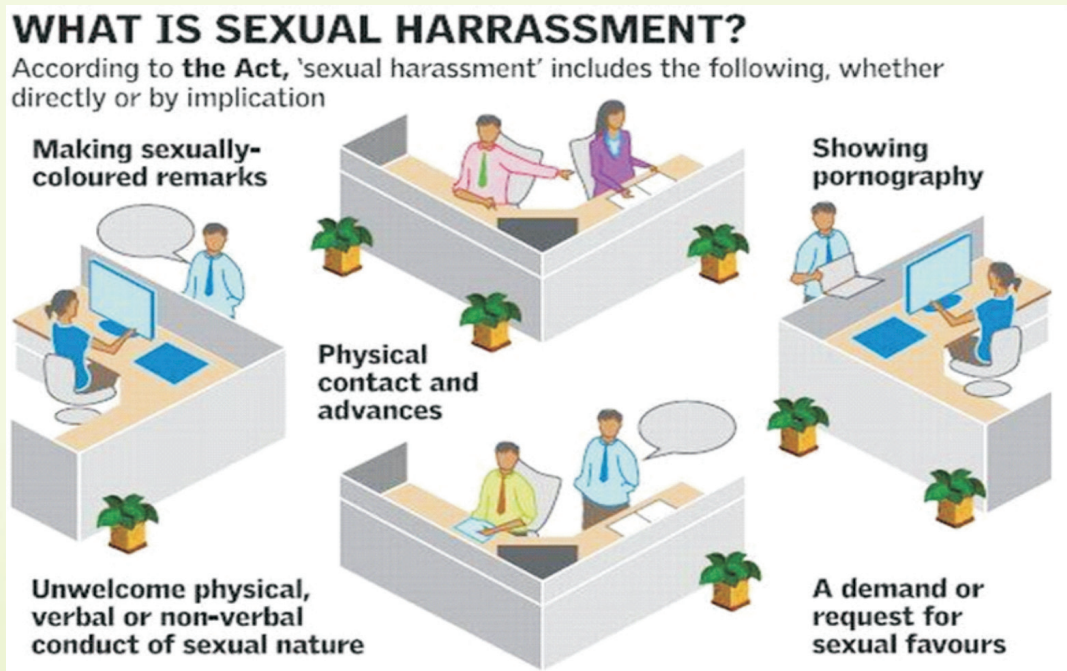
- Physical contact and advances involving unwelcome and explicit sexual overtures; or
- demand request for sexual favours; or
- showing pornography against the will of a woman; or
- making sexually coloured remarks, will be treated as an offence of sexual harassment on women.

A workable definition would be: *Sexual harassment in the workplace is unwelcome or unwanted attention of a sexual nature from someone at work, that causes discomfort, humiliation, offence or distress, and / or interferes with the job. This includes all such actions and practices of a sexual nature by a person or a group of people directed at one or more workers.*

### 1.2.3 What is Sexual Harassment at Workplace?

The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 states that if the following circumstances occur or are present in relation to, or connected with any act or behaviour of sexual harassment, it may amount to sexual harassment at the workplace.

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



Source: <http://www.wordlypost.in/wp-content/uploads/2014/11/sexual-harssament-act-in-india.jpg>



## 1.2.4 Different Concepts of Workplace

### Definition of Workplace

- Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit in the public sector; either established/owned, controlled or wholly or partly financed by funds received directly or indirectly by the government or local authority or a government company or corporation or a co-operative society.
- 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 services.
- Hospitals or nursing homes.
- Any sports institutes, stadium, sports complex or competition or games venue, even the residence if used for training, sports or other related activities.
- 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.
- A dwelling place or house.
- Workplace of unorganized sector.

### What is the Workplace in the Unorganized Sector?

An enterprise owned by individuals or self-employed workers:

- engaged in the production of goods
- engaged in the sale of goods
- providing service of any kind whatsoever
- Where the enterprise employs workers and the number of such workers is less than 10.

## 1.2.5 The Range of Harassing Behaviour

A variety of behaviour is designated as sexual harassment in the different measures which proscribe it. These range from some of the most egregious behaviour prohibited by the criminal law — rape, sexual assault — to conduct which can, in certain circumstances, be an innocuous part of day-to-day interaction — comments, jokes, physical contact. The kinds of conduct characterised as sexual harassment can be categorized as physical, verbal and non-verbal conduct. Each category encompasses a wide range of actions, some of which are illustrated below.

Examples of Sexual Harassment		
Physical conduct	Verbal conduct	Non-verbal conduct
Physical violence	Comments on a worker's appearance, age, private life, etc.	Display of sexually explicit or suggestive material
Physical contact, e.g. touching, pinching	Sexual comments, stories and jokes	Sexually-suggestive gestures
The use of job-related threats or rewards to solicit sexual favors	Sexual advances	Whistling
	Repeated social invitations	
	Insults based on the sex of the worker	

Source: M. Rubenstein: "Dealing with sexual harassment at work: The experience of industrialized countries", in Conditions of Work Digest: Combating sexual harassment at work, Vol. 11, No. 1, 1992, p. 11.

## 1.2.6 Myths and Realities of Sexual Harassment at Workplace

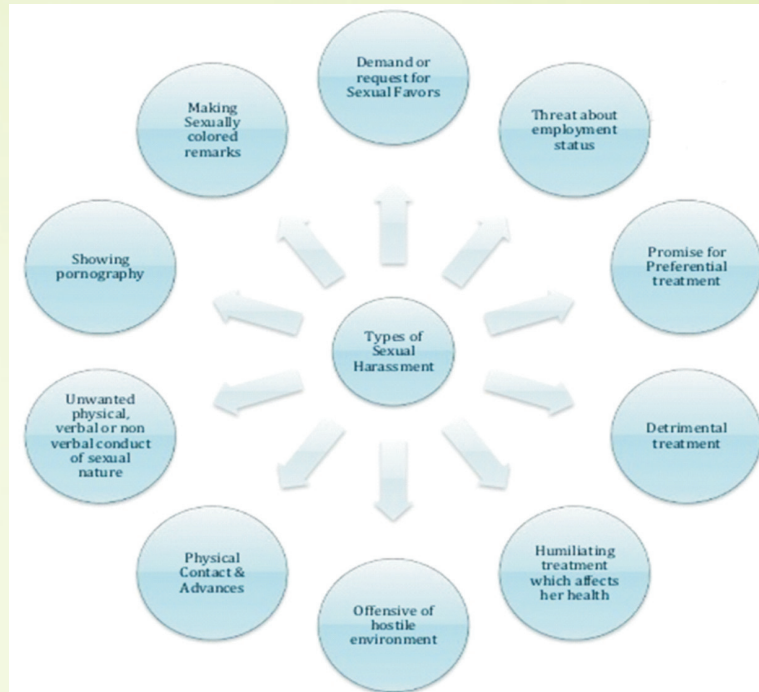
**MYTHS AND REALITIES:  
SEXUAL HARASSMENT AT THE WORKPLACE**

- Myth:** This so-called harassment is just harmless flirting. Women enjoy this kind of attention.
- Reality:** When flirting is unwelcome, it is known to cause anxiety, depression and health problems in women. It often forces them to leave the work force, and in extreme cases, even commits suicide.
- Myth:** Women provoke sexual harassment by the way they behave and dress. Respectable women do not face sexual harassment.
- Reality:** All kinds of women, whether old or young, dressed in sarees or burqas, construction workers or bankers, report having faced harassment. It is not the conduct of a woman that matters. Rather, harassment occurs because women tend to get sexualised in a male-dominated society.
- Myth:** The best way to put an end to sexual harassment is to ignore it.
- Reality:** Silence never helps. It may be misconstrued as enjoyment, encouraging the harassment to continue. It is important to object to the unwelcome conduct, and if necessary, raise an alarm and complain.
- Myth:** It is wrong for the law to restrict sexual expression/flirting among adults, only because they happen to work together.
- Reality:** The law does not restrict consensual sexual expression/flirting between adults at the workplace; it restricts only that conduct which the woman finds unwelcome and hostile. Flirting that is coercive, or ignores the woman's discomfort and refusal, is wrong.
- Myth:** Most charges of sexual harassment are a way to get back at bosses and colleagues.
- Reality:** Complaints are in fact under-reported because women fear stigma and possible loss of job for speaking out against sexual harassment. It is only in extremely rare instances that complaints are unsubstantiated.

Ministry of Labour and Employment  
PARTNER FOR LABOUR DEVELOPMENT  
www.pld.gov.in

Source: [http://feminisminindia.com/2015/12/17/know-sexual-harassment-workplace-law/#.VwzXT\\_971U](http://feminisminindia.com/2015/12/17/know-sexual-harassment-workplace-law/#.VwzXT_971U)

## 1.3 Types of Sexual Harassment



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### Types of Sexual Harassment at the Workplace

Sexual harassment manifests itself in different forms – verbal, non-verbal and physical. The fourth category is called “Quid pro quo”. Some examples are:

#### a. Physical conduct

- Physical violence
- Rape or attempted rape
- Physical contact, e.g. unwelcome touching, patting, stroking, grabbing pinching and hugging
- Blocking someone’s path with the purpose of making a sexual advance.

#### b. Verbal conduct

- Comments on a worker’s appearance, age, private life, etc.
- Sexual comments, stories and jokes



- Sexual advances (explicit or implicit )
- Repeated unwelcome social invitations
- Insults based on the sex of the worker
- Condescending or paternalistic remarks
- Telling lies or spreading rumors about a person's personal or sex life.

### c. **Non-verbal conduct**

- Display of sexually explicit or suggestive material
- Sexually suggestive gestures
- Starting, stalking, whistling, etc.
- Unwanted SMS/e-mail containing sexual comments.

### d. **Quid pro quo**

It occurs when (1) job benefit, including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment are associated with the provision of sexual favours, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment issues; or (2) the rejection of a sexual favour or request for sexual favour results in a tangible employment detriment, a loss of a job benefit of the kind described above.

### e. **Hostile work environment**

Hostile working environment involves uninvited and unwelcome conducts or behaviour, whether physical, verbal or non-verbal, leading to a work environment that is uncomfortable to an employee.

There are two legally recognised types of sexual harassment:

1. Quid pro quo sexual harassment
2. Hostile environment sexual harassment.

The victims of sexual harassment are more likely to bring charges and take legal actions against employers and harassing individuals than they were in the past. According to EEOC statistics, well over 90 per cent of the sexual harassment charges filed have involved harassment of women by men. However, some sexual harassment cases have been filed by men against women managers and supervisors and for same-sex harassment.



Two types of sexual harassment are defined as follows.

### 1.3.1 - Quid pro quo

It occurs when (1) job benefit including employment, promotion, salary increases, shift or work assignments, performance expectations and other conditions of employment are associated with the provision of sexual favours, usually to an employer, supervisor or agent of the employer who has the authority to make decisions about employment issues; or (2) the rejection of a sexual favour or request for sexual favour results in a tangible employment detriment, a loss of a job benefit.

**Quid Pro Quo**

Expressed or implied demands for sexual favors in exchange for a benefit or favorable treatment (a promotion, pay increase, additional or reduced job responsibilities, etc.) or to avoid unfavorable treatment (termination, demotion, etc.) in the workplace.

Can be perpetrated only by someone in a position of power or authority over another (e.g., manager or supervisor over a subordinate).

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Source: <http://image.slidesharecdn.com/sexharassmentassociatesfinal2013-130701074703-phpapp01/95/sexual-harassment-awareness-and-prevention-9-638.jpg?cb=1372665136>

### 1.3.2 Hostile Work Environment

Hostile working environment involves uninvited and unwelcome conducts or behaviour, whether physical, verbal or non-verbal, leading to a work environment that is uncomfortable to an employee.



Source: <http://image.slidesharecdn.com/preventionandprohibition-130712044742-phpapp02/95/prevention-of-sexual-harassment-at-workplace-and-criminal-prosecution-for-sexual-harrasment-11-638.jpg?cb=1373605243>

## Comparison between Quid Pro Quo and Hostile Environment Sexual Harassment

### QUID PRO QUO SEXUAL HARASSMENT

- Workplace benefit promised, given to, or withheld from harasser by harasser
- In exchange for sexual activity by harassee
- Generally accompanied by a paper trail

### HOSTILE ENVIRONMENT SEXUAL HARASSMENT

- Activity by harasser, toward harassee that
  - Is unwanted by the harassee
  - Is based on harassee's gender
  - Creates for harassee a hostile or abusive work environment
  - Unreasonably interferes with harassee's ability to do his or her job
  - Is sufficiently severe and/or pervasive
  - Affects a term or condition of harassee's employment

Source: [http://images.slideplayer.com/23/6650847/slides/slide\\_11.jpg](http://images.slideplayer.com/23/6650847/slides/slide_11.jpg)

### 1.3.3 Psychological and Internet harassment

#### Psychological harassment

Psychological harassment is vexatious behaviour that manifests itself in the form of conduct, verbal comments, actions or gestures characterized by the following four criteria:

They are repetitive\*;

They are hostile or unwanted;

They affect the person's dignity or psychological integrity, and

They result in a harmful work environment.

Prevention in the undertaking remains the best means of combating psychological harassment. It is the employer's responsibility to take reasonable steps to prevent psychological harassment and to put a stop to such behaviour when it is brought to his knowledge.

#### Internet harassment

Many workers do their work using the computer and the Internet. Increasingly Internet harassment is being identified as a concern at work, at home and at school.

Internet harassment, also referred to as "cyberbullying", is the term used to describe the use of the Internet to harass, threaten, or maliciously embarrass. It can involve behaviours such as:

- Sending unsolicited and/or threatening e-mail.
- Encouraging others to send the victim unsolicited and/or threatening e-mail or to overwhelm the victim with e-mail messages.
- Sending viruses by e-mail (electronic sabotage).
- Spreading rumours.
- Making defamatory comments about the victim in public discussion areas.
- Sending negative messages directly to the victim.
- Impersonating the victim online by sending an inflammatory, controversial or enticing message which causes others to respond negatively to the victim.
- Harassing the victim during a live chat.
- Leaving abusive messages on Web site guest books.



- Sending the victim pornography or other graphic material that is knowingly offensive.
- Creating a Web page or writing an entry on a blog that depicts the victim in negative ways.

## 1.4 Causes and Impact of Sexual Harassment

### 1.4.1 Causes of Sexual Harassment

The causes of sexual harassment vary. This discussion can cover only some of the main factors. Many of the causes are interrelated, linked to the culture and values in society and to the roles, relative power and status of the men and women concerned.



Source: <http://image.slidesharecdn.com/sexualharassment-130530220554-phpapp02/95/sexual-harassment-14-638.jpg?cb=1369951616>

#### a) Socialisation

The way in which men and women were brought up to see themselves and others strongly influences their behaviour. Various viewpoints could create a climate that allows for sexual harassment:



- In a culture where it is, or was until recently, "OK" to discriminate against people because they are different in terms of gender, race, culture, religion, lifestyle, political conviction or any other attributes, the abuse of power or humiliation that is typical of sexual harassment will not be unusual. Harassment is often closely linked to prejudice in general and to sexist attitudes in particular.
- Men who were brought up with macho beliefs like "real men pinch bottoms", "girls were made to hug and kiss", "the more, the merrier", easily carry these social values into the workplace, and treat their women colleagues accordingly. Such men often even think that women take such harassing statements as compliments.
- Many women have been brought up to believe women's highest calling is to please men; that popularity with men equals success, or that "real women look sexy". This can give the impression – usually unintended – that they invite sexual advances at work. Some women who see sexuality as their only power base, play along. Although research has proven them to be a small minority, their behaviour can also encourage harassment of other women.
- If women see themselves as dependent on, or of lesser value than men, or are unassertive, they find it difficult to handle harassers or to complain. Often women who are breadwinners are vulnerable and fear victimisation or even job loss, if they reject advances or complain.

## **b) Power games**

Recent social and political changes have changed power equations. Some men feel threatened by the career advancement of women and people of colour, or are uncomfortable with women's new-found independence and assertiveness at home and/or at work. Others who have recently gained positions of power (many after decades of discrimination) may also harass women subordinates to prove themselves. Some men even regard it as a "fringe benefit" to which their position, their power their sex entitle them. In times of uncertainty, fear, limited promotion opportunities, retrenchments, personal stress and performance pressure, there is a real danger that sexual harassment and trading of sexual favours will form part of the power games played.

## **c) Moral values, divorce and cultural differences**

- In times of moral laxity, when extramarital affairs and "one-night stands" are broadly accepted (despite HIV-AIDS risks), when some people equate monogamy with monotony, it is relatively easy for people to indulge in office



flirtations, whether one-sided or mutual. The person who tries, and doesn't accept rejection or sees the unwilling colleague as a challenge, easily becomes a harasser, or may victimise the reluctant colleague.

- The prevalence of marital stress and divorce in our society means that some men and women come to work in a state of emotional distress that could make them vulnerable to sexual harassment.
- Some confusion results from cultural differences about what is, or isn't, acceptable in our rapidly-changing society. For example, when action was taken against sexual harassment at the University of Cape Town, black male students claimed it was their cultural and traditional right to act in that way. They were strongly challenged by the then vice-chancellor, a black woman. Black women complaining about harassment by black men have been accused of disloyalty to their own group, while whites may fear accusations of racism or prejudice if they reject or complain about such behaviour from black colleagues.

#### **d) Credibility and victim-blaming**

The credibility of the victim is often called into question, as it is usually her word against that of the harasser/s. (Although dealing with rape rather than harassment, the film *The Accused* was a striking example of victim-blaming and male solidarity trying to defeat justice, similar to what often happens in the case of harassment.) Several factors aggravate this problem:

- The large majority of decent men who treat women with respect and would never dream of taking such liberties, usually find it difficult to believe that respected colleagues would abuse their position in this way.
- Management may take the word of a senior person rather than that of a subordinate as they are likely to have known the senior longer, and a manager usually has more credibility in a dispute than a subordinate. Particularly if the managers concerned are all men, they may not understand the seriousness of the problem, or may "stick together" out of gender loyalty.
- If the person deciding whether to take action or not, has himself been guilty of harassment, he is likely to go along with a cover-up, or at least give his "buddy" the benefit of the doubt.
- The harasser may be a high-level or highly-skilled person who is difficult to replace, while the victim is likely to be on a lower level, and thus more expendable.

- The common tendency of victim-blaming often causes the plaintiff to end up virtually as the accused. As in the case of sexual assault and rape, the dress, lifestyle and private life of the victim seem to become more important than the behaviour being investigated. Naturally it is advisable that women dress and behave appropriately at work. Yet any woman – whatever her appearance and lifestyle – has the right to decide whether, when, where, and from whom she wishes to accept any sexual approach or comment. And if she declines, she should not be victimised in any way. We should heed the saying:
  - “However I dress, wherever I go
  - My yes is Yes, and my no is No”.
- The victim may be very embarrassed by the events, or afraid of ridicule or revenge, and is likely to wait until matters become unbearable before she complains. She may then be blamed of having played along or condoned the behaviour initially.
- Many women are also inclined to excessive guilt and self-blaming, and may even believe that they unwittingly did or said something to invite the unwanted behaviour. And if they are ashamed or afraid and don't discuss the problem, they often don't realise that it is a fairly common occurrence, and not their fault.

### **e) Aggressiveness or bravado**

Men in groups often behave differently from how they would as individuals. This can explain some of the “gang harassment” that occurs when a woman enters a plant or walks past a group of workers at lunch; after a few drinks at an office party; or when a group of colleagues attend a conference. Alone, those men would probably be “harmless”, or less bold.

### **f) Lack of company policy**

- Many South African companies don't have clear policies and complaint and disciplinary procedures to deal with harassment – or if they have them, they do not implement them.
- In research for an MBL thesis (done by a concerned man in the 1980s), 76% of the women respondents said they had been harassed at work, while few of their companies had relevant policies. Women often resign rather than complain, since they do not know where to go, or if they do complain, it is either treated as a joke, or no action is taken by management.



- If management condones such behaviour or if victims end up being blamed, the perpetrator is encouraged to continue the pattern of harassment, affecting more and more women.

### 1.4.2 Types of harassers

Marital status, level in the organisation and age do not exclude people from being harassers. It appears that in many cases alcohol reduces inhibitions, and people who normally would not, become harassers. In many cases sexual harassment could also be linked to self-esteem problems on the side of the perpetrator, causing a need to “prove himself”. While behaviour and motives vary between individuals, we can probably divide harassers into six broad groups:

#### a) Mr. Macho, or One-of-the-Boys

This is usually linked to the bravado mentioned above, when groups of men embarrass women with comments, unwanted compliments or even physical evaluation, lewd jokes or gestures, and display of sexually distasteful posters. All these can create a hostile environment, and even if it goes no further than verbal and visual harassment, most women experience this as humiliating and disturbing.

#### b) The Great Gallant

This mostly verbal harassment occurs when the “gallant” pays excessive compliments and makes personal comments that are out of place or embarrass the recipient. While most men and women appreciate recognition and genuine compliments, comments focused on the appearance and the sex of a worker – rather than her competence or her contribution – are usually unwelcome. Such compliments are sometimes also accompanied by a possessive pride or by leering looks. While the giver of compliments may see himself as the gallant gentleman, the recipient usually experiences him as patronising or annoying, or both.

#### c) The Opportunist

This kind of harasser is usually fairly promiscuous in his attentions to female staff, suppliers or clients. Whenever the opportunity presents itself – in the elevator, when working late, on a business trip, at the office party, when alone in an office or a car with a female colleague – the “office grope’s” eyes and hands start wandering. Birthdays, farewells or special occasions are also opportunities to insist on (usually begrudged) kisses. Some of this may take place in public, but if not repelled, he is likely to try to go further in private. If confronted, he will insist that the women like and enjoy his attentions; or even that the single and divorced women “need it”.



#### **d) The Power-player**

Here harassment is a power game, where the man insists on sexual favours in exchange for benefits he can dispense because of his position: getting or keeping a job, promotion, orders, bank overdrafts, a drivers' licence, and so on. The Hollywood "casting couch" is probably the best-known example. Evidently some local trade union leaders have also forced women "to pay in kind" for admission to their unions. This can be described as "quid pro quo" harassment, and is closely allied to blackmail. Besides the effect on the victims, this form of harassment is an abuse of power and trust. It can lead to bad business decisions, and can cost the company dearly in terms of effectiveness, the cost of special favours, and company image.

#### **e) The Serial Harasser**

The most difficult type of harasser to identify, and the most difficult to deal with, is the one I label as the serial harasser. This person is compulsive and often has serious psychological problems. He carefully builds up an image so that people will find it hard to believe ill of him, plans his approaches carefully, and strikes in private where it is his word against that of a subordinate. He can do a lot of damage before he is found out. Although serial harassers are in the minority, managers and personnel professionals should be aware of this possibility. This person's aberrant behaviour is often a call for help, rather than deliberate harassment – as is usually the case in the above four types. In this case counselling is probably more important than mere disciplinary action.

#### **f) The Situational Harasser**

The trigger to this person's behaviour is usually psychological, but more situational than compulsive. Incidents are often linked to specific life situations or emotional or medical problems, such as divorce, wife's illness, impotence, hormonal imbalance, prostate disease, or psychiatric or systemic disturbances that suppress the higher brain functions, such as Alzheimer's and alcoholism. If the situation changes or the disease is brought under control, the harassment usually stops – but by then both victim and harasser have been harmed.

### **1.4.3 Typical victims**

Women of all ages are harassed – physically attractive or plain, sexily or soberly dressed. A woman's high rank or status in the organisation, her age or her race, is no insurance or shield: a man may regard her as a special challenge. If she succumbs, he will feel more powerful, or say "after all, she is still just a woman".

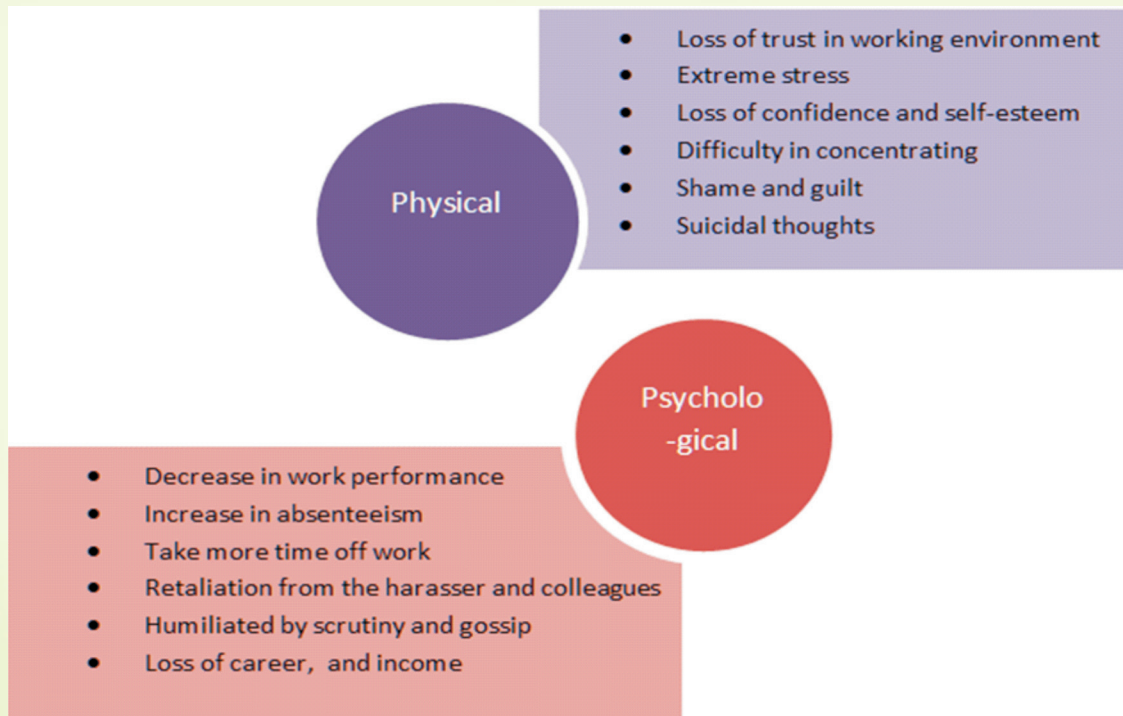
Women who are particularly vulnerable include:



- Women heads-of-household, who need their jobs badly.
- Divorcées, widows and spinsters are often psychologically vulnerable because of loneliness and personal loss – and they can't "plead virginity".
- Women who are timid or insecure about their abilities, and lack self-confidence and career-related education; who have limited potential for advancement and are easy to replace.
- Women who are eager to be accepted and liked, and may find it difficult to be assertive and say "No". Their friendliness and helpfulness is often misread as an invitation.
- Saleswomen may be pressured by clients to meet sexual demands in exchange for their business. To make matters worse, their employers may urge them to comply.

#### 1.4.4 Impact of Sexual Harassment

Sexual harassment has some effects on employees' performance as they might be affected emotionally, physically, financially and socially.



Source: <http://wccpenang.org/wp-content/uploads/2013/05/Capture2.png>

### **a) Emotional impact**

Sexual harassment can have an emotional impact on employees which includes self-blame and guilt this is mostly common in women who tend to think it's their fault. Rudman et al (1995) allude that employees who are harassed suffer from distress, denial, mood swings, depression, fear, anxiety, self doubt, irritability feeling of isolation, anger, feelings of intimation, loss of focus, re-living of issues in one's head, restlessness and uncertainty over the future. This reduces employee's morale hence they do not perform to their best if they are harassed which decreases their performance hence their output because of their emotional state. In support, a research carried out by Schneider, Swan and Fitzgerald (1997) to evaluate effects of sexual harassment revealed that sexual harassment leads to psychological outcome that is negative affective disposition and work related stress. Similarly, a study by Stockdale (1996) surfaced that individuals who are sexually harassed are prone to work related stress and may experience multiple abnormal stressors, which negatively affect job attitude and performance.

### **b) Physical impact**

Pellegrini (2001) states that once sexually harassed, victims suffer from headaches, stress-related ailments and stomach ailments. In addition, Rudman et al (1995) state the results of physical effect affects employee well-being and lead to absenteeism.

### **c) Social impact**

Social effect involves a physical or emotional withdrawal from friends, family and co-workers (Khan and Mawire 2005). They further state that victims experience difficulty in interacting with others and they end up limiting their social interactions and fear to go to work were the the incident occurred. Generalized fears of people or things that remind one of the harassment, others may distance themselves from a complainant because they do not want to get involved or do not understand what she/he is experiencing and also might indulge in alcohol or drug use/abuse and this goes a long way in affecting their performance.

### **d) Demotivated workforce**

Maslow's theory of motivation subscribe to the fact that human beings perform better when their needs are well catered for. Employees are intrinsically motivated from the internal traits that influence people's behaviour. Employees are motivated when they feel that their work is interesting, challenging and important. However, according to Armstrong (2009) sexual harassment creates a hostile working environment, stress, anxiety and decreased job satisfaction which leads to demotivation. Armstrong (2009)

further argues that sexual harassment victims suffer from insomnia, depression and work related stress and this negatively affect employee performance. A study by Merkin (2008) in Argentina, Brazil, and Chile on the effects of sexual harassment revealed that employees who are sexually harassed have intentions to leave the organisation and are likely to absent themselves from work.

### e) Costs of bad decisions

Since sexual harassment is unacceptable, the harasser may end up involved in making decisions which do not benefit the organisation but rather benefit him/her. These actions may be costly to the organisation. The bad decisions may be costly but however this is difficult to quantify. According to Aquinas (2007) costs of bad decisions include the costs of recruiting potential employee because of their outlook and to comply with demand of the job, rather than skills and competence. Moreover, the direct costs of perks and unearned increases for favourites. The travelling and subsistence costs, if employees are invited along on business trips or to conferences for personal rather than business reasons. Some managers end up issuing loans or overdrafts unwisely, or placing orders in the hope of gaining the victim's compliance.

### f) High Absenteeism

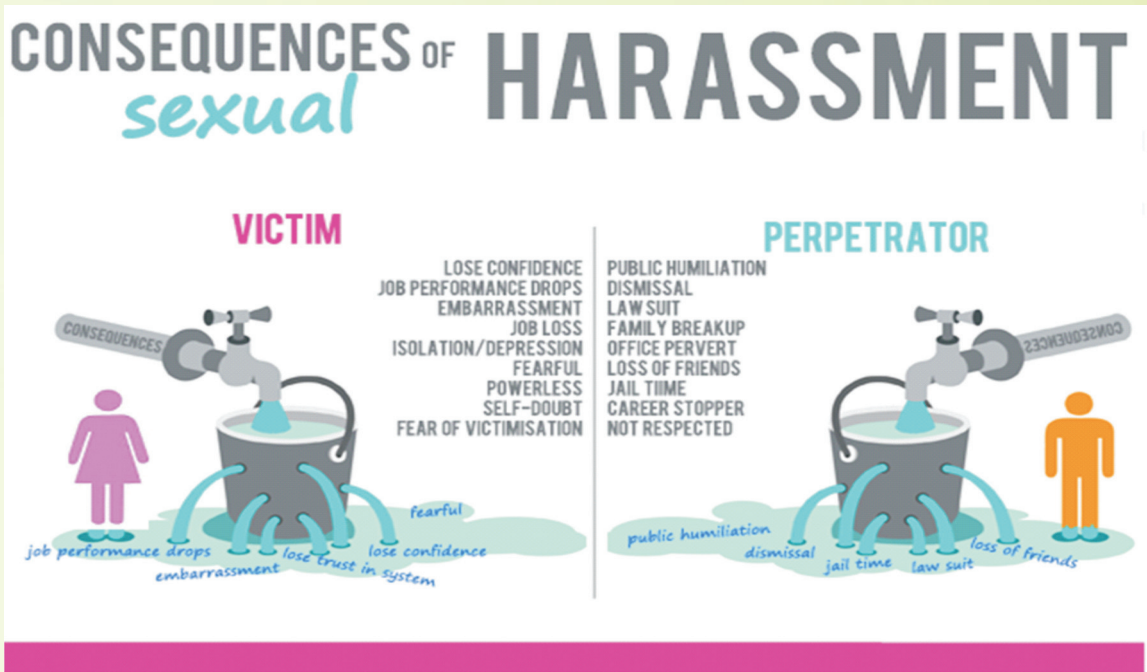
Armstrong (2009) propounds that absenteeism is a result or a possible symptom of sexual harassment, as the stress caused by such an unresolved problem, or the fear of being harassed again can either cause illness, or encourage employees to stay safely at home. Sexual harassment can make the working environment hostile and employees become ill when subjected to sexual harassment on a



Source: <http://sayfty.com/wp-content/uploads/2015/10/Slide31.png>



regular basis particularly where it is perpetrated by a supervisor. This is supported by Aquinas (2007) who argues that sexual harassment may lead to high labour turnover which affects output and organizational performance. In addition Frame (2004)’s study on the effects of sexual harassment showed that sexual harassment leads to absenteeism and increased labour turnover.



Source: <http://www.stafftraining.co.za/images/sexual-harassment-infographic.png>

## 1.4.5 Effects of sexual harassment on organizations

<ul style="list-style-type: none"> <li>• HIGH STAFF TURNOVER</li> <li>• REGULAR OR PROLONGED SICKNESS ABSENCE</li> <li>• STAFF LOOKING TENSE OR TROUBLED</li> <li>• A CHANGE IN ATMOSPHERE</li> <li>• REDUCED PRODUCTIVITY</li> </ul>	<ul style="list-style-type: none"> <li>• ABSENTEEISM</li> <li>• LESS CONCERN WITH QUALITY</li> <li>• LOW MORALE</li> <li>• LOSS OF INITIATIVE</li> <li>• LACK OF CREATIVE INPUT</li> </ul>
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Source: <http://bookboon.com/blog/wp-content/uploads/sites/5/2016/02/back-off-confront-workplace-bullying-harassment-now-ebook-bookboon-blog-2.jpg>



- Decreased productivity and increased team conflict;
- Decline in success at meeting financial goals (because of team conflict);
- Decreased job satisfaction;
- Loss of staff and expertise from resignations to avoid harassment or resignations/ firings of alleged harassers; loss of students who leave school to avoid harassment;
- Decreased productivity and/or increased absenteeism by staff or students experiencing harassment;
- Increased health care costs and sick pay costs because of the health consequences of harassment;
- The knowledge that harassment is permitted can undermine ethical standards and discipline in the organisation in general, as staff and/or students lose respect for, and trust in, their seniors who indulge in, or turn a blind eye to, sexual harassment;
- If the problem is ignored, a company's or school's image can suffer;
- Legal costs if the problem is ignored and complainants take the issue to court. (Boland 1990)

### Impact of Sexual Harassment at the Workplace

**No Society or Company can Afford to Condone Sexual Harassment.**

**(ILO. Sexual Harassment at Work Factsheet)**

Individuals	Employers/Enterprises	Society
<ul style="list-style-type: none"> <li>• Psychological suffering including humiliation, reduced motivation, loss of self-esteem, and loss of trust</li> <li>• Behavioural change including isolation, emotional withdrawal from friends, family, and co-workers</li> <li>• Stress-related physical and mental illness including sleep disturbances, stomach ailments, as well as drug and alcohol abuse</li> <li>• Professional losses, foregoing career opportunities, leaving employment</li> </ul>	<ul style="list-style-type: none"> <li>• Low productivity due to impaired judgment, compromised teamwork, demotivation, absenteeism, and high turn over</li> <li>• Hindered progress and innovation due to lack of trust and team spirit</li> <li>• Poor image of company: No applicants will fill vacancies at workplace where they fear sexual harassment</li> </ul>	<ul style="list-style-type: none"> <li>• Long term rehabilitation costs for the reintegration of the harassed</li> <li>• Unemployment welfare benefits and retraining</li> <li>• Legal and criminal justice expenses</li> <li>• Women's undermined access to high-status and well-paid jobs which traditionally have been male-dominated</li> <li>• Unsafe living and working environment condoning violence</li> <li>• Hindered productivity and development.</li> </ul>

Source: Prevention of Sexual Harassment at the Workplace: A user's guide to compliance with the Indian law, PRIA International Academy 2013



## 1.5 Group Activity

### Question 1

What happens when no one directly caused affront with you, but passed sexual comments, or commented about your looks behind your back?

### Answer 1

Will this also qualify as sexual harassment?

Yes, gossiping at work about the looks of a woman who works in the same workplace is indeed dangerous, and illegal!

### Question 2

What about preferential treatment due to sexual interest?

### Answer 2

At the workplace, often demands for sexual favors (especially when it is by a senior) are coupled with promises of some kind of preferential treatment, or an implicit presumption that the work environment may turn unpleasant in case the demand is not adhered to.

As per the Act, any promises of preferential or detrimental treatment, threats related to a woman's employment status or interference with her work, creation an intimidating, offensive or hostile work environment, or humiliating treatment which affects her health and safety are indicators that any unwelcome behavior, contact, advances or communication has caused sexual harassment to the woman.

Conduct that is not of a sexual nature will not be covered within the definition of sexual harassment. Therefore, a woman will not be protected under the Act in situations of threat of violence, offensive language or slang which is not sexual, and which is not accompanied by other acts that constitute sexual harassment.



## Scenario Based Questions- Identify Whether the Conduct Qualifies As Sexual Harassment

### Question 3

Miss Ritu works in a MNC. Her boss Mr. Raj often uses abusive names (Hindi non-sexual slangs) while reprimanding his subordinates, irrespective of their Gender. Miss Ritu took offence against such abusive language and files a complaint for sexual harassment? Whether such claim is sustainable

### Answer 3

No, the claim is not sustainable as the abuse by Mr. Raj was of a non-sexual manner. While Mr. Raj conduct may be professionally unacceptable, only conduct which has sexual overtones can be brought under the purview of the Sexual Harassment Act.

### Question 4

Priya is a new hire in a company. There's lot of work in the organisation and her superior often requires her to stay in office and work late night to complete the tasks at hand. She finds this too stressful and disturbing and wants to make a complaint for sexual harassment. Does such a claim qualify as Sexual Harassment?

### Answer 4

No, the claim is not sustainable as the threat was not of a sexual nature, but purely based on a business need, that is, achieving assigned business targets.

### Question 5

Miss Priya works in Law firm, where a senior partner of the firm usually makes remarks at her appearance and dresses, specifically demanding her to wear certain attire that makes her more attractive. Aggrieved by the act, she files a complaint for sexual harassment?

Whether this claim is sustainable under Sexual Harassment Act?

### Answer 5

Yes, any kind of sexual remarks, whether direct or indirect constitute sexual harassment under Sexual Harassment Act.

### Question 6

Mr. Sobhan often watches pornographic videos in the office in a deliberate effort to make it visible to the female colleagues who are uncomfortable by this act. One of the female colleagues who sat at the adjoining desk filed a complaint for sexual harassment. Is the claim sustainable under Sexual Harassment Act?

### Answer 6

Yes, showing pornography to the female colleague constitutes sexual harassment under Sexual Harassment Act and a valid claim may be made.

### Question 7

Mrs Sobha works in a multinational company. In a stray incident, her manager promises preferential treatment at work, if she consents to his sexual favors. Can she file a complaint in respect of sexual harassment with respect to such a one-off incident?

### Answer 7

Yes, asking for sexual favours for preferential treatment constitutes sexual harassment under the Sexual Harassment Act- whether the harassment has occurred at a stray instance or repeatedly is irrelevant.



## **MODULE 2**

# **GLOBAL INITIATIVES TO PREVENT SEXUAL HARASSMENT**

## Module 2

### Global Initiatives to Prevent Sexual Harassment

Sexual harassment is a hazard encountered in workplaces across the world, which reduces the quality of working life, jeopardises the well-being of women and men and above all, undermines gender equality at workplace. This module reviews international and regional initiatives, workplace policies and programmes.

In addition to legal measures, many governments, employers' and workers' organisations, and other bodies are using a range of techniques to prevent sexual harassment and help the victims. It is common for governments to issue guidance on how to design anti-sexual harassment measures and to offer counselling to workers who have been targeted. At the workplace level, growing numbers of employers are introducing sexual harassment policies and complaints procedures, particularly in industrialised countries and there are signs of awareness of the need for these policies in a number of countries in which they have, until now, been relatively rare. Moreover, there appears to be an emerging consensus around what workplace policies should contain and the steps to be taken to implement them, which can be drawn on by those employers who have yet to take action.

#### 2.1 International Labour Organisation

The International Labour Organisation (ILO) has addressed sexual harassment through a range of instruments and during discussions at tripartite meetings. It has also conducted research and training on the issue, and provided information and technical assistance to its constituents. Most recently, it has been stressed that the elimination of sexual harassment and violence at the workplace are significant elements in promoting decent work for women.

#### Conventions

The Discrimination (Employment and Occupation) Convention, 1958 (No. 111), addresses discrimination in employment on a number of grounds including sex and requires that ILO member States declare and pursue a national policy designed to promote equality of opportunity and treatment with a view to eliminate discrimination. Like CEDAW (Committee on the Elimination of Discrimination against Women), it endeavors to create widespread awareness of the issue of sexual harassment. As a consequence, it has been necessary for the Committee of Experts on the Application of Conventions and Recommendations to take the lead. In its 1996 Special Survey on Convention No. 111, the Committee confirmed that it views sexual harassment as a





form of sex discrimination against women in employment which undermines equality, damages working relationships and impairs productivity.

The Committee defined sexual harassment as:

“Any insult or inappropriate remark, joke, insinuation and comment on a person’s dress, physique, age, family situation, etc.; a condescending or paternalistic attitude with sexual implications undermining dignity; any unwelcome invitation or request, implicit or explicit, whether or not accompanied by threats; any lascivious look or other gesture associated with sexuality; and any unnecessary physical contact such as touching, caresses, pinching or assault.”

It added that sexual harassment may also arise from “situations which are generally hostile to one sex or the other”, thereby including instances of sexual harassment within those involving sexual behaviour. Moreover, the Committee stated that the elimination of sexual harassment should “be an integral part of legislative or other policy, independently of policies on discrimination on the basis of sex”. The elimination of sexual harassment and violence was identified as a priority gender issue during both the ‘Fourth World Conference on Women: Action for Equality, Development and Peace’ (Beijing, 4 – 15 September, 1995), and the Special Session of the United Nations General Assembly called ‘Women 2000: Gender equality, development and peace for the twenty-first century’, held in New York from 5 – 9 June, 2000. However, the only international Convention which specifically prohibits sexual harassment at work is the Indigenous and Tribal Peoples Convention, 1989 (No. 169). It provides that governments shall do everything possible to prevent any discrimination between workers belonging to the peoples to whom the Convention applies and other workers, including taking measures to ensure that they enjoy protection from sexual harassment.

## United Nations

The United Nations and regional treaty systems have recognised sexual harassment as a form of discrimination and violence against women. International statements of law and principle provide an important starting point in drafting legislation that prohibits sexual harassment.

General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women defines violence against women to include sexual harassment, which is prohibited at work, in educational institutions, and elsewhere (Art. 2(b)), and encourages development of penal, civil or other administrative sanctions, as well as preventative approaches to eliminate violence against women

(Art. 4(d-f)). The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) directs States Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life. (Arts. 7-16). Moreover, the Beijing Platform for Action, para. 178, recognises sexual harassment as a form of violence against women and as a form of discrimination, and calls on multiple actors including government, employers, unions, and civil society to ensure that governments enact and enforce laws on sexual harassment and that employers develop anti-harassment policies and prevention strategies.



Source: <http://aiesec.org/wp-content/uploads/2015/03/womenviolence-845x400.png>

## The International Confederation of Free Trade Unions (ICFTU)

In 1998, the Executive Board of the International Confederation of Free Trade Unions (ICFTU) adopted an Action Programme to combat sexual harassment within the trade union movement. The ICFTU declared its opposition to sexual harassment, and called on its affiliates and regional organizations to adopt effective measures to eliminate it from all trade union activities. It made a number of suggestions on measures which can be taken to tackle harassment, including the inclusion of a statement of principle in union constitutions; the introduction of measures to ensure that



participants at all trade union events are made aware of the policy; and complaints and investigation procedures which cover all trade union activities and workplaces. It also stated that the ICFTU, its regional organizations and affiliates should institute internal complaints procedures to deal with cases of sexual harassment in union workplaces, which should be included in collective agreements and discussed in special training programmes for all employees, and in basic trade union training courses. International federations have also taken initiatives on sexual harassment. The International Transport Workers' Federation (ITF), for example, launched a campaign on sexual harassment in 1997, which highlighted the mistreatment of female airline employees.

## 2.2 Initiatives by Developed Nations

### Europe

The Charter of Fundamental Rights of the European Union specifically enshrines the right to be free from discrimination on the basis of sex, and Article 23 obligates states to ensure equality between men and women in all areas. This principle has been further elaborated through several directives dealing with sexual harassment, including Directive 2006/54/EC related to equal opportunities in employment and the Directive 2004/113/EC related to equal treatment in access to goods and services. These directives require member states to incorporate into national law the following principles:

- The Charter of Fundamental Rights of the European Union prohibits discrimination on the grounds of sex and enshrines the right to equal treatment between men and women in all areas, including employment, work and pay, vocational training, and access to goods and services;
- Clarify that sexual harassment constitutes discrimination on the grounds of sex;
- Prohibition, at a minimum, of behavior meeting the Directives' definition of sexual harassment in the workplace and in the provision of goods and services;
- Encourage employers to take measures to combat all forms of sexual discrimination and prevent harassment in the workplace.

The Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) is the first legally-binding instrument in Europe on violence against women and domestic violence. It obliges states to reform laws, implement practical measures to aid victims, and, importantly, allocate adequate resources for an effective response to violence against women and domestic violence. In addition states must involve all relevant actors in the implementation of the Istanbul Convention, including national parliaments and institutions and non-governmental and civil society organizations.



Article 40 states that “Parties shall take the necessary legislative or other measures to ensure that any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment, is subject to criminal or other legal sanction.”

The Convention will enter into force once ten countries have ratified it. Eight of the ten ratifying countries must be Council of Europe member states. An ongoing list of signatures and ratifications can be found [here](#). Available [here](#) in 28 languages.

## Organisation of American States

The Organisation of American States treats sexual harassment as an issue of violence against women, instead of a discrimination issue. Accordingly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para) affirms the right of women to be free from violence, including sexual harassment in employment or any other context, and requires states to impose penalties and enact legal provisions to protect women from harassment and other forms of violence. Article 2 states that sexual harassment in the workplace, educational setting, health facilities, or any other place constitutes violence against women.

## 2.3 Initiatives by Developing Nations

### African Union & Sub-regional Bodies

The Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa obligates State Parties to take appropriate measures to:

- Eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training;
- Protect women from all forms of abuse (including sexual harassment);
- Ensure transparency in recruitment, promotion and dismissal of women, and combat and punish sexual harassment in education and the workplace. (See: Articles 12-13)

Sub-regional bodies in Africa also have addressed sexual harassment. For example, the Southern African Development Community Protocol on Gender and Development, in article 22, requires that states parties by 2015 must:

Enact legislative provisions, and adopt and implement policies, strategies, and programmes which define and prohibit sexual harassment in all spheres, and provide deterrent sanctions for perpetrators of sexual harassment.



The protocol has been signed by Angola, Democratic Republic of Congo, Lesotho, Madagascar, Mauritania, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe. The Economic Community of West African States, which includes Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo, also has put in place regional policy on sexual harassment in the workplace and in educational institutions. (See: Office of the Commissioner on Human Development and Gender)

## 2.4 Initiatives by Underdeveloped Nations

### Caribbean Community

The Caribbean Community (CARICOM) issued model legislation on sexual harassment in 1991. The model Protection against Sexual Harassment Act formed part of a broader project on the part of the Community to draft model laws on issues affecting women, which would be available to assist CARICOM Member States in crafting national legislation. The model Act prohibits sexual harassment in the workplace, as well as in education and accommodation, and includes provisions which would empower officers to conduct investigations and establish a tribunal to hear complaints.

### The Global Viewpoint

#### Snapshot of Global Laws Around Sexual Harassment at the Workplace

S. No.	Key Criteria	US	UK	Australia
1.	Name of the Law	Title VII of the Civil Rights Act of 1964	Equality Act 2010; Protection from Harassment Act 1997	Sex Discrimination Act 1984 amended by the Sex and Age Discrimination Legislation Amendment Act 2011
2.	Genesis and definition of sexual harassment	In 1980, the Equal Employment Opportunity Commission produced a set of guidelines for defining and enforcing Title VII (in 1984 it was expanded to include educational institutions). The EEOC defines sexual harassment as:	It states that harassments occurs where there is unwanted conduct on the ground of a person's sex or unwanted conduct of a sexual nature and that conduct has the purpose or effect of violating	Sex Discrimination Act 1984 defines sexual harassment as "... unwanted conduct of a sexual nature, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person harassed would be offended, humiliated or intimidated."



S. No.	Key Criteria	US	UK	Australia
		<p>Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:</p> <ol style="list-style-type: none"> <li>1. Submission to such conduct was made either explicitly or implicitly a term or condition of an individual's employment.</li> <li>2. Submission to or rejection of such conduct by an individual was used as the basic for employment decisions affecting such individual, or</li> <li>3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.</li> </ol>	<p>a person's dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them. If an employer treats someone less favorably because they have rejected, or submitted to, either form of harassment described above, this is also harassment.</p>	
3.	Is the employer responsible?	Yes	Yes	Yes
4.	Liability for employers	Monetary	Monetary	<p>The person who sexually harasses someone else is primarily responsible but the company may be held vicariously liable for sexual harassment by the employees, agents and contractors, unless it can show the steps that it took to prevent it from occurring.</p>
5.	Penalties			

Most countries have promulgated legislations that hold employers vicariously liable for acts of harassment by their employees, vendors, clients, sub-contractors etc. or within their workplace.



Brazil	Singapore
Law No 10.224	Protection from Harassment Act 2014
In 2001, the Brazilian Government enacted a criminal law (Law No 10.224) defining sexual harassment as an embarrassing conduct performed by a worker in a superior hierarchical position against someone hierarchically inferior at work, in order to obtain advantages or sexual favours. The law made sexual harassment a crime with imprisonment from one upto two years. This legislation has set Brazil a part from most countries where harassment is dealt with under civil law.	<p>Section 4</p> <p>1. No person shall by any means-</p> <p>a) Use any threatening, abusive or insulting words or behavior; or</p> <p>b) Make any threatening, abusive or insulting communication.</p> <p>which is heard, seen or otherwise perceived by any person (referred to for the purposes of this section as the victim) likely to be caused harassment, alarm or distress.</p> <p>2. Any person who contravenes subsection (1) shall be guilty of an offence and, subject to section 8, shall be liable on conviction to a fine not exceeding \$5000 .</p> <p>3. In any proceedings for an offence under subsection (2), it is a defence for the accused person to prove-</p> <p>a) That he had no reason to believe that the words or behavior used, or the communication made, seen or otherwise perceived by the victim; or</p> <p>b) That his conduct was unreasonable</p>
Yes	Yes
Unclear	Monetary
<b>In the event the harassment charges are proved against a person (who was involved in the dealing with the company), employer as well as the employee (who committed the crime) can be criminally held liable by the criminal courts, on the basis of the complaint filed by the victim</b>	

Sources: Society for Human Resource Management <http://www.shrm.org/hrdisciplines/global/articles/pages/sexual-harassment-law-global.aspx>

## Combating and Preventing Sexual Harassment

Experiences in many countries have shown that effective action against sexual harassment in the workplace requires a combination of legal frameworks as well as greater enforcement, adequately funded institutions and a greater awareness of the issues. Some examples of developments on this front are listed here. A number of national governments have adopted relevant legislative provisions that address sexual harassment in the workplace:

S.No.	Laws	Countries
1	Criminal laws	India, Tanzania;
2	Labour codes	Chile, Thailand;
3	Laws targeting sexual harassment	Brazil, Belize, Philippines, Israel;
4	Equality and sex discrimination laws	Japan, South Africa;
5	National Human Right Legislation	Canada, Fiji, New Zealand;
6	Laws on safe working conditions	The Netherlands;

## Conclusion

Workplace sexual harassment has been addressed at the regional and international levels as both an aspect of gender discrimination and a form of violence against women. The United Nations Committee on the Elimination of Discrimination Against Women has expressed the relationship between these two approaches by identifying sexual harassment as a form of violence against women and gender-based violence as a type of sex discrimination. At the regional level, the European Union, one of the first bodies to take the problem seriously, has adopted binding legal measures on sexual harassment, while the Organisation of American States has addressed it in its Convention on Violence Against Women. At the international level, workers' organizations have called on their affiliates to adopt measures and provided guidance on their content. Various UN instruments call for its elimination, including the Platform for Action adopted at Tripartite regional seminar on combating sexual harassment at work held in Manila on 22-26 November 1993 (Geneva, 1994).



## 2.5 Group Activity

**Question 1:** What has the EU done to tackle violence against women and girls?

### Answer 1

The EU has worked to gather accurate and comparable European data on gender-based violence. The first EU-wide survey on women's experiences of various forms of violence, carried out by the European Union Agency for Fundamental Rights (FRA), shows that violence takes place everywhere, in every society, whether at home, at work, at school, in the street or online. On average, every minute of every day in Europe, 7 women are victims of rape or other sexual assault, 25 are victims of physical violence and 74 are victims of sexual harassment. Cyber violence is a growing concern: 10% of women have been victims of sexual harassment online.

The Commission has put such laws in place:

- Victims of violence, in particular domestic violence, can soon count on EU-wide protection. The EU has put in place a package of measures to ensure that the rights of victims are not forgotten, and victims are treated justly. The Victims' Rights Directive was adopted on 25 October 2012 ensuring that victims are recognised, treated with respect and receive proper protection, support and access to justice. The Directive considerably strengthens the rights of victims and their family members to information, support and protection as well as their procedural rights when participating in criminal proceedings. EU Member States must implement the provisions of this Directive into their national laws by 16 November this year (MEMO/15/4465).
- The majority of victims of trafficking registered in the EU are women and girls (80%) [2]. The EU has recognised trafficking of women and girls as a form of violence against women and has adopted a comprehensive legal and policy framework to eradicate it. The anti-trafficking Directive 2011/36/EU is gender specific, victims centred, human rights based. In addition to approximating EU States' substantive criminal laws, it establishes robust provisions on victims' protection and prevention, as well as supports the principle of non-punishment and unconditional assistance of victims. The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 compliments legislation with a series of actions, including on gender dimensions of trafficking in human beings.

**Question 2:** What is the EU doing to promote gender equality around the world?

**Answer 2:** The EU is and remains at the forefront of those advancing gender equality – inside the Commission and the European External Action Service, inside the European Union and in our relations with third countries. The EU presents political demarches, funds programmes aiming at specific problems and discriminations suffered by women of all ages and girls; supports women's associations, and advocates for their cause, and use a rights-based approach in all its initiatives.

The eradication of gender-based violence is a specific priority of the European Union's human rights policy in third countries, as reflected in the "EU Guidelines on Violence against Women and Girls and combating all Forms of Discrimination against Them". Along with these Guidelines, for instance, the European Union works with third countries to enhance the fight against impunity and to support the protection and reintegration of victims, in close cooperation with civil society organisations and with women human rights defenders. This includes protection against harmful traditional practices, such as female genital mutilation, child early and forced marriage, femicide.

In our EU Strategic Framework & Action Plan on Human Rights we have prioritised the following areas on gender in external relations: women's political participation and economic empowerment; elimination of violence against women and girls; the implementation of the UNSCR 1325 and its follow up resolutions on Women, peace and security; the implementation of the "EU Action Plan on Gender Equality in Development". The work of the Union on protecting women in conflict situations and in facilitating their pro-active role as peace-builders is also guided by the "EU Comprehensive Approach for the Implementation of UN Security Council Resolutions 1325 and 1820 on Women, Peace and Security".

As the world's largest donor, the EU has a crucial role to play in empowering women and girls and in promoting gender equality. The MDGs have played an important role in increasing attention to gender equality and women's empowerment. The EU contribution has also helped to achieve some concrete progress since 2004: 17 million consultations on reproductive health have been carried out; 7.5 million births were attended by skilled health personnel; 300,000 new female students enrolled in secondary education in partner countries. This however, is not enough because many gaps still exist.

Gender equality, human rights and the empowerment of women and girls are essential preconditions for equitable and inclusive sustainable development, as well as important values and objectives in themselves. It is essential to work across different policy areas and across borders to fight gender inequality. The EU is currently involved in global discussions on a new development agenda and is persuaded that this post-2015 global development agenda needs a stand-alone goal to achieve gender equality and empower all women and girls.

### **Question 3:** UN Women Safe Cities Global Initiative

**Answer 3:** "Sexual harassment and other forms of sexual violence in public spaces are an everyday occurrence for women and girls around the world—in urban and rural areas, in developed and developing countries. This reality reduces women's and girls' freedom of movement. It reduces their ability to participate in school, work and in public life. It limits their access to essential services, and enjoyment of cultural and recreational opportunities. It also negatively impacts their health and well-being."





"UN Women's Safe Cities Global Initiative includes two main flagship programmes. In 2010, with UN-Habitat, Women in Cities International, the Huairou Commission, Women and Habitat Network of Latin America and the Caribbean, and 80 other global and local partners, launched the "Safe Cities Free of Violence against Women and Girls" Global Programme in Quito, Ecuador; Cairo, Egypt; New Delhi, India; Port Moresby, Papua New Guinea; and Kigali, Rwanda. It is the first-ever global comparative programme that develops, implements, and evaluates comprehensive approaches to prevent and respond to sexual harassment and other forms of sexual violence against women and girls in public areas. In 2011, UN Women, UNICEF, and UN-Habitat launched the "Safe and Sustainable Cities for All" joint programme in Rio de Janeiro, Brazil; San José, Costa Rica; Tegucigalpa, Honduras; Nairobi, Kenya; Beirut, Lebanon; Marrakesh, Morocco; Manila, Philippines; and Dushanbe, Tajikistan.

The Safe Cities Global Initiative has generated a number of results through partnerships with mayors' offices, national governments, women's groups and other partners. As part of their comprehensive approaches, the municipality of Quito has amended a local ordinance to strengthen action against sexual harassment in public spaces, New Delhi has integrated Safe Cities' approaches in social protection schemes, and Egypt's Ministry of Housing, Utilities and Urban Development has adopted women's safety audits to guide urban planning."

We have to work with communities to change harmful social norms and attitudes, and social institutions that discriminate and tolerate violence against women."

**Question 4:** What are the objectives and results of the Strategy for equality between women and men (2010-2015)?

#### **Answer 4**

The Strategy for equality between women and men for 2010-2015 reflected the Commission's commitment to stepping up its activities in the field of gender equality (IP/10/1149). The Strategy lists actions to be implemented between 2010 and 2015.

The Strategy outlined six priority areas:

- equal economic independence for women and men;
- equal pay for work of equal value;
- equality in decision-making;
- dignity, integrity and ending gender violence;
- promoting gender equality beyond the EU;
- Horizontal issues.



**MODULE 3**

**NATIONAL LEVEL LANDMARKS IN THE  
PREVENTION OF SEXUAL HARASSMENT  
AT WORKPLACE**



## Module 3

### National Level Landmarks in the Prevention of Sexual Harassment at the Workplace

Women's rights and well-being are under threat all the time, either within the family or outside its confines. They are now not only facing harassment within the confines of their homes, but also on roads and in their workplace. One such harassment is sexual harassment, which is oldest and the most common form of harassment that touches the life of every woman irrespective of age, race, religion, income, class and culture. With an increase in the number of women in the workforce and closeness between the opposite sex, it is important to lay down specific guidelines for their behaviour. One needs to have a firm policy in the workplace, and since sexual harassment, by its very nature, is a sensitive issue, it needs to be handled expeditiously. Following the Supreme Court ruling in 1997, appropriate mechanisms for redressal of grievances as well as preventive and corrective steps are to be taken.

This module is an attempt to explain some of the national level landmarks in the prevention of sexual harassment at the workplace.

#### 3.1 The Convention on Elimination of all forms of Discrimination against Women (CEDAW), 1993

United Nations' Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted by the UN Assembly in 1979 and ratified by India in 1993. CEDAW identifies discrimination on the ground of sex as a clear violation of Human Rights. By ratifying the Convention, States commit themselves to

- (1) Incorporate the equality of men and women in their legal system and abolishing all discriminatory laws;
- (2) Establishing tribunals and other public institutions to ensure effective protection of women against discrimination; and
- (3) Ensuring elimination of all acts of discrimination against women by persons, organizations or enterprises.

#### 3.2 Women Rights in our Constitution

The Constitution of India has strived to emancipate women and maintain gender equality. The fundamental rights enshrined in the Constitution of India not only liberate women but also permit the State to sanction necessary measures to make women overcome the various socially and culturally constructed handicaps which obstruct their rights.

The Constitution states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

Constitutional Provisions of the Constitution of India	
Article 14	Equality before the law and the equal protection of the law. Includes gender equality, which is a universally recognised basic human right
Article 15	Prohibits discrimination on grounds of religion, race, caste, sex or place of birth
Article 19 (1) (g)	All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business
Article 21	No person shall be deprived of his life or personal liberty except according to procedure established by law
Article 39	The citizens, men and women equally, have the right to an adequate means of livelihood;
Article 42	The State shall make provision for securing just and humane conditions of work and for maternity relief
Article 51A	It shall be the duty of every citizen of India :- a) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women

Source: Compiled by Author from Gender Dimensions at Work and Employment: A Case of Sexual Harassment, 2016

### 3.3 Evolution of the Law on Workplace Sexual Harassment

The Prevention of Workplace Sexual Harassment Act and the Prevention of Workplace Sexual Harassment Rules have been enacted 16 years after the Supreme Court of India’s landmark judgement in Vishaka and others v. State of Rajasthan (“**Vishaka Judgement**”). The Supreme Court, in the Vishaka Judgment, laid down guidelines, making it mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women (“Guidelines”).

#### I. The Vishaka Judgement

In 1992, Bhanwari Devi, a woman employed with the rural development programme of the Government of Rajasthan was brutally gang raped on account of her efforts to curb the then prevalent practice of child marriage. This incident revealed the hazards that working women were exposed to on a day to day basis and highlighted the urgency for



safeguards to be implemented in this regard. Championing the cause of working women in the country, women's rights activists and lawyers filed a public interest litigation in the Supreme Court of India under the banner of Vishaka.

The Supreme Court of India, for the first time, acknowledged the glaring legislative inadequacy, and acknowledged workplace sexual harassment as a human rights violation. In framing the Guidelines, the Supreme Court of India placed reliance on the Convention on Elimination of All Forms of Discrimination against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified.

As per the Vishaka Judgment, the Guidelines, until such time a legislative frame work on the subject has been drawn-up and enacted, would have the effect of law, mandatorily to be followed by organizations, both in the private and government sector.

LEGISLATIVE TIMELINE	
2007	Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 (" <b>Bill</b> ") approved by the Union Cabinet.
2010	The Bill was introduced in the Lok Sabha
2012	The Bill was amended and re-introduced in the Lok Sabha.
September 03, 2012	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was passed by the Lok Sabha
February 26, 2013	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2012 was passed by the Rajya Sabha.
April 23, 2013	The Prevention of Workplace Sexual Harassment Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013.
December 09, 2013	The Indian Ministry of Women and Child Development notified: 1. December 09, 2013 as the effective date of the Prevention of Workplace Sexual Harassment Act; and 2. The Prevention of Workplace Sexual Harassment Rules

Source: India's Law on Prevention of Sexual Harassment at the Workplace, 2015

### 3.4 Supreme Court Guidelines for Preventing Sexual Harassment at the Workplace. 1997 (Vishaka Guidelines) Vishakha Directives and its Rulings

Bhanwari Devi faced tremendous challenges in registering her case, and years of follow-up by a group of social activists, to seek redressal of this matter who took up the matter on her behalf, in 1997, the Supreme Court of India gave us the Vishakha judgment.



Popularly referred to as the Vishakha Guidelines, they filled a legal vacuum and sexual harassment at the workplace became a constitutional concern

- Sexual harassment was viewed through an equality lens and thus prioritised prevention
- In the absence of legislation, the guidelines became legally binding on all workplaces. Unlike the criminal law, it was the State, the employer, and the institution that had to accept responsibility for the equality and dignity of women at work
- It gave us a map for creating accountability. Workplaces, organisations, institutions (including educational establishments) were compelled to raise awareness about sexual harassment, take steps to prevent it and to offer effective redress
- It granted the presence of a third party expert on complaints committees for sexual harassment, a mechanism mandated by Vishaka for all workplaces (Kapur, 2012). The landmark Vishakha Guidelines have led to several amendments in existing laws for both government and private establishments. Both the Supreme Court and the High Court, where such cases were heard, announced rulings that have profound impacts on the interpretations of the law, in the context of sexual harassment at the workplace.

### **A. Rulings by the Supreme Court**

1) *Apparel Export Promotion Council v/s A.K. Chopra: AIR 1999 SC 625*

This case is the first one, where the Supreme Court (SC) applied the law as laid down under the Vishaka Directives. In this case, the SC ruled that ‘an attempt to molest’ is equally an infringement of a woman’s right to dignity at the workplace as a ‘successful attempt of molestation’. It was also recognised that in such cases, evidence and witnesses may not always be forthcoming. Hence, circumstantial evidence has to be relied upon, and whether in overall terms this, inspires the confidence of the judges. The terms used for such evidence is that of “high probability” or “within reasonable doubt” (Pandey, 2008).

2) *Medha Kotwal Lele & Others v Union of India & Others [W.P.(Crl.) No.173-177/1999 (26.4.20040)*

In 1999, following the harassment of a student who was allegedly sexually harassed by her guide (since 1995), a PIL (Public Interest Litigation) was filed by Medha Kotwal, a professor at MS University in Baroda. Kotwal stated that the Vishakha Guidelines,



issued by the Supreme Court of India was disregarded during the investigation of the complaint. As a follow up of this case, along with ordering all State Governments to file affidavits regarding all measures taken by them to comply with the Vishaka Guidelines, the Supreme Court also held that:

- I. A complaint committee's report "shall be deemed to be an inquiry report," based upon which disciplinary action can be taken.
- II. In January 2006, the Supreme Court ordered the chief secretaries of each state to appoint a state-level officer, who would be in charge of and concerned with the welfare of women and coordinate the implementation of the Guidelines, particularly in relation to the setting up of complaint committees.
- I. The Court further ordered the Labour Commissioner's office of each State, work as nodal agencies for the implementation of the Directives in regards to factories, shops and commercial establishments. Their tasks would include collecting details regarding the complaints and seeing to it that the required committee is established in such institutions.
- II. Amendments were also introduced to laws governing industrial establishments and standing orders relevant to industrial establishments.

Subsequently, the Ministry of Labour and Employment (MoLE), issued a notification for the constitution of Complaints Committees in the factories, shops and commercial establishments having 50 or more workers. The Labour Commissioner's office was in charge of implementation of the Vishakha in every state and to ensure that complaints of sexual harassment were addressed.

### 3) *DS Grewal v Vimi Joshi & Others*

In this case, the female Principal in a school run by an Army Welfare Society received unwelcome suggestive letters and sexual advances from the Deputy Commander of an army brigade. The Principal tried to lodge a complaint with the school's Chairman, which he refused to believe or accept. Finally, when she refused to withdraw her complaints, the management terminated her services. The complainant challenged her termination, alleging sexual harassment as one of the grounds, and the High Court passed an order, directing the Army headquarters to take disciplinary action against the Deputy Chairman and the Chairman. When this matter reached the Supreme Court on appeal, the Court reaffirmed the Vishaka definition and directed the Army to bear the cost of forming and running a Complaints Committee. Additionally, the school's management

was required by the Supreme Court to reimburse all the costs incurred by the Principal, including the legal counsel fees incurred by her.

## **B. Rulings by the High Court**

- 1) Civil Writ Petition No. 8826 of 2004, Aarti Durgaram Gavandi vs. Managing Director, Tata Metaliks and Others (2008 (6) Bom CR1)

This case came up in the Bombay High Court, involving Tata Metalliks Limited, wherein a lady supervisor was subject to sexual harassment at the hands of the Deputy General Manager at the plant. The lady sought an inquiry, while the management, with the help of an advocate, conducted an inquiry. The perpetrator was exonerated on the basis of this inquiry and the services of the woman were terminated.

However, she challenged her termination in a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The ruling in her favour declared that the employer was guilty of unfair labour practices and granted reinstatement with consequential benefits. However, since the management failed to comply with the order of reinstatement by the order of the Labour Court, the matter was once again filed in the Bombay High Court. The Court observed that the Vishakha Directives are a law under Article 141 of the Constitution and that the powers to deal with the complaint of sexual harassment of an employee and inquiry rests with the Complaints Committee and cannot be decided by the management (Pandey, 2008).

- 2) *High Court of Kerala Puthuppan P K vs. KS Girja*

In September 2008, the High Court of Kerala (Puthuppan PK c KS Girja and Others 2008 (3) KLJ 416) declared that the guidelines in Vishaka's case must be followed and that declared that the workplace includes government establishments, public sector organisations, industrial establishments private.

- 3) *S.K. Mallick*

Mallick, the Director of National Academy of Audit and Account (NAAA) had allegedly entered the room of the woman officer at Shimla in an inebriated condition and misbehaved with her. The woman filed an FIR (First Incident Report) with the police the next day. This led to a departmental enquiry and Mallick was suspended on the basis of a criminal case pending against him. He then approached the Delhi High Court who dismissed the petition. The judgments given by the High Court in this case, set important precedents by



- Extending the meaning of workplace
- Defining who the affected women are
- Delineating the nature of sexual harassment and
- Establishing the role of Internal Complaints Committees (Pandey, 2008).

### 3.5 The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that is for protecting women from sexual harassment at their workplace. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3rd of September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26th of February 2013. The Bill got the approval of the President of India on 23 April 2013. This Act came into force from 9th of December 2013.

#### Preamble

A Bill conferring upon Women the Right to Protection against Sexual Harassment and to protect the Right to Livelihood and towards that end for the prevention and redressal of Sexual Harassment of Women.

Whereas Sexual Harassment infringes the Fundamental Right of a woman to gender equality under Article 14 of the Constitution of India and her Right to life and live with dignity under Article 21 of the Constitution which includes a Right to a safe environment free from Sexual Harassment.

And Whereas the Right to protection from Sexual Harassment and the Right to work with dignity are recognised as universal human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which has been ratified by the Government of India.

And Whereas the Supreme Court in Vishakha vs. State of Rajasthan [1997(7) SCC.323] has formulated guidelines to address Sexual Harassment until a suitable legislation is enacted in this respect.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.



## Background and provisions

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

## Major Features

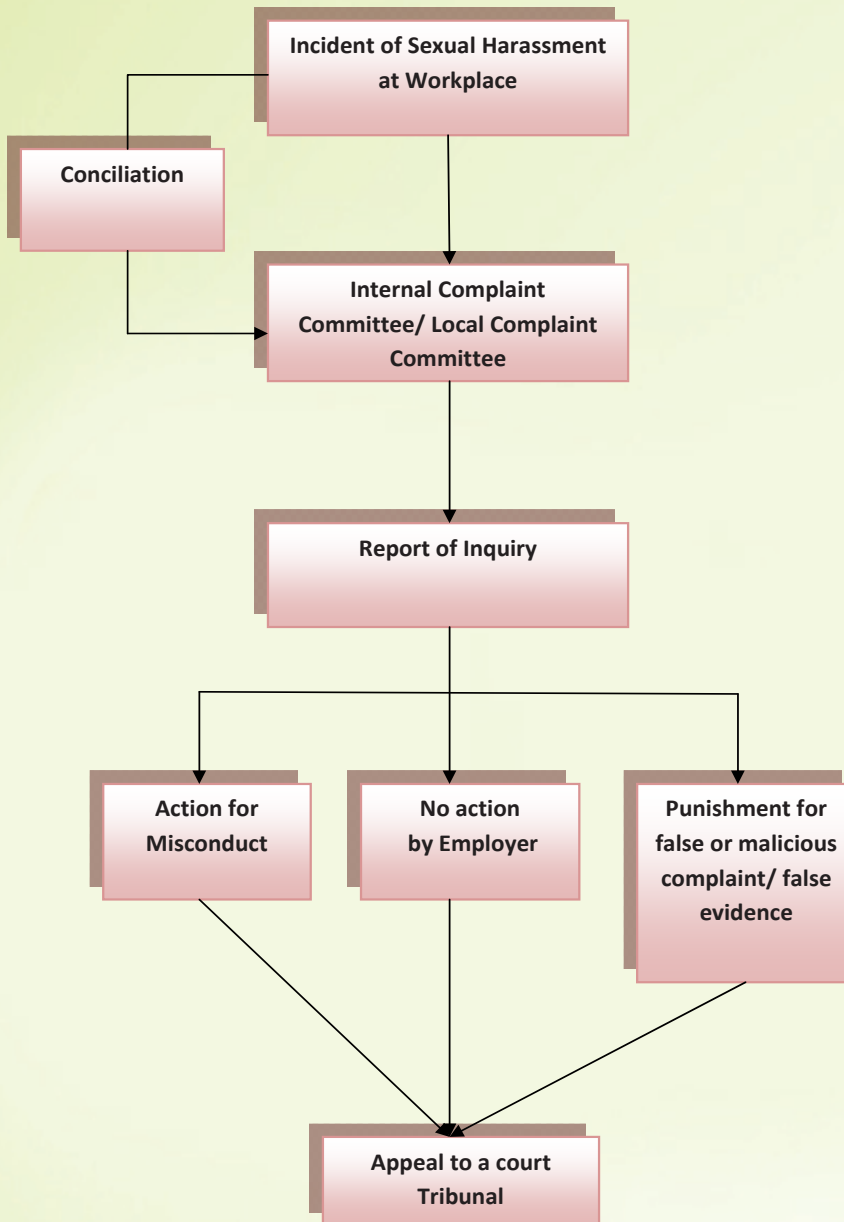
- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.
- While the "workplace" in the Vishaka Guidelines is confined to the traditional office setup where there is a clear employer employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation.
- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- Penalties have been prescribed for employers. Noncompliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.





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

### Procedure to be followed



#### Timelines

A written complaint has to be filed by the female employee within 3 months of the date of incident.

The inquiry has to be completed within 90 days.

The inquiry report has to be issued within 10 days from the date of completion of inquiry.

Employer is required to act on the recommendations of the committee within 60 days of receipt of inquiry report.

Appeal against the decision of the committee is allowed within 90 days of the date of recommendations.

Source: Nishith Desai Associates, 2013

### 3.6 Other Laws Pertaining to Workplace Sexual Harassment

#### I. Industrial Employment (Standing Orders) Act, 1946

The Industrial Employment (Standing Orders) Act, 1946 (“Standing Orders Act”) is a central enactment which, inter alia, requires an employer to define and publish uniform conditions of employment in the form of standing orders. As per 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.

At the first instance, the Standing Orders Act is applicable to ‘industrial establishments’ employing a minimum of 100 workmen.<sup>27</sup> The Standing Orders Act prescribes Model Standing Orders, serving as guidelines for employers and in the event that an employer has not framed and certified its own standing orders, the provisions of the Model Standing Orders shall be applicable.

The Model Standing Orders prescribed under the Industrial Employment (Standing Orders) Central Rules, 1996 (“Standing Orders Rules”) prescribe a list of acts constituting ‘misconduct’ and specifically includes sexual harassment. The Model Standing Orders not only define ‘sexual harassment’ in line with the definition under the Vishaka Judgment, but also envisages the requirement to set up a complaints committee for redressal of grievances pertaining to workplace sexual harassment. It is interesting to note that ‘sexual harassment’ is not limited to women under the Standing Orders Rules.

#### II. Indian Penal Code, 1860

Conduct that may be construed as sexual harassment not only violates the Prevention of Workplace Sexual Harassment Act, but also could constitute an offence under the IPC. Listed out below are the key offenses under the IPC that could be triggered in a case of sexual harassment.

Section	Offence	Punishment	Cognizable/ Non-Cognizable
354	<u>Outraging the modesty of a woman</u> Assault or use of criminal force to any woman, intending to outrage or knowing it to be likely that modesty would be outraged.	Simple/Rigorous Imprisonment for a term which shall not be less than one year but which may extend to five years; and fine.	Cognizable



354-A	<p><u>Sexual harassment by a man</u></p> <p>(i) Physical contact and advances involving unwelcome and explicit sexual overtures;</p> <p>(ii) Demand or request for sexual favours;</p> <p>(iii) Showing pornography against the will of a woman; or</p> <p>(iv) making sexually coloured remarks.</p>	<p>Offences (i), (ii) and (iii) are punishable with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.</p> <p>Offence (iv) is punishable with simple/ rigorous imprisonment for a term which may extend to one year, or with fine, or with both.</p>	Cognizable
354-B	<p><u>Assault or use of criminal force to woman with intent to disrobe</u></p> <p>Assault or use of criminal force to any woman or abetment of such act with the intention of disrobing or compelling her to be naked.</p>	Simple/Rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years, and fine.	Cognizable
354-C	<p><u>Voyeurism</u></p> <p>Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image.</p>	<p>First conviction: Simple/ Rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years, and fine.</p> <p>Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which shall not be less than three years, but which may extend to seven years, and fine.</p>	Cognizable
354-D	<p><u>Stalking</u></p> <p>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</p> <p>Monitoring the use by a woman of the internet, email or any other form of electronic communication.</p>	<p>First conviction: Simple/ Rigorous imprisonment for a term which may extend to three years, and fine.</p> <p>Second or subsequent conviction: Simple/ Rigorous imprisonment for a term which may extend to five years, and fine.</p>	Cognizable

509	<u>Insulting the modesty of a woman.</u>  Uttering any word, making any sound or gesture, or exhibiting any object, intending that such word or sound shall be heard, or that 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.	Simple imprisonment for a term which may extend to three years, and fine.	Cognizable
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Source: India's Law on Prevention of Sexual Harassment at the Workplace, 2015

### 3.7 Group Activity

**Question 1:** Miss Aneshwa, an employee of an IT-Service provider, works as onsite staff at the premises of the client, she was sexually harassed by an employee of the MNC during the office party at the client's place. Can she file a complaint under sexual harassment Act with the MNC?

**Answer 1:** Yes, in this situation, the IT-Services provider is essentially a contractor, and the woman is employed on the client's premises through the IT-Services provider. Women employed through agents or contractors are protected under the ambit of Sexual Harassment Act. As the harassment occurred during an official party, which she has visited in the course of her employment, such place will be covered under the Act.

**Question 2:** Miss Monika, a social activist, works in a NGO on voluntary basis without any remuneration. She was sexually harassed by a colleague. Can she file a complaint with the appropriate committee under the Sexual Harassment Act?

**Answer 2:** Yes, women working as volunteers or without remuneration are protected under the Sexual Harassment Act.

**Question 3:** Miss Renuka works as a Salesgirl in a departmental store on part-time basis after college hours. She was sexually harassed by her floor manager. Can Renuka file a complaint under Sexual Harassment Act?

**Answer 3:** Women working on part-time basis are protected under the Sexual Harassment Act.



**MODULE 4**  
**PREVENTING SEXUAL HARASSMENT IN**  
**THE WORLD OF WORK**



## Module 4

# Preventing Sexual Harassment in the World of Work

The most effective weapon against sexual harassment is prevention. Harassment does not disappear on its own. In fact, it is more likely that when the problem is not addressed, the harassment will worsen and become more difficult to remedy as time goes on. This module describes those who are both responsible and accountable to prevent workplace sexual harassment in compliance with the Act. It also highlights the role of men and women in prohibiting workplace sexual harassment through an effectively communicated policy.

### 4.1 Preventive Authorities and their Responsibilities

#### 4.1.1 Who is an Employer?

An employer refers to:

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

### Responsibilities



Source: <http://www.sophiasanchezblog.com/wp-content/uploads/2015/10/haras-pic.png>



- Make it clear that this is a workplace where harassment will not be tolerated.
- Provide education and information about harassment to all staff on a regular basis. The circulation of information, open communication and guidance are of particular importance in removing the taboo of silence which often surrounds cases of sexual harassment. Information sessions, personnel meetings, office meetings, group discussion and problem-solving groups can prove very effective in this respect. Staff should also be informed of the best way of coping with aggression by means of guidelines and staff development programs on sexual harassment at work.
- Develop an anti-harassment policy together with employees, managers, and union representatives.
- Communicate the policy to all employees
- Make sure that all managers and supervisors understand their responsibility to provide a harassment-free work environment.
- Ensure that all employees understand the policy and procedures for dealing with harassment - new and long-term employees alike - this involves training, information and education.
- Show you mean it - make sure the policy applies to everyone, including managers and supervisors.
- Promptly investigate and deal with all complaints of harassment.
- Appropriately discipline employees who harass other employees.
- Provide protection and support for the employees who feel they are being harassed.
- Take action to eliminate discriminatory jokes, posters, graffiti, e-mails and photos at the work site.
- Monitor and revise the policy and education/information programs on a regular basis to ensure that it is still effective for your workplace.

Employers should provide a mechanism for addressing sexual harassment in a confidential and sensitive manner after a grievance has been filed. A well constructed and well-implemented plan within an organisation may stop inappropriate conduct before it creates a problem for individual employees or the company.

#### **4.1.2 Who is an Appropriate Government?**

As per the Act, Appropriate Government means:

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

## Responsibilities

- Advancement of public awareness and understanding of the Act's provisions
- Make rules for carrying out the provisions of the Act by notification of the same in the Official Gazette (responsibility of the central government)
- Lay the rules made by them under this Act before each House of Parliament, while it is in session
- Formulate orientation and training programmes for members of the Local Complaints Committee
- Monitor the implementation of the Act and initiate necessary actions to ensure that all workers are protected from sexual harassment
- Maintain data on the number of cases of sexual harassment that have been filed and disposed of. (ILO & PRIA, 2013)

### 4.1.3 Who is a District Officer?

State Governments 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).

## Responsibilities

The duties and powers of the District Officers as specified in the Act are to:

- Monitor the timely submission of reports furnished by the Local Committee
- Take necessary measures to engage non-governmental organizations to create awareness on sexual harassment
- Prepare and forward brief report based on annual reports to the State Government



- Monitor the number of cases being filed and dealt with by the LCC
- Authorize any officer to make inspection of the records and workplace in relation to sexual harassment, who shall in return submit a report of the inspection within the specified time period.

#### 4.1.4 Who is Labour Commissioner?

The Ministry of Labour and Employment is responsible for establishing policies in respect to labour matters. Labour matters include industrial relations, co-operation between labour and management, settlement of labour disputes, regulation of wages and other conditions of work and safety, women's labour, child labour, labour welfare and social security. Broadly, Labour Commissioners are entrusted with enforcing various labour legislations for the welfare of the workforce, meanwhile maintaining industrial peace, harmony and congenial working atmospheres.

#### Responsibilities

The following key roles of the Labour Commissioner can be interpreted in the prevention of sexual harassment:

##### (i) Enforcement

The various Acts under which a Labour Officer can take preventive action, as well as ensure the redressal of sexual harassment at the workplace are as follows:

- ✓ Industrial Disputes Act, 1947
- ✓ The Factories Act, 1948
- ✓ The Mines Act 1952
- ✓ Shops and Commercial Establishments Act, 1958

For example, benefits of separate washing facilities, rest rooms and toilets were provided for women under these acts to ensure their privacy, safety and security. These could be understood as a positive step towards creating an enabling environment at the workplace and the prevention of sexual harassment at the workplace towards

##### (ii) Conciliation

As a nodal agency, the Labour Commissioner may be appointed as the appropriate authority to play the role of a conciliation officer. In cases of sexual harassment, it can be effective in explaining to both parties the legal mandate of the Supreme Court in the particular instance. Even after the report of the Internal Complaints Committee, if either of the parties is not satisfied with the decision of the committee, the matter



should be referred for compulsory resolution to the labour court or industrial tribunal (after preparing the failure report of conciliation proceedings).

### **(iii) Research and Analysis**

The Labour Commissioner may also obtain and use information from Socio Economic Surveys of Different Segments of Labour (SESDSL), which are conducted for different sectors of industries, to ascertain the working and living conditions of workers employed therein. Of the four components, the two most relevant in the context of creating a more conducive work place is (i) socioeconomic conditions of women workers in industries and (ii) Working and living conditions of workers engaged in unorganized sector industries/employments. This information can be used as a basis for developing plans that ensures the safety and security of women in all kinds of workplace

## **4.2 Responsibility of Employees and Trade Unions in prevention of sexual harassment at workplace**

### **4.2.1 Employee Responsibilities**

In addition to the employer's responsibility to provide a non-discriminatory and non-violent workplace atmosphere, employees must also assume an active role in the prevention of sexual harassment. Employees should commit to do the following:

#### **Understand**

- ✓ obtain and become familiar with the organization's policy on sexual harassment;
- ✓ examine one's feelings, attitudes, and behaviors in relation to sexual harassment;
- ✓ see that behavior corresponds with the expectations and behavioral requirements of the organization's sexual harassment policy.

#### **Observe**

- ✓ be aware and conscious of engaging in potential sexual-harassment behaviors or incidents at work;
- ✓ be sensitive to individuals who may be offended by the verbal and non-verbal behavior of others;
- ✓ be aware of subtle forms of sexual harassment;
- ✓ watch for and discourage sexual behaviors that negatively affect work.

#### **Examine**

- ✓ pay attention to the response of others in order to avoid unintentional offense;





- ✓ do not assume that employees or co-workers enjoy or want to hear risqué jokes or sexually oriented comments about their appearance, or be touched, stared at, flirted with, or propositioned for dates or sexual favors;
- ✓ ask yourself if your verbal or non-verbal behaviors might have a negative impact on other co-workers' attitudes toward work;
- ✓ examine your behaviors, gestures, and comments. Ask yourself, "Could I unknowingly be encouraging sexual interplay by the way I interact or communicate?"
- ✓ do not take sexual harassment lightly. If you think you are being sexually harassed by an individual or a group, do not accept it as a joke. Do not encourage the harasser by smiling, laughing at his/her jokes, or flirting back. Let the harasser know that you do not enjoy and do not want this type of attention.

### Confront

- ✓ if possible, confront the sexual harasser immediately. Tell him/her that you find that type of attention offensive;
- ✓ if possible, tell the harasser that the behavior affects you negatively and has the potential of negatively affecting your job;
- ✓ if possible, tell the harasser what behaviors (gestures, physical or verbal) behaviors you find offensive.

### Resolve

- ✓ seek confidential advice to develop your personal resolution strategy;
- ✓ consider writing a letter to the harasser and keep a copy for yourself;
- ✓ document all the incidents of sexual harassment. Be detailed, precise about date, time, location, and person/persons involved.

### Support

- ✓ if you know someone who is being harassed, give him or her your support. Encourage the recipient to talk about it and to take immediate action to stop it;
- ✓ if you actually see or hear an incident of sexual harassment or are subjected to an offensive environment, you can also take the appropriate steps to resolve the harassment or co-file with the complainant;
- ✓ when a recipient files a complaint, if possible, support him or her throughout the complaint process.

Prevention of sexual harassment in the workplace requires training programs for both employers and employees, which concretely address such topics as the national laws that prohibit sexual harassment, creating work place polices and steps that individuals can take.

#### 4.2.2 Trade Unions Responsibilities

Trade Unions in the unorganised sector can play a definite and vital role, in setting up complaints mechanisms and instituting systems/channels that could provide forum for receiving complaints of sexual harassment in the unorganised sector. Trade union members can:

- Carry out awareness raising and training on sexual harassment which include the effect of sexual harassment on occupational, health and safety and the general working environment
- Help the aggrieved in filing a complaint with the appropriate authority
- Appoint several 'persons of confidence' consisting of employer and union representatives of both sexes to handle complaints, and ensure they are appropriately trained.
- Ensure that those who are victims of sexual harassment can inform someone of their own sex about what happened.
- Determine the extent of the problem in the workplace. A survey of the members may be useful. Inform the management on the survey and discuss measures in developing and supporting an environment free from gender discrimination and sexual harassment.
- Ensure that the employer has an anti-sexual harassment policy that is prominently posted and effectively communicated to all employees. (Raymond, 2003).

### 4.3 Role of men/women in prevention of sexual harassment at workplace

#### 4.3.1 Role of men

- **Take an active stand against sexism-** Avoid making sexist jokes or laughing when others tell them. Whether you actively participate in the degradation of women or simply passively listen, you are communicating that you believe women are not as deserving of respect or equal treatment as men are. Jokes, comments, pornography and other forms of media which objectify or sexualize women foster a "rape culture" which justifies and normalizes rape. Remember, too, that every



woman is somebody's sister, daughter, mother, girlfriend, etc. Men demand that the women who are close to them be treated appropriately but some men may fail to afford the same treatment to other women. Treat all women as you would want the women you care about to be treated.

- **Manage alcohol and other drug use-** The vast majority of campus rapes involve alcohol or other drug use on the part of the perpetrator and/or victim. Research studies demonstrate that alcohol increases male sexual aggression by exacerbating the effects of testosterone. Men should especially be aware that when they are intoxicated, they may not listen as well or be aware of their own strength. Regardless of your state of intoxication, you are accountable for your actions.
- **Hold your male friends accountable-** How men are raised in US society can affect the way men think and talk about sexual relationships or women. You may feel a lot of pressure to prove your masculinity. The best role models of masculinity are those who aren't afraid to stand up for or do the right thing. Stop a friend who is getting too sexually aggressive. If you care about your male friends, don't let them take drunk women up to their rooms, sexually harass women at a house party or in a bar, or otherwise place themselves in potentially risky situations. Men have a lot to lose if they're accused or convicted of rape.
- **Take a public stand against sexual assault-** Write letters to the editor of the college newspaper. Participate in anti-violence marches and rallies. Not enough men's voices are heard in the public arena in support of a non-violent community. All men are ethically and morally responsible for influencing the behavior of the few men who do commit violence against women. Ultimately, men have the greatest potential to impact other men and prevent sexual assault.

### 4.3.2 Role of women in prevention of sexual harassment at workplace

Most women themselves fail to recognise sexual harassment and treat it as trivial and routine. If you experience sexual harassment, take action to stop it.

- **Speak up at the time:** Be sure to say "NO" clearly, firmly and without smiling when you experience sexual harassment. It is the best way to let the harasser know that his or her behaviour is offensive. If you are asked to go places, do things, respond to questions, or engage in situations that make you uncomfortable, say "NO" emphatically and clearly and do not worry about offending the other person or hurting his or her feelings. Objecting to the behaviour when it takes place helps, if you decide to file charges later.

## Women Employee Responsibilities

- Say "NO" clearly
- Document what happened
- Report the harassment
- Review your personnel file
- Use the grievance procedure at work
- Involve your Union.
- Fill a discrimination complaint with a Government Agency.
- File a lawsuit.



Source: <http://image.slidesharecdn.com/sexualharassmentinpakistanandhowwestopthis-130127125053-phapp01/95/sexual-harassment-in-pakistan-and-how-we-stop-this-31-638.jpg?cb=1359291159>

- **Keep records:** Keep track of what happens in a journal or diary and keep any letters or notes or other documents you receive. Keep copies of any offensive material at the workplace. Write down the dates, times (including frequency of offensive encounters), places, and an account of what happened. Write down the names of any witnesses. Every document that you use during trial must be authenticated by a witness. Keep this in mind during the investigations, when the Committee asks from where you obtained a document. If you are not clear about where you got the document, and who can authenticate it, you might not be able to use it as evidence. In many cases where women have filed cases of sexual harassment, there have been allegations that these charges are false and a case is being made to counter her poor performance. Therefore, keep all letters of commendation, awards, 'thank you notes and anything at all that will corroborate your positive job performance. Pay special attention to documents that your superiors have provided, lauding you and your work. If possible, ask your clients, staff, and peers for letters of commendation, in the event that you have to file a case of sexual harassment.





- **Talk to someone you can trust:** Being quiet or tolerant about sexual harassment gives it the space and opportunity to continue. Talk to other co-workers, union members, family members or friends whom you can trust. You may not be the only one harassed by this person.
- **Create a witness:** Inform a trusted colleague and try to ensure that s/he is an eye or ear witness to a situation where you are being sexually harassed. This will be useful later if you chose to file a formal complaint.
- **Report sexual harassment to the appropriate person in the organisation:** Explore the different avenues available to you and file a formal complaint. If your organisation does not have a policy, ensure that your employer formulates an anti-sexual harassment policy and carries out all the connected tasks.
- **Get a medical check-up:** If you have been raped or physically assaulted, go for a medical check-up. Obtain a medical report. This is important, should you decide to pursue a legal case (UNDP, 2001).

## 4.4 Impact of Gender Mainstreaming, Workplace equality in prevention of sexual harassment at workplace

### 4.4.1 Gender Mainstreaming

Gender mainstreaming in institutions is a strategy, a process and a method of bringing about change in organizations by bringing together the experiences, knowledge and interests, of both men and women to have a positive impact upon the functioning of the workplace.

In July 1997, the United Nations Economic and Social Council (ECOSOC) defined the concept of gender mainstreaming as follows:

*“Mainstreaming a gender perspective is the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality.”*

Mainstreaming is not about adding a “woman’s component” or even a “gender equality component” into an existing activity. It goes beyond increasing women’s participation; it means bringing the experience, knowledge, and interests of women and men to bear on the development agenda (ILO, 2002). Gender Mainstreaming takes into account the two most important aspects of social integration and social cohesion that are integral



in an individual's life –a) the home and family, on the one hand, and b) the workplace, on the other.

Principles of mainstreaming gender take into account:

- ✓ Current social constructs
- ✓ Requirements of both the home and the workplace
- ✓ Needs of the male and female worker
- ✓ Opportunities for better work distribution
- ✓ Stress on equality, freedom and empowerment

Gender Mainstreaming can take many different forms in the workplace. They may include but are not limited to:

- ✓ Developing of various policies such as Gender Policies, Equal Opportunity Policies and Anti-Sexual Harassment Policies that take into consideration the specific needs and challenges that women face in workplaces and steps by which they may be resolved.
- ✓ Incorporation of principles of 'Gender Responsive Budgeting' into financial practices
- ✓ Gender training and capacity building across all levels of the organisation.
- ✓ Career Counseling and appropriate skill building

#### **4.4.2 Workplace equality**

The workplace needs to be developed into a conducive environment which is gender sensitive and inclusive of the sentiments and needs of all employees, especially women. This requires environment building as well as developing capacities and sensitivities of the staff towards gender issues, including sexual harassment. All of these training programmes and other forums should:

- ✓ Be conducted in a non-threatening atmosphere of mutual trust and respect for each other;
- ✓ Reassure staff that all complaints of sexual harassment will be addressed, irrespective of the stature of the persons concerned – both the aggrieved woman as well as the offender;
- ✓ Reinforce the fact that all cases will be dealt with, by following the principles of natural justice and each party will get a chance to speak and put forth their point of view;



Source: [http://childrenandthelawblog.com/wp-content/uploads/2015/12/zero-tolerance-cropped-shutterstock\\_171438128-400x400.jpg](http://childrenandthelawblog.com/wp-content/uploads/2015/12/zero-tolerance-cropped-shutterstock_171438128-400x400.jpg)

- ✓ Assure women that they will not suffer any negative consequences if they register a complaint of sexual harassment;
- ✓ Ensure that an atmosphere of comfort and ease is maintained amongst colleagues, as they are more aware of following appropriate patterns of behaviour.
- ✓ Through face-to-face educational programs and social marketing, workplace-based strategies can raise men's awareness of issues of gender inequality in general or men's violence against women in particular.
- ✓ Workplaces can promote a culture of zero tolerance for sexist and disrespectful behaviour. Undermining established masculine norms and cultures is crucial to such efforts, and should include moves away from traditional models of masculine leadership.
- ✓ Men can challenge the structures and systems at work that produce inequality and exclusion, including by countering unconscious bias in recruitment and promotion, conducting gender audits, setting targets for women's representation, and examining gendered interactions at work.

- ✓ Finally, workplaces can encourage men out of the paid workforce, adopting strategies for men to spend less time at work and more time involved in parenting and domestic work

## 4.5 Other Measures

### 1. Adopt a sexual harassment policy

An effective measure to prevent sexual harassment at the workplace is to adopt a comprehensive sexual harassment policy. The aim is to ensure that sexual harassment does not occur; and if it occurs, adequate procedure are readily available to deal with problem and prevent its occurrence.

The policy should include –

- i) An express commitment to eradicate and prevent sexual harassment
- ii) A detailed definition of sexual harassment at the workplace.

### 2. Communicate the policy and other relevant information

Section 19(b) of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, requires the employer to display the penal consequences of sexual harassment at a conspicuous place in workplace. Therefore display the Sexual Harassment Policy at the Bulletin Board.

### 3. Constitute the internal complaint committee

Section 4(b) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, makes it mandatory for every employer having 10 and more employees to constitute an internal complaint committee to deal with cases of sexual harassment.

### 4. Establish complaints channels

Employees need to be provided different routes to approach the internal complaint committee and file complaints. Informal methods of resolving complaints must be part of the complaints mechanism as many complaints can be resolved effectively and positively through informal methods.

### 5. Workshop/Awareness programme/Training

Section 19(c) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, require the employer to organize workshops and awareness generation programmes at regular intervals for sanitizing the employees with the provisions of the Act.



## 6. Establish sensing mechanism

Setting up a mechanism does not mean that there is sexual harassment in your workplace. Prevention is always better than cure, and being pro-active always helps. Along with performance, change in employees' behaviour patterns also deserves employer's close scrutiny.

## 7. Support Internal Complaint Committee (ICC) in enquiry process

The most comprehensive sexual policies and procedures are bound to fail if a company does not enforce them quickly, consistently, and aggressively. Therefore section 19(d), (e) and (g) require the employer to provide all necessary support to the ICC for dealing with the complaint and conducting an unbiased enquiry.

## 8. Encourage employees and trade unions

**Speak out:** Speaking out about sexual harassment is an effective tool to combat

it. While speaking about it, the problem becomes visible, is acknowledged, and pushes the management to take effective measures against it. Speaking about sexual harassment also helps in changing the attitudes of people towards the issue.

**Keep records:** Keep track of what happens in a diary and keep any letters or notes or other documents you receive. Write down the dates, times, places, and an accounts of what happened. Write down the names of the witnesses.

**Be aware of situations and people who may harm you:** Don't ignore other's warnings about particular employee or social settings. Acknowledge their concern for you and for themselves.



## 4.6 Group Activity

**Question 1:** Women working at an NGO which employs 20 people has been sexually harassed and wants to know available remedies. Does she have the right to complain to the Internal Complaint Committee of the NGO as per the Sexual Harassment Act (considering it is not a commercial venture)?

**Answer 1:** Yes, the nature of the venture is not relevant – so long as the woman is engaged in a capacity covered within the ambit of the Sexual Harassment Act and the location qualifies as workplace within the meaning of the act. In this case, both these requirements are met.

**Question 2:** A Women who works as an analyst at a market research firm faced an instance of sexual harassment from the driver while she was travelling in the company cab for field research. Is she protected under the Sexual Harassment Act?

**Answer 2:** Yes, the women will be entitled to remedies under the Sexual Harassment Act. Under the Act, 'Workplace' includes places visited out of or in the course of employment and any transportation provided by the employer for such visits.

### **Question 3:**

Nimisha, an intern working in a stock broking firm has received sexually offensive SMSes from her senior. The broking outfit has 30 employees, only 5 of whom are women. Can she utilize the machinery under the Sexual Harassment Act in this situation?

### **Answer 3:**

Yes, the stock broking firm is required to constitute an Internal Complaint Committee (ICC) since it has more than 10 employees. The act is applicable in interns - Nimisha can approach the ICC and report the incident.





**Question 4:** Tasneem, an associate at an accounting firm visits a client's office for an audit and faces harassment from a managerial level employee of the client. Both organisations have more than 10 employees. Whom should she complain to?

- A. Internal Complaints Committee of the accounting firm
- B. Internal Complaints Committee of the Client
- C. Local Complaints Committee of the district
- D. Although the client's office constitutes a workplace, she the ICC mechanism will be ineffective in this situation and she should directly approach the police (she can take her employer's help in this regard)

**Answer 4:** Although Tasneem is working in the office of the client, she is doing the work as an employee of the audit firm. Her employer is the audit firm (not the client – because there is no employment relationship with the client). Under the Sexual Harassment Act, workplace includes off – site locations – the client's office will be considered her 'workplace' in this situation. However, since the ICC mechanism will not be effective in this situation, she should initiate criminal proceedings herself or ask the employer for assistance in this regard.



**MODULE 5**  
**TOWARDS EFFECTIVE WORKING OF**  
**INTERNAL COMPLAINTS COMMITTEE/  
LOCAL COMPLAINT COMMITTEE**



## Module 5

### Towards Effective Working of Internal Complaints Committees/Local Complaints Committees

***“Natural justice is a great humanizing principle intended to invest law with fairness and to secure justice”***

***– Justice Bhagwati in Maneka Gandhi v. UOI***

Natural Justice can be described as ‘commonsense justice’ or ‘universal justice’. It is the sense or an implied obligation on the part of a person who is placed in a position of a judge and can pass binding decision to the prejudice of any person to act in a fair, just and reasonable manner.

It is a matter of common sense that if a person is a Judge, then there is an implied duty on him to do justice in a fair and just manner. The law may not expressly tell him that he has to act judicially but the position he is placed comes with a tag that he must act reasonably and fairly in the discharge of his duties. This is known as natural justice and some call it as ‘fair play in action’.

Sexual Harassment at workplace is a serious infringement of rights of a woman. Hence, the legislature has enacted the above legislation providing for ICC-Internal Complaints Committee and the LCC-Local Complaints Committee for redressing the loss caused to the victim. This committee, which is to be constituted from among the staff of the employer in accordance to the provisions of the act. It is vested with such powers that it can reprimand, transfer, deduct salary or increment and even terminate the services of the respondent. It also has the powers to award damages to the victims.

Hence, it becomes inevitable that such a committee observe the principles of natural justice when disposing of the matters before it. Rule 7 (4) of the Sexual Harassment of Women at Workplace Rules, 2013 makes it expressly clear that the committee shall observe the principles of natural justice when inquiring into complaints of sexual harassment. The rules provides for some basic procedure to be followed and leaves out the other parts to the common sense of the committee to act fairly and do justice.

Hence, the procedure needs to be one which is specific from case to case and should be such that it should appear to have rendered justice.

## 5.1 Complaints Committee/s

### 5.1.1 Types

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

### 5.1.2 Composition of Complaints Committee/s

#### 1) Internal Complaints Committee (ICC)

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

S.No.	Member	Member Eligibility
1	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2.	2 Members (minimum)	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
3.	Member	From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

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

#### 2) Local Complaints Committee (LCC)

The District Officer will constitute an LCC in every district so as to enable women in the unorganized sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

1. From women working in an organisation having less than 10 workers;
2. When the complaint is against the employer himself;
3. From domestic workers.

S.No.	Member	Member Eligibility
1.	Chairperson	Nominated from amongst the eminent women in the field of social work and committed to the cause of women
2.	Member	Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district



3	2 Members	Nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that: <ul style="list-style-type: none"><li>• <i>At least one must be a woman</i></li><li>• <i>At least one must have a background of law or legal knowledge</i></li></ul>
4.	Ex Officio member	The concerned officer dealing with social welfare of women and child development in the district

### 3) External Members on the Complaints Committee/s

The Act refers to external members, which generally means persons who have expertise with the issue of sexual harassment. Given the largely intangible nature of workplace sexual harassment, there is a range of complexities involved in responding effectively to workplace sexual harassment complaints. For this reason, external third party/ members of the Complaints Committee/s (from civil society or legal background) should possess the following attributes:

1. Demonstrated knowledge, skill and capacity in dealing with workplace sexual harassment issues/complaints;
2. Sound grasp and practice of the legal aspects/implications.

Such expertise will greatly benefit Complaints Committees in terms of fair and informed handling of complaints to lead to sound outcomes. These external third party members shall be paid for their services on the Complaints Committees as prescribed.

#### 5.1.3 Role of Complaints Committee

The two key roles of a Complaints Committee, as laid down by the Supreme Court Directives are to provide prevention and redress mechanism for sexual harassment complaints within the workplace. According to the Vishakha directives, the primary role of the Complaints Committee is to prevent sexual harassment of women at the workplace. It also states that the rules and regulations of government bodies, public sector bodies and private employers should include the prohibition of sexual harassment as part of its internal code of conduct.

Under the new Act, complaints committees are responsible for the following roles:

- a) Time bound treatment of complaints;
- b) Maintaining confidentiality during inquiry;
- c) Counseling or other support services to the aggrieved employee; and
- d) Preparing an annual report to be given to the government department concerned with complaints and actions taken to address them (Gupta & Hajra, 2007).



## 5.2 Rights of the Parties

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

### 5.2.1 Rights of the Complainant



Source: <http://www.mylegaladvisor.in/wp-content/uploads/2015/02/sexual-harassment-complaint-lawyer.jpg>

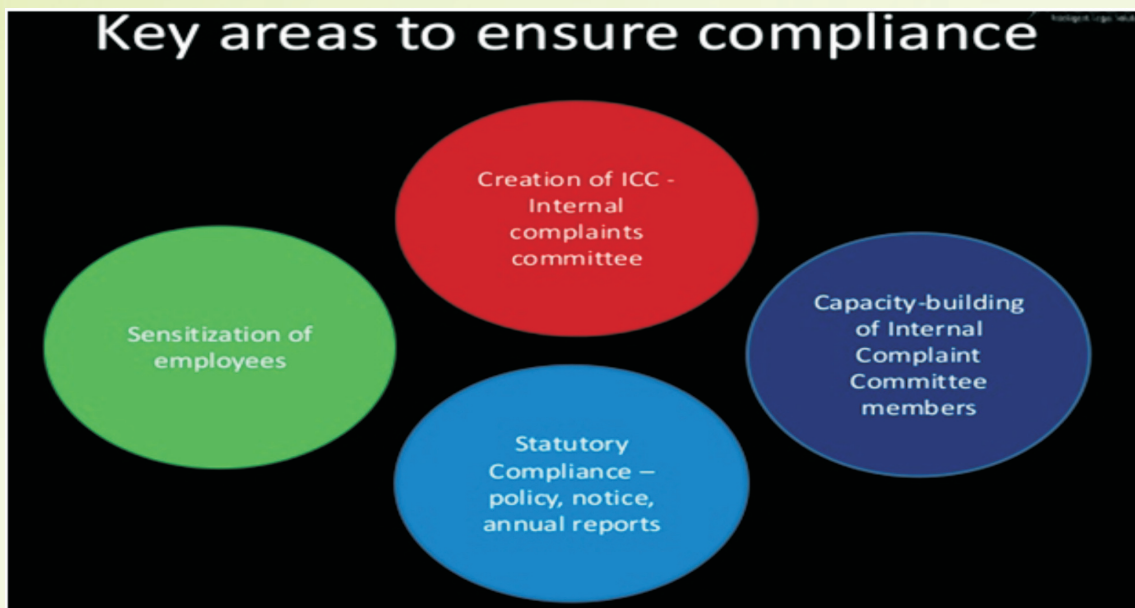
- ✓ An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment
- ✓ A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent
- ✓ Keeping her identity confidential throughout the process
- ✓ Support, in lodging FIR in case she chooses to lodge criminal proceedings
- ✓ In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent
- ✓ Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee

### 5.2.2 Rights of the Respondent

- ✓ A patient hearing to present his case in a non-biased manner

- ✓ A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- ✓ Keeping his identity confidential throughout the process
- ✓ Right to appeal in case not satisfied with the recommendations/findings of the Complaints Committee

### 5.3 Working of Internal Complaints Committees/ Local Complaints Committees



Source: <http://image.slidesharecdn.com/endsexualharassment-explainerppt04042014-140404062950-phpapp02/95/end-sexual-harassment-toolbox-3-638.jpg?cb=1396595263>

According to the Act, a complaint can be made to the Internal Complaints Committee, Local Complaints Committee or directly to the court of law. The Complaints Committee/s needs to collect information in five stages, detailed below, for addressing a complaint of workplace sexual harassment.

#### Step 1

Aggrieved women can file their complaints in writing to the ICC or LCC 'as appropriate', within three months of the incident of sexual harassment. 6 copies of the complaint along with supporting documents and the names and addresses of the witnesses need to be submitted.

However, this time line can be extended if the ICC/LCC is satisfied that circumstances were such that the aggrieved person was prevented from filing a complaint.

If the aggrieved woman is unable to make the complaint due to physical or mental incapacity, then her legal heirs, friends, or relatives can do so. Further, if an aggrieved woman is unable to file a complaint for any other reason, any person who has knowledge of the incident (e.g. colleague) may file a complaint on her behalf with her written consent.

## Step 2

Upon receipt, ICC/LCC will inquire into the complaint and give both parties the chance to be heard, although neither party can bring their lawyers to the inquiry process. The inquiry must be completed within 90 days.

In cases of complaints brought by domestic workers, the LCC will forward the complaint to the police, within '7 days' to initiate criminal proceedings.

## Step 3

In cases where the ICC/LCC finds that the allegation/ charges made in the complaint are proven, it shall prepare and submit a report to the employer within 10 days of the completion of the inquiry to take action. An action that the ICC can recommend are:

1. Action against the respondent such as
  - a. Furnishing a written apology to the aggrieved person;
  - b. Warnings, reprimands or censure;
  - c. Withholding promotion or pay rises/ increments of the respondent;
  - d. Terminating the respondent from service;
  - e. Counselling sessions or community service for respondents.
2. Deductions from the respondent's salary to be paid to the aggrieved woman as compensation.

## Step 4

The employer must act on the ICC/LCC recommendations within 60 days. If the employer fails to take any action on the ICC/LCC's recommendations, s/he may be fined (upto Rs. 50,000/-). Repeated violations may result in the employer losing his / her license or registration to function.

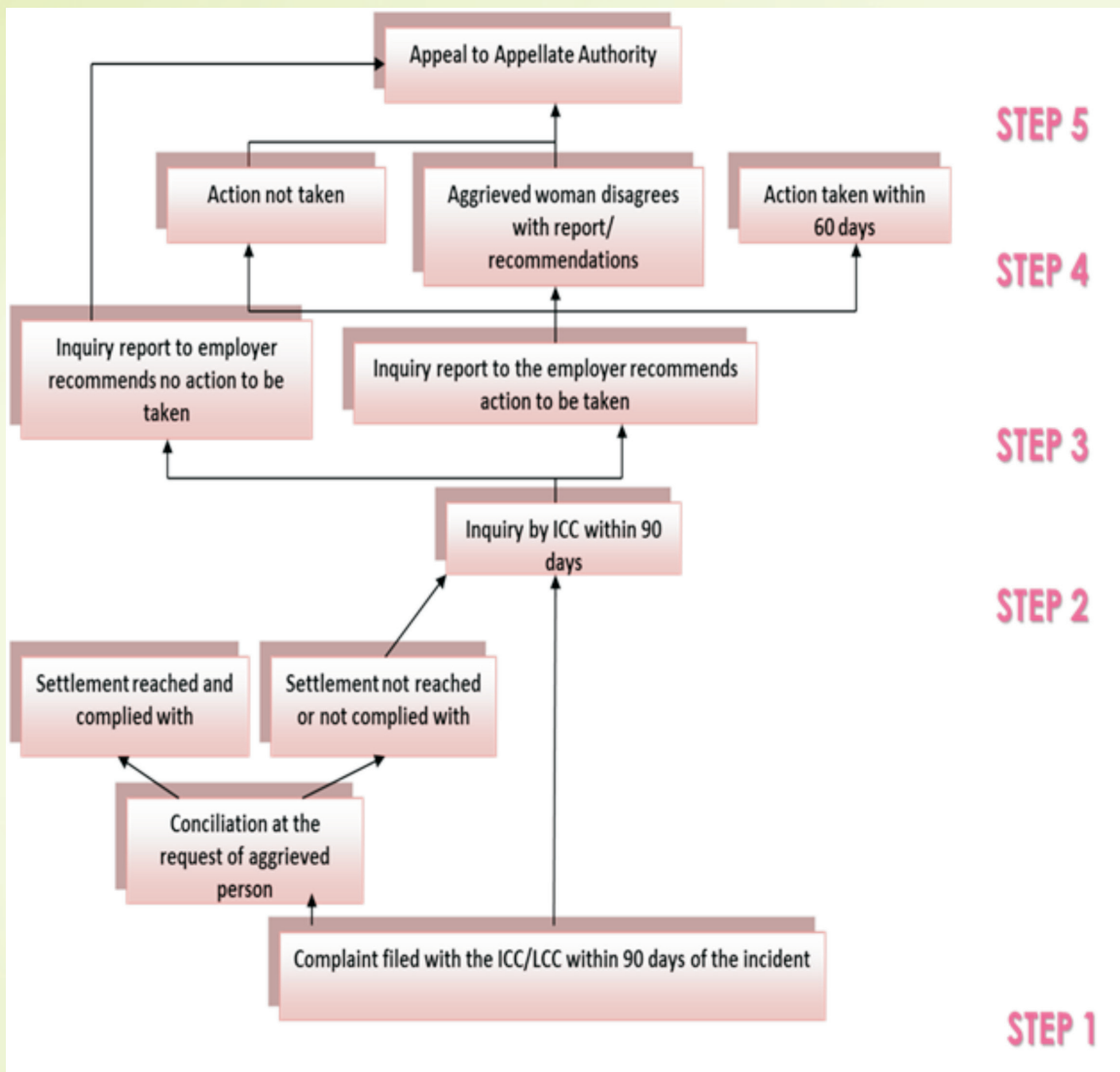
## Step 5

If the aggrieved woman does not agree with the ICC/LCC's recommendations, or the employer fails to take any action based on the recommendation, she may file an appeal in accordance with applicable service rules to the court or any specified appellate authority. In the absence of service rules, she can file an appeal with appellate authority notified under the Industrial Employment (Standing Orders) Act, 1946.

NB: Employers are required to disseminate information on the law and particularly on the grievance redressal mechanism. This includes information on applicable service rules and notified appellate authorities. Hence, information on applicable service rules and appellate authorities should be available with the employer and explained in the organisation's anti-sexual harassment policy.

Flowchart of all the five steps is given below:-

### Working of ICC & LCC



Source: *Using law to address sexual harassment against women in the workplace in India a guide for working women NEN, 2014*



### 5.3.1 Timelines related to Inquiry Process

S.No.	Inquiry Process	Time Period
1.	Submission of Complaint	Within 3 months of the last incident
2.	Notice to the Respondent	Within 7 days of receiving copy of the complaint
3.	Completion of Inquiry	Within 90 days
4.	Submission of Report by ICC/LCC to employer/DO	Within 10 days of completion of the inquiry
5.	Implementation of Recommendations	Within 60 days
6.	Appeal	Within 90 days of the recommendations

Source: Handbook on Sexual harassment of women at workplace (prevention, prohibition and redressal) act, 2013 by MOWCD, Nov 2015

### 5.3.2 Confidentiality of the Inquiry Proceedings

The Act prohibits the publication or making known the contents of a complaint and the inquiry

Proceedings. Any breach of confidentiality will result in specific consequences.

The Act prohibits the disclosure of:

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

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

**Consequences:** As per the Service Rules or Rs.5,000/ to be collected by the employer.

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

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





## 5.4 Standards to Assess Complaints of Sexual Harassment

The most leading standards to assess sexual harassment in the workplace include:

- i. Reasonable Woman Standard
- ii. Intent vs. Impact
- iii. Human Rights
- iv. High Probability of Occurrence of Sexual Harassment

### 5.4.1 Reasonable Woman Standard:

The most common practice to assess sexual harassment in the workplace is to use a Reasonable Woman Standard. It implies that any act(s) or behaviour is considered to be sexually harassing if a 'reasonable woman', when put in that situation, would deem it to be so. This standard was adopted in order to avoid decisions being taken that would, in all likelihood, have a male perspective to it, if there are no woman- based standards available. This shifts the emphasis from the respondent to the complainant, who is always a woman.

### 5.4.2 Intent vs. Impact:

"Intent" vs. "impact" is one of the most crucial standards in assessing sexual harassment. In this framework, the "impact" on the victim is given weightage as opposed to the "intent" of the perpetrator. This view has had significant bearing upon cases of sexual harassment and the consequent decisions that have favoured women. There is an emphasis on the purpose or effect of the offensive conduct on another's dignity. Impact, not intention, is what counts. In a nutshell, it is not sufficient reason to excuse an act of sexual harassment merely because someone said "*Well, I did not mean it, sorry!*"

This approach, combined with the Reasonable Woman Standard approach, are important elements in deciding cases from a third party perspective, along with the cultural context and other prevailing social norms to ensure that justice is meted out.

### 5.4.3 Human Rights Approach:

This approach uses the definition of 'human rights' in Section 2 (d) of the Protection of Human Rights Act, 1993. However, going beyond the law and using a human rights approach, shifts the emphasis in assessing a case of sexual harassment. Decisions are no longer taken on the basis on direct evidence or proof that is submitted but examine the social context in which such violations occur. The reality that sexual harassment is a 'power game' and often occurs in a relationship of unequals becomes central to assessing a complaint. The human rights issue also goes beyond an individual perpetrator

and takes into account lapses in the work environment that can have detrimental results and negative consequences for the individual, as well as the organisation.

#### 5.4.4 High Probability of Occurrence of Sexual Harassment:

The Supreme Court recognised, as in the case of Apparel Export Promotion Council vs. A.K. Chopra in 1999, that if evidence and witnesses may not always be forthcoming, reliance has to be placed on the circumstantial evidence and whether it inspires the confidence of the judges. The terms used for evidence is that of “high probability” or “within reasonable doubt”. Which means that it is not required that the Committee obtain a ‘proof beyond reasonable doubt’ to take a decision on whether sexual harassment has occurred. As most incidents of sexual harassment are in private without any solid evidence or eye witnesses, the case should be built upon the high probability of the occurrence of sexual harassment having taken place is sufficient to take a decision in the favour of the aggrieved (Farrell, 2010).

### Group Activity

#### Question 1

You, a female worker approach your supervisor for guidance on the project that you are working on and are told that if you stay later and put in a little effort of your own, he will give you the guidance you are looking for. He says this without looking at your eyes but all over your body.

- 1) How do you feel in this circumstance?
- 2) What is the best reaction to take?
- 3) Who can you complain to?

#### Answer 1

- 1) People respond to sexual harassment in different ways. The responses can range from shame to confusion to anger. What is important is to speak out instead of hiding or depressing your real feelings.
- 2) Sexual harassment is against the law and you do not have to be subjected to it. The best way to stop such conduct is to be direct. Have a talk with your supervisor or send him a letter which should be brief and clear. Your supervisor should be aware that his actions are making you feel uncomfortable and you would appreciate if he stops right away.
- 3) You can first file a complaint with the relevant department of your own organization, if no proper action is taken, you can file a complaint with the supervising organisation or women’s organisation and the trade union. If all of these are ineffectual, file a case with the court.



## Question 2

A new female employee has just been hired to a firm and is doing her best to make a good impression. Her boss has been complimenting her on her work and style. One day when she is working later than the other employees, he comes to her, rubs her shoulders and reiterates how much he appreciates her efforts, but says that she could be doing more, after which he makes a hand gesture for her to follow him into her office.

- 1) Should she follow her boss into his office?
- 2) Should she tell her boss not to touch her in such a manner?
- 3) Should she request all the compliments be stopped?
- 4) Should she not stay late hours anymore?

## Answer 2

- 1) She should not give the opportunity, being in public may be a weapon against the harasser. It can provide the victim an opportunity to say "No" to sexual harassment with witnesses around. This can be useful if the employee does decide to take her case to court.
- 2) Yes, if she feels uncomfortable by any action toward her, she should express it right away. Otherwise her boss may feel justified and even encouraged by her silence.
- 3) Some compliments are appropriate in a work setting and some are not. Compliments and appreciation toward her work may be called for in the proper context. If she is not comfortable with all the compliments of her boss, she can politely request that all compliments be stopped.
- 4) Employees should not allow harassers' action to limit their freedom. Doing so gives the harasser more power than he/she deserves. As hard as it may be, employees should not allow the harasser to affect their work as this may give the boss a reason to fire you. If you feel the need to put in late hours and you have done so before, go ahead and do it. The goal of actions against sexual harassment is to change the harasser's actions not your own.

**Question 3:** A secretary at a firm feels that her job expectations may be exceeding her job requirements. Her boss asks her to pick up his laundry, bring his lunch from home, of which he has given her a key out of what he calls trust. He has recently asked her to accompany him to a networking event with other companies. When she expresses resistance, he insists that she has to do so for the company. He tells her that since his wife left he has been very lonely, so she should consider anything she can do to help him be a happier boss as part of her job and will be rewarded accordingly.

- 1) Should the lady refuse to do any of these tasks? If so, which ones and how?
- 2) Should she have accepted the key to his house?
- 3) Is it her job to make her boss happy? How should she respond to his request?
- 4) What kind of rewards do you think the boss is referring to? Is he at liberty to do so?

### Answer 3

- 1) Some tasks may be considered ordinary for a secretary. This may include getting the boss coffee, ordering his lunch, and making personal phone calls to friends, family, and business acquaintances. While a secretary's task may get a little more personal than the other employees, there is a limit. Where the line is drawn depends on the secretary. If the boss crosses the line, for instance, asking the secretary to accompany him to a personal event, the secretary should be clear with her boss that that is not a possibility. A secretary does not need to do things that are not included in her labor contract.
- 2) Accepting the key to the boss' house oversteps the employer-employee boundaries. Although it may be a little difficult to refuse the boss' request, not refusing them immediately will make them harder and harder to refuse as time goes on. This will only create a more difficult work environment and increase the risk of sexual harassment.
- 3) All employees work for the success of the company. That can happen whether or not the boss is happy. Therefore, the secretary is not responsible for keeping her boss happy. The secretary has the right to turn down the boss' requests that make her feel uncomfortable and let the boss know why. Communication is the key, lack of which only causes more problems.
- 4) It does not matter what exactly the rewards are. But the implication is important. If the boss is implying that if the secretary takes up the responsibility of making him happy, she will receive employment benefits- no matter what that may be, otherwise, he will not give her the recognition of her work, it is wrong. A boss is not at liberty to assign employment benefits to any employee for his personal benefit.



#### Question 4

A woman has expressed her need for a promotion. She tells her boss that she is willing to put in extra hours if necessary. She is told that her request will be reviewed and taken into consideration, after which her boss starts criticizing her work and letting her know she can put in more effort all around. He calls her into her office and informs her that after reviewing her input in the company, he cannot grant her request. He concludes, however, that if she would like to further discuss the matter, he would be willing to take her for dinner, after which he would also be willing to take her to see a performance.

- 1) How could the female employee have immediately responded to his criticism?
- 2) Do you think the lady should refuse to have dinner with her boss when she suspects it is due to her request for a promotion?

#### Answer 4

- 1) The lady could have asked specifically what problems her boss had with her work so she could make sure not to repeat the same mistake. If the criticism continued afterwards, the lady can ask if this newly found criticism has anything to do with her request for a promotion and force the boss to confront the topic directly.
- 2) She can request that they discuss it during work hours in order to maintain a professional environment. If the lady does refuse to discuss the matter over dinner, the boss may claim to be too busy to discuss it otherwise or may make some other excuse to meet with the women alone. This should be recognised for what it is - a ploy.



### Question 5

Miss. Sunita is a high ranking female in the company. She has been feeling ostracized/ isolated from her fellow male counterparts. She expresses these concerns to her boss and requests to be invited to the same events as her male co-workers. Her boss lets her know that they are not company events, but more of male bonding activities which she doesn't need to be concerned with. At her insistence, he invites her and other staff members, some of whom are other women to a company dinner. At the dinner, lewd jokes are made about men. The other women do not seem to have a problem with the jokes and laugh. When Miss. Sunita expresses her distaste of the jokes, she is made to feel ridiculed by the other men at the table for overreacting. Her boss takes her to the side and tells her that this is what he thought she wanted but if she feels uncomfortable, she is free to leave.

- 1) Does the boss have a legitimate reason to ask her to leave?
- 2) Does Miss. Sunita have a legitimate reason to feel offended?
- 3) Is it appropriate to have activities that exclude any gender group from participating?

### Answer 5

- 1) The boss' request for an employee to leave an employee dinner is rude and has no legitimate reason, especially after she expressed her concerns of isolation in the work setting.
- 2) Any one who is reasonable would be offended under such circumstances. Therefore Miss. Sunita should not have to question whether her feelings are legitimate. She should continue to communicate and share her concerns with her boss again and not be intimidated by his position.
- 3) Excluding any gender group from company activities is inappropriate, which in itself is gender discrimination in the workplace.



# **MODULE 6**

## **CREATING SUSTAINABLE INCLUSIVE ENVIRONMENT IN THE WORLD OF WORK**

# Module 6

## Creating Sustainable Inclusive Environment in the World of Work

### 6.1 Sensatisation on providing an enabling environment for women workers in the World of Work

#### 6.1.1 Gender Sensitisation

Gender Sensitisation deals with creating awareness and to sensitize/ train the staff members in the organization, men and women, to understand and to eliminate gender discrimination. Thus it helps in providing safe and conducive working environment for the women, by eliminating chances of sexual harassment.

#### 6.1.2 Need for Gender Sensitisation

In India, the Constitution provides equal rights and opportunities for women; but in practice the women employees face various problems like lack of safety, sexual harassment from superiors and colleagues etc. This is prevalent in un-organized sectors, as well as in organized sectors. As more and more women are coming forward for employment and many of them have to independently shoulder the responsibilities of their families, ensuring comfortable, safe and conducive working-environment for women is the responsibility of the society, the employer and the colleagues. The society where violence against women, both subtle and direct, is borne out of the patriarchal values operating in the society, force women to confine to gendered roles. These patriarchal values and attitudes of both men and women pose the greatest challenge in resolution and prevention of sexual harassment. Sexual Harassment at workplace is an extension of violence in everyday life and is discriminatory, exploitative, thriving in atmosphere of threat, terror and reprisal.

#### 6.1.3 Sexual Harassment Awareness Raising

The setting up of a complaints committee and an anti-sexual harassment policy lays a strong foundation for a workplace free of sexual harassment. The training programme is the best way to ensure proper understanding and implementation of the policy. It is the best forum to communicate to employees what behaviour is acceptable and what is not, in a non-threatening atmosphere of mutual learning. Inform the supervisors that even mild to moderate sexual jokes or statements can create an atmosphere of hostility that will make some employees uncomfortable, and could lead to the creation of a hostile work environment. The training for the employees should address perceptions of

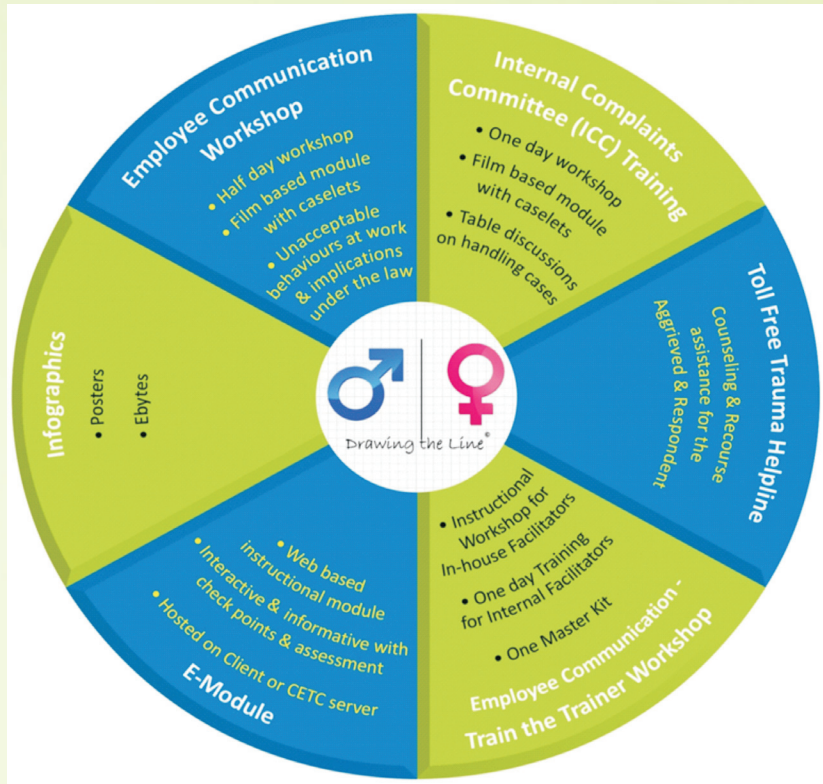


sexual harassment, impact of sexual harassment on individuals and workplace, why and how to prevent it, understanding the policy and complaints mechanism. Training for the members of the Complaints Committee and others who are going to be instrumental in implementing the policy, is very essential. Their training should include a component of gender sensitisation, along with the procedures for taking complaints, and for enquiry, etc.

It is common for governments to conduct awareness-raising on the existence of sexual harassment, techniques to prevent it, and the content of the relevant legal provisions. In Jamaica, for instance, sexual harassment has been included as an element in government awareness-raising activities aimed at improving the treatment of women in employment. Many of these kinds of programme are aimed at ensuring that newly introduced legislation or codes of practice become widely known among potential victims, harassers and employers. The Malaysian Ministry of Human Resources held nation-wide workshops and seminars as part of an awareness-raising campaign on its *Code of practice on sexual harassment*. In France, too, information brochures were produced for distribution to the general public to call attention to its legislation; while in the Netherlands, a television advertisement campaign was launched by the Ministry of Social Affairs. The Women's Secretariat of the General Confederation of Labour in Greece issued a brochure informing workers of their rights under two judicial decisions prohibiting sexual harassment; and, in the Philippines, the Department of Labor and Employment (DOLE), through its Bureau for Women and Young Workers, has focused on developing and distributing low-cost and widely-available information materials. A poster outlining the provisions of the sexual harassment legislation and an information kit containing a model company policy and procedure have been distributed. Other organizations are also conducting awareness-raising activities in a number of countries. In South Africa, for example, the Sexual Harassment Education Project (SHEP), an NGO which works to improve the environment for women in unions, businesses, government and NGOs, conducts sessions for trade unions and other bodies

The EEOC reported nearly 100,000 job bias charges in the fiscal year of 2012, with retaliation, race, and sex discrimination, including sexual harassment, as the most frequently filed charges. Most employers are well aware that they must and should prevent discrimination in the workplace. Indeed, failing to curb discrimination can be costly and result in increased employee turnover and absenteeism, lower employee morale and productivity, and higher insurance premiums and defense costs, among other things. Therefore, it is important for employers to be proactive and prevent discrimination from occurring in the first place. To accomplish this goal, employers should consider the following steps:





Source: <http://cetcindia.com/wp-content/uploads/2014/02/Drawing-the-line.jpg>

## 6.2 Prevention of Discrimination in the workplace

# Discrimination Prohibited

WSU policy prohibits discrimination on the basis of:

- Race
- Sex/Gender
- Sexual orientation
- Gender identity/expression
- Religion
- Age
- Color
- Creed
- National or ethnic origin
- Physical, mental or sensory disability
- Marital status
- Genetic information
- Status as an honorably discharged veteran or member of the military

Source: [http://images.slideplayer.com/18/6068252/slides/slide\\_4.jpg](http://images.slideplayer.com/18/6068252/slides/slide_4.jpg)





## 6.2.1 Become Familiar With All Applicable Antidiscrimination Laws

As a starting point, employers should obtain a firm understanding of the various discrimination laws applicable to them. Employers often mistakenly believe that compliance with federal antidiscrimination laws, like Title VII is sufficient. However, many employers must also comply with antidiscrimination laws at the state and local levels. Those laws may offer greater protections against discrimination than federal antidiscrimination laws.

For example, some states have state antidiscrimination laws which, unlike Title VII, prohibit employers from, among other things, discriminating against employees on the basis of sexual orientation. While an employer would not violate Title VII if it terminated an individual because of his or her sexual orientation, that employer would violate the state antidiscrimination law.

Employers can familiarize themselves with these laws by having the appropriate employer representative(s) periodically attend training seminars and review literature regarding discrimination in the workplace.

## 6.2.2 Implementation of Comprehensive Antidiscrimination Policy

After developing a sufficient understanding of the applicable antidiscrimination laws, the next step is to create a broad, or broaden an existing, antidiscrimination policy. Some state antidiscrimination laws may even require employers to maintain an antidiscrimination policy. Such policies allow an employer to make clear to its employees the types of behaviors that it will not tolerate in the workplace. Any antidiscrimination policy should use clear and concise language, be easily understood by the employee and include the following:

- ✓ A broad and explicit policy that the employer strictly prohibits discrimination and harassment in the workplace.
- ✓ Clear definitions of discrimination and harassment, including examples where appropriate. It should also identify each class protected against discrimination and harassment (e.g., race, color, sex, age, religion, etc.).
- ✓ Language regarding the policy's application of its protections beyond the workplace. It should apply anywhere employees act on behalf of the employer (e.g., at an off-site client meeting) or attend an employer-sponsored event (e.g., holiday party).
- ✓ Workable complaint and reporting mechanisms. Any policy should encourage employees to report discriminatory or harassing conduct through the appropriate channels, outline the employer's investigation procedures, and promote confidentiality.

- ✓ Broad anti retaliatory and disciplinary provisions. Employees must believe that they can complain without fear of reprisal in any form, and that the employer will issue the appropriate sanction, including termination, against any individual found to have discriminated, harassed or retaliated.

Employers are well-advised to consult experienced employment counsel to assist them draft a policy. Once the policy is finalised, it should be distributed to all new employees upon hire, and to all existing employees at least annually, and on an as-needed basis. Employers should require that each employee review and acknowledge the policy each time it is distributed, and retain employee acknowledgments in personnel files. Employers should also review their antidiscrimination policies periodically and modify them to account for any changes in the law (or to otherwise make them consistent with their business objectives).

### **6.2.3 Conduct Antidiscrimination Training Programs**

Employers need a policy that is put into practice. Therefore, it is necessary to develop and institute appropriate antidiscrimination programs designed to train employees on how to understand and abide by the employer's antidiscrimination policy. More generally, however, these programs should highlight the employer's goal of eliminating discrimination and harassment and otherwise reinforce the employer's values of professionalism and mutual respect in the workplace.

Training should occur periodically (at least annually) and attendance should be mandatory. In fact, some state laws require employers to conduct these training programs. All employees should be required to sign acknowledgments regarding their attendance and that they were encouraged to ask questions about the company's antidiscrimination policies and procedures. Employers should maintain these signed acknowledgments in the employees' personnel files. Further, any program should be comprehensive in nature and should:

- ✓ Ensure that employees are aware and continue to be aware of the employer's policies and procedures regarding discrimination and harassment, including how to report allegations of discrimination and harassment and prohibitions against retaliation;
- ✓ Extend well beyond issues related to sexual harassment to ensure that employees become familiar with all aspects of discrimination, harassment and retaliation; and
- ✓ Encourage employees to participate during the program and provide real world examples. This not only makes the training program more interesting and



fulfilling, but will allow employees to better recognise and report discrimination and harassment when it actually happens.

Employers should also develop a separate or enhanced program for supervisory or managerial employees that also focus on how to recognise and report discrimination and harassment, as these employees serve as the employer's first line of defense to its prevention efforts. They must also be aware that they will be disciplined for failing to report discrimination or harassment or for retaliating against a complaining employee.

Employers should ensure that an experienced HR professional or employment counsel conducts any training program.

#### **6.2.4 Ready to Investigate Complaints of Discrimination or Harassment**

In addition to a broad antidiscrimination policy and training program, employers must also create the appropriate investigatory procedures in order to effectively resolve complaints of discrimination and harassment once they are reported. Employers should consider the following when investigating a complaint of discrimination or harassment.

- ✓ **Investigate Promptly.** Do not delay - as soon the complaint is reported, begin to investigate. Employers should treat all complaints seriously, no matter how trivial they may appear from the outset.
- ✓ **Select an Investigator.** Select an individual, usually an HR professional, who is well-versed in handling discrimination or other employee complaints, to investigate. Selection of a third-party investigator such as outside counsel or a consulting firm may be appropriate depending on the severity of the alleged incident, if an employee levels discrimination charges against a high-level official within the employer's organization, and/or if the employee decides to publicize the complaint.
- ✓ **Conduct Interviews and Review Evidence.** Conduct the appropriate interviews and review documents. Start with the complaining employee, and inform him or her that the complaint is being taken seriously. Encourage the employee to be open and honest about the events surrounding the complaint so that a fully-informed decision can be made. Next, interview the alleged wrongdoer and obtain his or her version of the events. Finally, interview any other employee that could assist in determining whether any discrimination occurred. Also review any relevant documents, such as emails between the employees.
- ✓ **Consider Confidentiality.** Inform the complaining employee and other interviewed employees that, to the extent possible, steps will be taken to ensure

confidentiality and to protect against unnecessary disclosures. Communications made to others should be made on a limited *need to know* basis.

- ✓ **Prevent Retaliation.** Make sure that the complaining employee is not retaliated against under any circumstances. Employers must be aware that unlawful retaliation extends beyond standard adverse personnel decisions such as terminations, demotions and salary reductions, and includes any action that would have dissuaded a reasonable person from having complained in the first place. Further, unlawful retaliation may occur even if no discrimination did, and it is not uncommon for an employer to prevail on a discrimination claim, only to lose on a retaliation claim.
- ✓ **Document the Investigation.** The investigator should take detailed notes during the interviews. Document each and every step taken to conduct the investigation, including who was interviewed, when and where, and who was present for the interview. Identify any documents (including emails) reviewed as part of the investigation. Prepare a report summarizing the findings from the investigation and recommending proposed disciplinary actions. If no disciplinary action is warranted, state the reasons why.
- ✓ **Take Appropriate Disciplinary Action.** When the investigation is complete, inform the participants, and immediately take the appropriate disciplinary action against the alleged wrongdoer. The type of disciplinary action will always depend on the circumstances, including the severity of the action, and may range from further antidiscrimination training or counseling, to a warning or suspension, or even termination. Even if an investigation proves inconclusive, additional antidiscrimination training or counseling may be warranted.

### 6.2.5 Analysis of Unintentional Discrimination

Employers must also be aware that discrimination may result when an employment practice that is seemingly neutral on its face (e.g., a standardized test for applicants), negatively impacts a protected class of employees. In this case - called disparate impact discrimination - the discrimination is not the product of any bad intent; instead it results from neutral decision-making.

For example, consider a reading proficiency test given to job applicants. While a reading test is not discriminatory on its face, it could disproportionately affect learning disabled individuals. To defend against a *disparate impact* discrimination claim, the employer would be required to demonstrate that the reading test is job-related and consistent with business necessity. If the employer at issue here was a manufacturer seeking to hire manual laborers to populate its assembly line, then it is unlikely the employer could





make this showing. If, however, the employer operated a tutoring business seeking to hire reading tutors, then it could possibly make this showing. The employee would only be able to prevail if he or she could then show that a less discriminatory alternative practice was available.

To prevent this type of discrimination from occurring, employers should carefully analyze their business decisions to determine whether they adversely impact a protected class of employees, including by running statistical analyses, or where appropriate, validation tests, and if the business decision does adversely impact a protected class of employees, the employer should then determine whether it is related to the skills necessary to perform the job or is otherwise necessary to operate the business, and even if so, whether a less discriminatory or even neutral alternative practice is available.

### **6.3 Implementing a conducive working environment**

It is apparent that having a policy on sexual harassment, and even ensuring that all employees know of its existence, is insufficient to prevent sexual harassment. Policies must also routinely be applied, and complaints swiftly and effectively addressed. Employee perception of the organization's tolerance of harassment and the employees' beliefs as to the organization's stance on the problem have been found to have more influence on their attitudes and behaviours than the existence of formal rules and regulations. Consequently, measures must be taken to ensure that policy statements are put into practice. For instance, certain policies hold all members of management responsible for maintaining a harassment-free working environment. Many require that all staff ensure an environment free from sexual harassment, while imposing a specific obligation on managers and supervisors to uphold the policy, rather than confining this role to human resource officers and senior executives. In Canada, for example, a trend has been noted in the banking sector towards introducing policies under which preventing harassment is the direct responsibility of every manager and supervisor. In India, the Central Civil Service Conduct Rules include a provision that every government servant in charge of a workplace should take appropriate steps to prevent sexual harassment. There are also signs of moves being made towards involving employees in ensuring that sexual harassment policies are implemented, including by allowing third parties to complain about conduct they have witnessed. In addition, in some enterprises, the powers accorded to individual victims are particularly extensive, enabling them to deal with sexual harassment immediately of their own accord without prior recourse to official channels. In the Netherlands, for instance, the collective agreement covering social workers in family care provides that employees subjected to sexual harassment may immediately stop work before presenting their complaint to a superior.



### 6.3.1 Commitment from top

Commitment is shown through enforcement and action by the responsible authorities. Even the most comprehensive sexual harassment policies and procedures are bound to fail if a company does not enforce them quickly, consistently, and aggressively. To be effective, organizations must take sexual harassment seriously. They need to make certain that personnel responsible for enforcement conduct prompt, thorough, and documented investigations of all complaints, even those that appear trivial.

Organizations should take action that is reasonably calculated to end the harassment. Such action must be directed toward the harasser, and may include verbal warnings, written warnings, job transfers, suspension of employment, and, if necessary, termination. Employers should also keep tabs on their supervisors. This can be accomplished by means of monthly meetings with higher management, unscheduled spot checks, or periodic sexual harassment training sessions with the implementing authorities.

### 6.3.2 Practices consistent with Policies

Organizations must place just as much emphasis on reporting responsibilities and mechanisms as on the policy itself. Setting a precedence - Even if the accused is a senior executive/ a partner/any other person who is an asset to the company, and brings in a lot of business, it is essential that he should be punished if found guilty, as this sends out a strong message that the company will not tolerate any harassment by anyone.

The issue of sexual harassment needs understanding, assessment, sensitivity and commitment from all quarters but mostly from the senior managerial authority as their commitment and action can achieve the aim of prevention and effective resolution of sexual harassment at workplace and a gender friendly, discrimination free workplace. Above mentioned literature highlights that 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. 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. It is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace (PRS Legislative Research, 2013). In order to achieve substantive equality, Sexual Harassment issues need to be adopted in policies addressing affirmative steps that would enhance



women participation in the labor market. The above mentioned literature highlights the need for detailed research on issues pertaining to sexual harassment. Within this context the present research has been conducted.

## **6.4 Educating employers and employees on Sexual Harassment policies**

### **6.4.1 Training of employers and employees to keep the workplace free of discrimination and harassment**

Training is among the most important of the proactive measures which can be taken to ensure that the broad contours of a sexual harassment policy be effectively implemented in practice. Many organizations provide training in two stages: first, on the content of the policy; and then to ensure that it is effectively enforced and used. Training sessions can then be conducted at regular intervals to ensure awareness among the workforce and managers of what constitutes sexual harassment, their responsibilities, and the details of the grievance procedures, and to update them on any changes. Sessions may be directed at the entire workforce, or designed to fit the specific needs of employers, managers and individuals with specialized roles, such as confidential counsellors. Ultimately, individuals in the organisation can be trained to conduct future sessions and workshops. Employers are currently making use of some or all of these training options. Some design training unilaterally. In others, however, the provision of training has enabled workers and their representatives to be actively involved. In Germany, for example, many firms have arranged training seminars in cooperation with their works councils.

The stage at which the training is conducted can be crucial. Many organizations have recognised the need to educate workers about sexual harassment as soon as possible, and have introduced training at an early stage, perhaps even during the recruitment process or in the first few weeks of employment. In China, for example, in a number of hotels in Tianjin, pre-post training has been offered to women workers, although it has tended to focus on proving the ability of women to protect themselves from harassment rather than on methods of preventing it. Some policies require training to be included in induction programmes. In addition, some organizations have targeted training at groups in their workforces who are at a particular risk of being sexually harassed. Bell Canada, for instance, established a Qualifications Development Programme aimed at increasing the representation of women in trades, technology and operation jobs. Management and unions have developed training specifically for women entering the programme and their supervisors, including a sexual harassment awareness workshop. Training programmes are also often devised specifically for individuals with a specialized role in the complaints procedure on the most appropriate ways of dealing with complaints.

Training on sexual harassment in the workplace can take a number of forms, depending on the stage at which it is introduced and the groups to whom it is addressed. Often, however, it is conducted by presenting examples of harassment in role-playing, allowing the participants the opportunity to discuss whether the behaviour they have witnessed constitutes sexual harassment and the most appropriate ways of responding to it. One of the most widely reported examples of this kind of training sessions is the workshop, “A matter of respect”, conducted at DuPont. These sessions involve interactive video-based training in which the participants view scenarios and engage in a facilitated discussion. The American Social Security Administration, which employs workers across the United States, purchased sexual harassment awareness training software to provide training for all of its employees. However, even where these relatively expensive methods of training provision are unavailable or inappropriate, the primary elements of training – defining sexual harassment, ensuring that those responsible for the implementation of the policy can recognise and address it, identifying the most effective ways of conducting investigations – can be included as elements of even the most basic training course.

#### **6.4.2 Launch regular education and training campaigns on the prevention of sexual harassment**

All employees should attend regular training programs on the prevention of sexual harassment in the workplace, including training for new employees, credit examination meetings, credit communication correspondence and management training. Such training programs are organized by the legal and HR functions, which are available in online and on site. The trainees discuss circumstances which may be deemed as sexual harassment so as to achieve the following objectives:

- ✓ Understand what behavior constitutes sexual harassment;
- ✓ Learn the impact of sexual harassment on the company and employees;
- ✓ Consider and understand how to prevent sexual harassment;
- ✓ Understand how to deal with sexual harassment.

The training for managers not only covers the polices, but also includes how to deal with and investigate reports.

The training emphasizes that before the first sexual harassment, even if the motive is friendly, the other party will feel uncomfortable, because different people have different feelings for the same behavior. Don't assume that your behavior is acceptable to the other party, nor take for granted that you have established a good relation with the other party. Before exercising sexual harassment for the second time, you should know



that due to subordination and other relations that may bear an impact, the other party normally would not reject explicitly. Therefore, once you know that your behavior is unwelcome to the other party, stop it immediately.

### 6.4.3 Sensing Mechanisms

Setting up a mechanism does not mean that there is sexual harassment in your workplace. Prevention is always better than cure, and being proactive always helps. Along with performance, change in employees' behavior patterns also deserves employer's close scrutiny.

**Conducting Surveys** - Conducting time-to-time surveys are helpful to identify and prevent factors/situation leading to incidence of sexual harassment. The survey can be done anonymously and should be distributed with a copy of the company's sexual harassment policy. The survey can simply ask the employees (male and female) if they have experienced any form of sexual harassment during the past year. The survey also helps to show that the organisation is actively engaged in preventing and correcting sexual harassment

### Conclusion

It is essential to realize sexual harassment in work places and to prevent it, for which sensitisation and awareness training regarding the anti-sexual harassment policy of the organisation are required to be provided to all staff- men and women. Policies and procedures should be adopted after consultation or negotiation with employee representatives. Strategies to create and maintain a working environment in which the dignity of all employees is respected are most likely to be effective where they are jointly agreed. While the Apex Court has given mandatory guidelines, known as Vishaka Guidelines, for resolution and prevention of sexual harassment enjoining employers by holding them responsible for providing safe work environment for women, the issue still remains under carpets in most of the organizations



## Group Activity

### Question 1. What is sex or gender discrimination?

**Answer 1:** Sex or gender discrimination is treating individuals differently in their employment specifically because an individual is a woman or a man. If you have been rejected for employment, fired, or otherwise harmed in employment because of your sex or gender, then you may have suffered sex or gender discrimination. Here are some examples of potentially unlawful sex/gender discrimination that women, for example, may face:

- **Hiring/Firing/Promotions:** You apply for a job for which you have experience and excellent qualifications, but you are not hired because some of the company's long-time clients are more comfortable dealing with men; you are told that you are laid off due to company cutbacks and reorganization, while men in the same job and with less seniority than you keep their jobs; you have worked for your company for several years, receiving exemplary reviews and an employee-of-the-year award, yet each of the five times you have applied for promotions, the positions you applied for are instead filled by less qualified men.
- **Pay:** You worked your way up from the position of cook's helper to chef. A male chef with similar training and work experience was recently hired, and you find out that he will be paid more than you; you are a top salesperson for your company, but are moved to a less desirable territory while a man with much lower sales is given your territory and client base, enabling him to make much more in commissions than you will make for several years.
- **Job Classification:** You work at a company for four years and put in many hours of overtime. After you return from having a baby, you tell your employer that you will not be able to put in as many hours of overtime. Your position is then changed to a lower level and you get less pay, while male coworkers in similar positions are allowed to cut back their overtime hours for personal reasons without any changes to their positions or pay.
- **Benefits:** Your company's health insurance policy does not cover your spouse, because it is assumed that he will have his own benefits, while your male coworkers have their wives covered by the policy. Because your husband is between jobs, you have to pay increased health benefits on his behalf that your coworkers do not pay for their wives.





**Question 2.** Can an employer pay me less because I'm a woman? Can I be paid less because I'm a man?

**Answer 2:** No, Both Title VII and the Equal Pay Act (EPA) make it illegal to discriminate on the basis of sex in the payment of wages or benefits. The laws against discrimination in compensation cover all forms of compensation, including salary, overtime pay, bonuses, stock options, profit sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits.

The EPA requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but they must be substantially equal. It is the content of the job, not job titles, that determines whether jobs are substantially equal. Unlike the EPA, Title VII does not require that the job of the person claiming discrimination be substantially equal to that of a higher paid person of the other sex, nor does Title VII require the person claiming discrimination to work in the same establishment as the higher paid person. However, Title VII, unlike the EPA, requires proof of intent to discriminate on the basis of sex, while the EPA does not require proof of discriminatory intent.

Under the EPA, employers are prohibited from paying unequal wages to men and women who perform jobs that require substantially equal skill, effort and responsibility, and that are performed under similar working conditions within the same establishment. The law defines these terms as follows:

- Skill: measured by factors such as the experience, ability, education, and training required to perform the job. The key issue is what skills are required for the job, not what skills the individual employees may have.
- Effort: the amount of physical or mental exertion needed to perform the job.
- Responsibility: the degree of accountability required in performing the job.
- Working conditions: encompasses two factors: (1) physical surroundings like temperature, fumes, and ventilation, and (2) hazards.

**Question 3.** Is it illegal to give different benefits to male and female employees?

**Answer 3:** Yes. As discussed above, even though differences between the sexes may result in different benefit costs to an employer, it is against the law for an employer to discriminate between men and women with regard to benefits.

Employers are also not allowed to condition benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, since that status bears no relationship to job performance and discriminatorily affects the rights of women employees.

An employer cannot make benefits available:

- for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees;
- for the wives of male employees which are not made available for female employees; or
- For the husbands of female employees which are not made available for male employees.

It is also against the law for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex.

**Question 4.** Can an employer treat me differently because I am unmarried or married?

**Answer 4:** Marital status discrimination is not prohibited by the federal laws generally applicable to private employment, which prohibit discrimination based on race and color, sex, religion, national origin, age and disability. However, several states have laws making it illegal to discriminate on the basis of marital status.

However, marital status discrimination and sex/gender discrimination can often coexist. If, for example, as a married woman you are rejected for a position involving frequent overnight trips with male coworkers because it is assumed your husband would be jealous, and the position is offered to a married man, the problem may be sex/gender discrimination instead of marital status discrimination. It is illegal for your employer to make assumptions based on gender stereotypes, even if those assumptions are motivated in part by your marital status. For more information, see our page on family responsibilities discrimination

**Question 5.** Can an employer treat me differently because I have kids or have to care for a family member?

**Answer 5:** Parental status discrimination is not prohibited by the federal laws generally applicable to private employment, which prohibit discrimination based on race and color, sex, religion, national origin age and disability. However, several states have laws making it illegal to discriminate on the basis of parental status.



However, parental status discrimination and sex/gender discrimination can often coexist. If a woman with young children, for example, is rejected for a position involving frequent travel and overtime work because it is assumed that she should or will want to spend time with your children, and the position is offered to a man with small children, the problem may be sex/gender discrimination instead of parental status discrimination. It is illegal for your employer to make assumptions based on gender stereotypes, even if those assumptions are motivated in part by your parental status. For more information, see our page on family responsibilities discrimination.

If you need leave from work to care for a newborn or a sick child or family member, you may also be protected by the Family & Medical Leave Act (FMLA). For more information, see our page on family leave.



# **MODULE 7**

## **GOOD PRACTICES**



## Module 7

### Good Practices

The United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination against Women defines sexual harassment of women to include:

“such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.”

#### Sexual Harassment at Workplace Laws around the world

Over 50 countries have prohibited sexual harassment at work through national legislation or labour codes. India became one of these countries in 2013. It is interesting to see how different countries have different understanding of sexual harassment – which is to a great extent influenced by their culture and understanding of gender equality.

#### Australia

Under Australian Law, a person who sexually harasses someone else is primarily responsible for their behaviour. However, in many cases the company also be held vicariously liable for sexual harassment by the employees, agents and contractors, unless it can show the steps that it took to prevent the sexual harassment from occurring. Under the Sex Discrimination Act, the employer must take all reasonable steps to minimize the risk of discrimination and harassment occurring. The Sex and Age Discrimination Legislation Amendment Act 2011 amended the Sex Discrimination Act 1984 in May 2011 to expand the protections against sexual harassment. The victim can make a complaint to the Australian Human Rights Commission in case he/she has been sexually harassed. The Commission will then investigate the complaint and will try to resolve the complaint through a process of conciliation, during which it will help the two parties involve by acting as an impartial person. If the complaint is not resolved, then the victim can take the complaint to Court.



## Austria

The Federal Equal Treatment Act 1993, which is applicable to public service employees, explicitly deals with Sexual Harassment / Harassment based on Sex. It provides (section 7) that:

- (1) Discrimination based on sex occurs if, in the context of his or her public service employment or training relationship, the public service employee
  1. Is sexually harassed by the representative of the actual employer,
  2. Is sexually harassed by a third party,
  3. Is sexually harassed by a third party and the representative of the employer fails to take the appropriate remedial action.
- (2) Sexual harassment occurs if conduct of a sexual nature is perpetrated and this conduct
  1. Is an affront to a person's dignity;
  2. Is unwanted by, inappropriate or offensive to the affected person and
  3. (a) Creates an intimidating, hostile or humiliating working environment for the affected person or;  
(b) If the person affected refutes or tolerates conduct of a sexual nature on the part of a representative of the employer or a colleague, and this forms the basis, either overtly or tacitly, for the a decision that adversely affects this person's access to training and further training, employment, further employment, promotion or payment or forms the basis for another negative decision concerning the public sector employment or training relationship.

The Equal Treatment Act 1979 (section 2, Part 1 a and b), which applies to private sector employment, is materially identical. The Articled Clerk Act 2000 (section 22) and the Student Teacher Act 2000 (section 22) each prohibit sexual harassment in materially identical terms to those in the legislation mentioned above, effectively extending the prohibition on such conduct outside the strict sphere of "employment".

## Belgium

In Belgium, the law relating to the Protection Against Violence and Moral and Sexual Harassment at Work (11th June 2002, which is included in the law relating to the well-being of workers when carrying out their work August, 4th, 1996) which explicitly deals with Sexual Harassment / Harassment based on Sex defines sexual harassment at work as "all types of verbal, non verbal or physical behaviour of a sexual nature which the guilty party knows or should know will affect the dignity of men and women in the workplace".



Royal decrees of 18 September 1992 and 9 March 1995 and a number of Government Decrees also provide protection against sexual harassment in the workplace. These decrees should be adapted to the law to the protection against violence and moral and sexual harassment at work, June 11th 2002.

The Law of 7 May 1999 on equal treatment of men and women relating to working conditions, access to employment and promotion possibilities, access to an independent profession and complementary social security systems is also referenced but there is no additional information given in relation to the definition contained in the legislation. Sexual harassment is categorized (Article 2, section 6 of the law of 25 February 2003) as a form of sex discrimination. It is defined as any form of verbal, non-verbal or physical behaviour of a sexual nature which the guilty party knows or should know affects the dignity of men and women in the workplace.

## Britain

The Acts that are applicable in Britain if you are subjected to sexual harassment at work are the Sex Discrimination Act and the Employment Rights Act. The Sex Discrimination Act makes it unlawful for employers in Great Britain to subject someone to sexual harassment. The act also makes it unlawful to harass a transsexual person because they intend to undergo, are undergoing, or have undergone gender reassignment. Sexual harassment itself is prohibited by the Sex Discrimination Act but, in many instances, it will be accompanied by other forms of unfavorable treatment such as not being recruited, criticism of work, lack of promotion, enforced transfer and ill health or dismissal. The Employment Equality (Sex Discrimination) Regulations 2005 amended the Sex Discrimination Act in 2005. The new law extends the protection of sex discrimination rules to cover sexual harassment.

## Brazil

In 2001, the Brazilian Government enacted a criminal law (Law No 10.224) defining sexual harassment as an embarrassing conduct performed by a worker *in a superior hierarchical* position against someone hierarchically inferior at work, in order to obtain advantages or sexual favours. The law made sexual harassment a crime with imprisonment from one upto two years. This legislation has set Brazil apart from most countries where harassment is dealt with under civil law.

## Czech Republic

The Labour Code 2004, which entered into force on 1st March 2004, **explicitly** defines sexual harassment as behaviour of a sexual nature in any form rightly perceived by

the respective employee as unwelcome, inappropriate or insulting and the intention or impact of which leads to reducing the dignity of the physical person or to creation of hostile or disturbing environment at the workplace or may be rightly perceived as a condition for decision influencing performance of rights and duties following from employment relationship. Similar provision is made in relation to the Army and the Police.

## Denmark

Sexual harassment is defined as, when any verbal, nonverbal or physical action is used to change a victim's sexual status against the will of the victim and resulting in the victim feeling inferior or hurting the victim's dignity. Man and woman are looked upon as equal, and any action trying to change the balance in status with the differences in sex as a tool, is also sexual harassment. In the workplace, jokes, remarks, etc., are only deemed discriminatory if the employer has stated so in their written policy. Women are viewed as being responsible for confronting harassment themselves, such as by slapping the harasser in the face. Law number 1385 of December 21, 2005 regulates this area.

## France

Article 222-33 of the French Criminal Code describes sexual harassment as, "The fact of harassing anyone using orders, threats or constraint, in order to obtain favors of a sexual nature, by a person abusing the authority that functions confer on him..." This means the harasser can only be someone with authority on the harassed (basically, there can't be sexual harassment between coworkers of the same rank). However, moral harassment occurs when an employee is subjected to repeated acts (one is not enough) the aim or effect of which may result in a degradation (deterioration) of his conditions of employment that might undermine his rights and his dignity, affect his physical or mental health or jeopardize his professional future. Sexual as well as the moral harassment is recognised by the law.

## Germany

Under the Protection of Employees Act, Employers and managers shall be required to protect employees against sexual harassment at the workplace and also both male and female employees can file a complaint if they are sexually harassed. Employees affected shall have the right to complain to those responsible in the enterprise or the department if they feel that they have been sexually harassed. The employer has an obligation investigate the complaint and take appropriate measures to prevent the harassment from continuing. If the employer fails to do so, or applies measures which are obviously inadequate, the employees who are harassed shall have the right to suspend their



activity at the workplace concerned, without loss of wages or salary, for as long as this is necessary for their protection.

## Luxembourg

In Luxembourg, the Law on Protection against Sexual Harassment within the relationships (2000) explicitly defines sexual harassment under Article 2 as follows:

“For the purposes of the present law, harassment within industrial relations shall be any conduct of a sexual nature or any other conduct based on sex for which the perpetrator knows or ought to know that it would affect the dignity of a person at work, and where one of the following three conditions is met:

- (1) The conduct is improper, hurtful to and untimely for the person subjected to it.
- (2) The fact that a person refuses or accepts such conduct from an employer, an employee, a client or a supplier is expressly or implicitly used as the basis for a decision affecting the rights of this person as regards vocational training, employment, continuation of employment, promotion, salary or any other decision concerning that person’s employment.
- (3) Such conduct creates an intimidating, hostile or humiliating environment for the person subjected to it. The conduct may be physical, verbal or nonverbal. The intentional element of the conduct is presumed.” In addition, Article 10. 1 of the Law dated 16 April 1979, fixing the general status of government officials, as amended by the law of 26 May 2000 on protection against sexual harassment within industrial relations provides that the protection against sexual harassment is extended to civil servants.

## Philippines

The Anti Sexual Harassment Act of 1995 was enacted “primarily to protect and respect the dignity of workers, employees, and applicants for employment as well as students in educational institutions or training centers. This law, consisting of ten sections, provides for a clear definition of work, education or training related sexual harassment and specifies the acts constituting sexual harassment. It likewise provides for the duties and liabilities of the employer in cases of sexual harassment, and sets penalties for violations of its provisions. It is to be noted that a victim of sexual harassment is not barred from filing a separate and independent action for damages and other relief aside from filing the charge for sexual harassment.”

## Poland

There is no special provision in the employment law that provides for moral or sexual harassment; however it is commonly accepted by the jurisprudence, that sexual



harassment occurs when the employee is subjected to acts of another person in order to obtain favours of a sexual nature. Moral harassment occurs when an employee is subjected to acts which may result in a deterioration of his conditions of employment or undermine his rights and dignity as well as affect his physical or moral health. These definitions are not legal ones, but definitions accepted by the jurisprudence.

## Russia

In the Criminal Code, Russian Federation, (CC RF), there exists a law which prohibits utilization of an office position and material dependence for coercion of sexual interactions (Article 118, current CC RF). However, according to the Moscow Center for Gender Studies, in practice, the courts do not examine these issues. The Daily Telegraph quotes a survey in which "100 per cent of female professionals [in Russia] said they had been subjected to sexual harassment by their bosses, 32 per cent said they had had intercourse with them at least once and another seven per cent claimed to have been raped."

## Spain

The Spanish Labour Act provides certain guarantees against sexual harassment. These rights include protection against physical or verbal conduct that may constitute sexual harassment. Under a recent amendment, s. 54.2.g of the Labour Act considers sexual harassment at work place as a breach of the employment contract and hence it is valid clause to dismiss the harasser.

## Switzerland

A ban on discrimination was included in the Federal Constitution (Article 4, Paragraph 2 of the old Federal Constitution) in 1981 and adopted in Article 8, paragraph 2 of the revised Constitution. The ban on sexual harassment in the workplace forms part of the Federal Act on Gender Equality (GEA) of 24 March 1995, where it is one of several provisions which prohibit discrimination in employment and which are intended to promote equality. Article 4 of the GEA defines the circumstances, Article 5 legal rights and Article 10 protection against dismissal during the complaints procedure. Article 328, paragraph 1 of the Code of Obligations (OR), Article 198 (2) of the Penal Code (StGB) and Article 6, paragraph 1 of the Employment Act (ArG) contain further statutory provisions on the ban on sexual harassment. The ban on sexual harassment is intended exclusively for employers, within the scope of their responsibility for protection of legal personality, mental and physical wellbeing and health.

Article 4 of the GEA of 1995 defines sexual harassment in the workplace as follows: "Any behaviour of a sexual nature or other behaviour attributable to gender which





affronts the human dignity of males and females in the workplace. This expressly includes threats, the promise of advantages, the application of coercion and the exercise of pressure to achieve an accommodation of a sexual nature.”

## United Kingdom

The Discrimination Act of 1975, was modified to establish sexual harassment as a form of discrimination in 1986. It states that harassment occurs where there is unwanted conduct on the ground of a person’s sex or unwanted conduct of a sexual nature and that conduct has the purpose or effect of violating a person’s dignity, or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them. If an employer treats someone less favourably because they have rejected, or submitted to, either form of harassment described above, this is also harassment.

## United States

There are a number of legal options for a complainant in the U.S.: mediation, filing with the EEOC or filing a claim under a state Fair Employment Practices (FEP) statute (both are for workplace sexual harassment), filing a common law tort, etc. Not all sexual harassment will be considered severe enough to form the basis for a legal claim. However, most often there are several types of harassing behaviors present, and there is no minimum level for harassing conduct under the law. (Boland, 2002) Many more experienced sexual harassment than have a solid legal case against the accused. Because of this, and the common preference for settling, few cases ever make it to federal court. The section below describes the legal definitions that have been created for sexual harassment in the workplace. Similar definitions have been created for academic environments in the U.S. Department of Education Sexual Harassment Guidance.

## The Netherlands

The Working Conditions Act 1998 Article 1.3.e.8 **explicitly** defines sexual harassment as undesired sexual approaches, requests for sexual favors or other verbal, nonverbal or physical behavior also in relation to the following issues:

- submission to this kind of behaviour is used either explicitly or implicitly as a precondition for the employment of a person;
- submission to or denial to such behaviour by a person is used as a basis for decisions in relation to the job of the person;

– such behaviour has the goal to damage the job performance of a person and/or to create an intimidating, hostile or disagreeable job environment, or has the outcome that the job performance of a person is damaged and/or an intimidating, hostile or disagreeable job environment is created.

The Regulation on Sexual Harassment of Civil Servants (1994) was also cited as **explicitly** addressing the issue of sexual harassment.

## Zimbabwe

Sexual harassment is considered to be an unfair labour practice according to the Zimbabwe Labour Relations Act. The country has a national gender policy to deal with such issues. As it is an unfair labour practice, victims of sexual harassment can report offences through the Labour Officers who are in charge of conciliation of employment related disputes and unfair labour practices. The victim may also appeal to the Labour Court. A victim of sexual assault also has the right to press separate criminal and/or civil charges against an alleged perpetrator.

## India

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was passed by both the Lok Sabha and the Rajya Sabha and got the assent of the President recently and has become law. This Act deals with protecting women from harassment in the workplace and providing a safe environment. India took 50 years to come up with a definition for what constitutes sexual harassment in the workplace, courtesy of a Supreme Court judgment 12 years ago. (*Visakha v. State of Rajasthan*). The act uses the definition of sexual harassment as laid down in *Visakha*. Section 15 of the Act determines the level of compensation to be paid to the woman who has been sexually harassed. The main criticism of this law is that it is not gender neutral. According to this act, only a woman can file a complaint. Also, sexual harassment is a crime under the Indian Penal Code and the penalties range from 1 to 3 yrs imprisonment and/or fine.

## Examples of Best Practices from India

A number of organizations have developed policies and/or training programs which could be characterized as examples of “best practices” with respect to either the, comprehensiveness of their training or innovative programs designed to further their goal of the prevention of sexual harassment. The following are several examples.

## Oxfam India works to strengthen Workplace Sexual Harassment Act

**Stop sexual harassment at the workplace**

काम की जगहों पर यौन उत्पीड़न को रोको

तुम्हारे शब्द, तुम्हारी आंखें, तुम्हारे हाथ  
 पीछ करतें हैं हमारा...  
 घर से...सड़क तक  
 ...खेतों से ...भट्टी तक  
 ...फैक्टरी से ...दफ्तर तक  
 यह खेल नहीं उत्पीड़न है  
 रामझो बूझो इस अन्धारे को  
 बन्द करने कार्पोरेट में  
 यौन हिंसा को

**Your words, Your eyes, Your hands  
 follow us from the home to the street  
 ...in the field  
 ...in the office  
 ...in the factory and the kiln  
 You call it teasing, we call it harassment  
 Recognise the difference and  
 STOP THIS VIOLENCE**

Campaign to Eliminate Violence against Women  
 Oxfam India Programme Office  
 11th Building, Near Airport, Subhash Road, New Delhi, India  
 Tel: +91 11 2619 2111, 2112, 2113, 2114. Email: india@oxfam.org

**Oxfam**

Source: Best Practices to deal with Sexual Harassment at Workplace

In India, it is estimated that someone is sexually harassed **every hour**. Legal protections against workplace sexual harassment in India have historically been weak, but the Landmark "Vishakha Judgement" (passed 14 years ago) recommended drafting a law



concerning Sexual Harassment in the workplace. This finally happened in December 2010, when the Government introduced the “Protection of Women from Sexual Harassment Bill,” which sought to legislate restrictions and introduce stronger penalties for harassment crimes.

The bill signifies a big step forward; it’s progressive in terms of recognizing workplace sexual harassment as discriminatory against women, and a violation of the right to equality and to work. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 act was passed by the Ministry of Women and Child Development, in essence, seeks to create a safe, secure, and enabling workplace environment free from all forms of sexual harassment. But the formulation lacked the necessary robust mechanisms to address the problem, largely due to the lack of input and guidance from civil society.

### A Global Problem

Sexual Harassment in the workplace is a global problem, and can impact gender equality, career advancement, health and livelihood. Power inequalities can make women especially vulnerable in a workplace setting, particularly when work environments are male dominated. In India, Oxfam – and other organizations across the country – are working to change that.

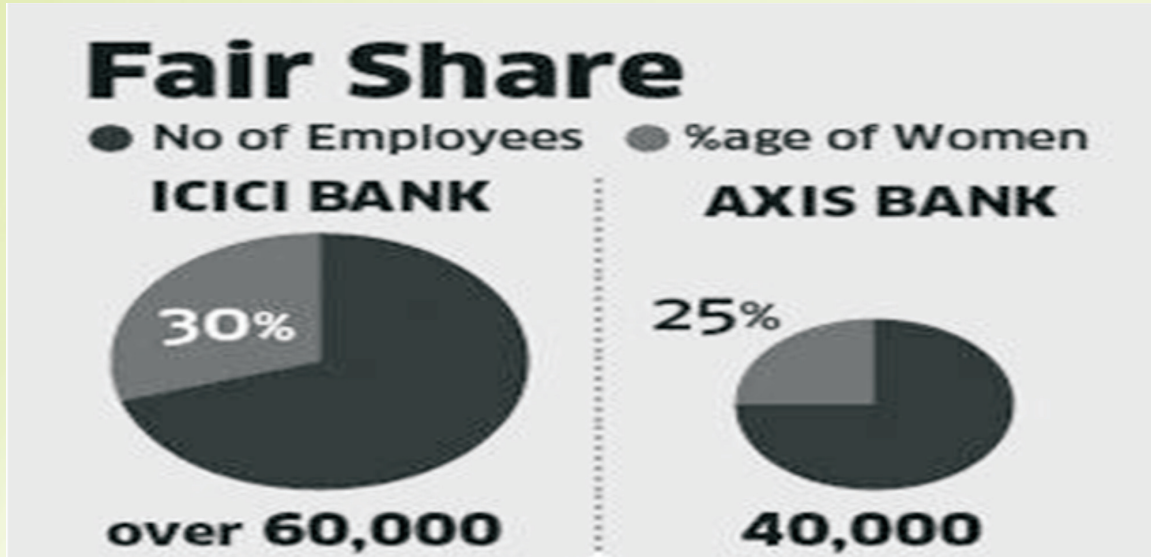
Further research identified ways of combating workplace sexual harassment, located trends and good practices, and determined the challenges to comprehensive legal protections. There is still a question as to whether the law will include **domestic workers**, which comprise a high percentage of the informal sector in India; however, the Standing Committee report has recommended the inclusion of domestic workers under the legislation.



Source:- ET Bureau Mar 29, 2016

## Banks step up efforts to prevent sexual harassment at workplace

Anita Bhoir, ET Bureau Nov 27, 2013



(While ICICI Bank has set up a gender neutral committee to deal with harassment cases, Axis Bank has put in place an eight-member complaint redressal panel.)

The gender neutral committee is headed by bank officials of the ICICI Bank. Employees can register harassment complaints with the committee. The process is reviewed by a two-member panel that consists of people from outside the bank. Roughly 20 to 25 harassment cases get registered annually. Apart from trying to make sure that women employees have a secure environment to work in, ICICI Bank also has a quick response team that's responsible for coming to their aid outside the office. Anyone in such a situation can call an emergency number. The quick response team tracks the individual and sends an executive to help the employee. The rules also cover interactions with employees of companies that ICICI Bank deals with. In a recent instance, an ICICI salesperson reported harassment by an employee of another company. ICICI Bank supported its employee and filed a complaint on behalf of the worker with the concerned company.

Axis Bank also has a complaint redressal committee for the prevention of sexual harassment. The eight-member panel meets monthly. Axis bank follows a zero tolerance policy towards any such incident brought to our notice. As banks extend their network into rural and semi-rural centres, more harassment cases are being registered from branches. This could also be because the manager in a small branch is a powerful figure and his subordinates may find it difficult to approach the person.



## Jawaharlal Nehru University (JNU)



Source: [https://upload.wikimedia.org/wikipedia/en/9/9b/Jawaharlal\\_Nehru\\_University\\_logo.jpg](https://upload.wikimedia.org/wikipedia/en/9/9b/Jawaharlal_Nehru_University_logo.jpg)

JNU has Gender Sensitisation Committee Against Sexual Harassment (GSCASH), a body which deals with complaints of sexual persecution. It consists of two student-elected representatives, faculty members, office staff and representatives from the JNU Students' Union, JNU Officers' Association and JNU Staff Association. GSCASH, which works as an autonomous body, was constituted in 1999. It has three major functions: gender sensitisation and orientation, crisis management and mediation, and formal enquiry and redressal.

### Functions of GSCASH

#### Gender Sensitisation and Orientation

- (i) GSCASH will ensure the prominent publicity of the Policy in all Centres, Schools, Hostels, offices of administration, as well as in all public places on the campus such as the library, health centre, residential areas, canteens, shopping centres, etc.
- (ii) GSCASH will organize programmes for the gender sensitisation of the University community through workshops, seminars, posters, film shows, debates, skits, etc. It may enlist the help of specialized NGOs and any campus body to carry out these programmes.
- (iii) GSCASH will conduct at least one major activity per semester involving large sections of the University community.

#### Crisis Management and Mediation

- (i) GSCASH will assist in the mediation of situations arising out of incidents of sexual harassment and sexual assault on the campus.



- (ii) GSCASH will co-ordinate with the campus security services to devise ways and means by which a system of crisis management that is gender-sensitive as well as prompt and effective is put in place. It will maintain regular contact with the campus security services to ensure that in crises arising out of incidents of sexual harassment, GSCASH members, and/or the volunteers identified by it, shall be intimated without delay.
- (iii) GSCASH will, through a circular at the beginning of each semester, enlist and activate an adequately representative team of volunteers. GSCASH shall ensure the widespread publicity of the contact details (both official and personal) of all its members and volunteers.
- (iv) GSCASH will organize training workshops for members and volunteers to equip them to handle sexual harassment cases (including legal and medical aspects of aid). Volunteers will assist in the gender sensitisation, crisis mediation and management duties of GSCASH, but shall not participate in the task of formal redressal of complaints under these Rules and Procedures of GSCASH.
- (v) In cases in which sexually motivated conduct against a student, or a member of the academic or a non-teaching staff, or a resident and/or a service provider amounts to a specific offence under the Indian Penal Code or any other Indian law, GSCASH shall assist the affected party in making a complaint to the appropriate authority outside the University.

### **Formal enquiry and Redressal**

- (a) The Enquiry Committee shall enquire into the complaint of sexual harassment using procedures in conformity with the principles of natural justice and gender sensitivity.
- (b) The Enquiry Committee shall act on any violation of the order of restraint issued to the defendant in accordance with the procedure outlined in Section VI.3 (C).
- (c) The Enquiry Committee shall submit a detailed report to GSCASH in which it shall communicate its findings based on its investigations and its recommendations regarding the nature of disciplinary action, if any.

### **Corporate India takes steps to comply with POSH Act, but complex road ahead: Deloitte India survey on sexual harassment at the workplace**

Close to three years post the enactment of the POSH Act, while corporate India appears to be taking steps to comply with the provisions mentioned in POSH Act, however

there appears to be a need to also focus on creating a more participative culture to better address the issue of sexual harassment at work place. Deeper scrutiny of the operational aspects of complying with the POSH Act reveals several opportunities for improvement, according to the latest survey by Deloitte Touche Tohmatsu India LLP (Deloitte) report titled '*Creating a safe work environment – Best practices to deal with sexual harassment at the work place*'. About 92 percent of survey respondents said that they had anti-sexual harassment (ASH) policies in their organizations, of which about 62 percent indicated the presence of separate ASH policies, independent of the code of conduct.

Further, to increase awareness about the ASH policy, outline behavior that can be construed as sexual harassment and the prescribed response to such incidents, survey respondents indicated relying on the following measures: making information available on the company's intranet/ HR portal (71 percent), conducting trainings and workshops (52 percent), sending out regular newsletters (38 percent), using common areas of the office to share posters and information booklets on the subject (27 percent) and running e-learning programs (25 percent).

*"While these measures taken by organizations are commendable, it is important to understand that sexual harassment tends to stem largely from cultural issues and can manifest itself in myriad forms – some of which, an employee may not even be able to readily identify so as to seek help. In such cases a more participative approach, including discussing case studies and potential sexual harassment scenarios, can help employees readily identify and respond to such incidents," said Rohit Mahajan, APAC Leader, Partner, and Head, Forensic, Financial Advisory, Deloitte*

## Best Practices from Corporate world

### **WIPRO**

Wipro offers equality of opportunity to all employees and does not engage in or support discrimination in hiring, compensation, access to training, promotion, termination or retirement based on ethnic and national origin, race, caste, religion, disability, age, gender or sexual or political orientation.

Wipro is committed to build a culture in which employees, and those seeking employment in Wipro, can compete in a fair, open and transparent environment. Principles of equal opportunity and meritocracy are embedded in their core values and aligned to globally accepted standards and principles of the U.N. Global Compact, U.N. Universal Declaration of Human Rights and International Labour Organization. Company's wide Code of Business Conduct (COBC) provides guidelines and direction for responsible business conduct and imbibes commitment for human rights and zero tolerance for



discrimination at all stages of employee lifecycle. Their hiring, training, compensation, promotion, role movements and other key people processes are based on principles of merit and performance alone.

Regular external and internal audits are conducted and this facilitates continuous improvement in people related practices within the organisation. They also believe that an empowered workforce is the best way to receive feedback and identify improvement areas. Through mailers, posters and other modes of communication, they encourage employees to highlight concerns, grievances and policy/integrity breaches. The Ombuds Process and Prevention of Sexual Harassment Committees provide all employees, vendors, suppliers and customers a secure and 24x7 access to raise grievances.

## **ITC :**

### **A Gender Friendly Workplace**

As a good corporate citizen, ITC is committed to a gender friendly workplace. It seeks to enhance equal opportunities for men and women, prevent/stop/redress sexual harassment at the workplace and institute good employment practices.

ITC maintains an open door for reportees; encourages employees to report any harassment concerns and is responsive to employee complaints about harassment or other unwelcome and offensive conduct. A committee has been constituted to enquire into complaints and to recommend appropriate action, wherever required.

ITC demands, demonstrates and promotes professional behaviour and respectful treatment of all employees.

## **INFOSYS**

### **Human rights: Best practices Infosys**

Infosys created a Human Rights Statement as part of the UNGC pact. This statement guides the policies and practices related to operations, partnerships, investment agreements and contracts. It also explains the Company's stand on compliance with global norms in providing a harassment-free workplace, freedom of association, workplace health and safety, and anti-corruption safeguards. A stringent internal and independent review through work councils and a comprehensive governance framework ensures that they are compliant with current and ongoing best practices related to human capital. There is a bi-monthly audit of supplier agencies to check compliance with various labor laws such as, the Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, Payment of Gratuity Act, Employees' State Insurance (ESI) and Employees' Provident Fund (EPF). They have established grievance forums for contractual staff to ensure their issues and concerns are heard and resolved.



They have various grievance redressal channels to deal with issues related to discrimination, retaliation and harassment. The complainants are assured of complete anonymity and confidentiality. All geographies are governed by the Global Policy on Prevention and Redressal of Harassment at Infosys. The Policy on Prevention and Redressal of Sexual Harassment specific to India is applicable to India locations and is a supplement to the Company's Global Policy and is in compliance with The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Ministry of Women and Child Development Notification dated December 19, 2013. The Company has constituted internal complaints committees in all development centers in India to address complaints of sexual harassment raised by women employees. The constitution of the committee is as per the Act and includes external members from NGOs or persons familiar with issues relating to sexual harassment.

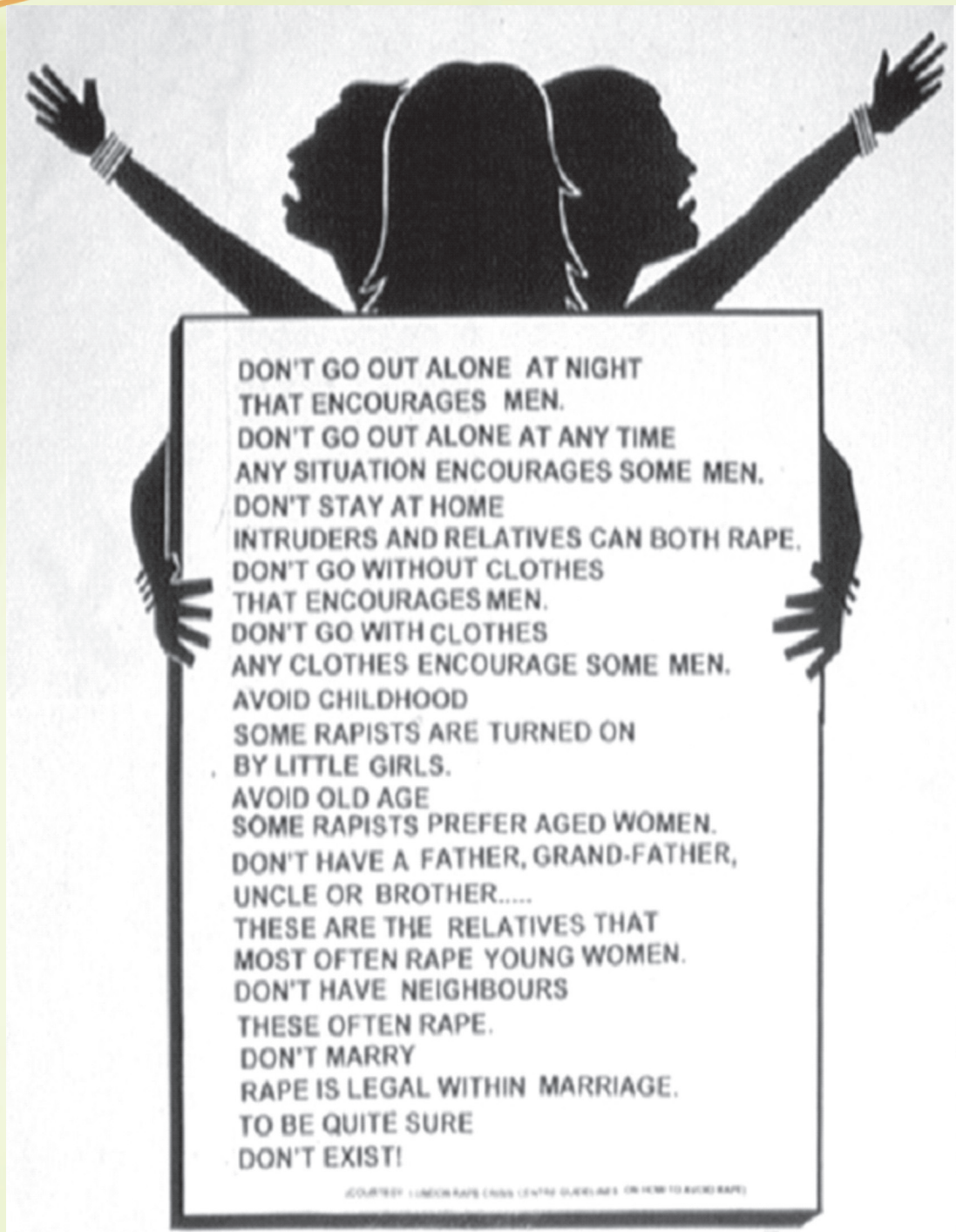
### Group Activity

Question1: What are the good practices for SH in your organisation?

Answer1: Group Discussion for way forward-

Theater for evolving better workplaces





Source: Best Practices to deal with Sexual Harassment at Workplace

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- Addressing issues of transformations in the world of work;
- Disseminating knowledge, skills and attitudes to major social partners and stakeholders concerned with labour and employment;
- Undertaking research studies and training interventions of world class standards; and
- Building understanding and partnerships with globally respected institutions involved with labour.



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