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Appreciation Programme

Prevention of Sexual Harassment at the Workplace

Module - III

Responding to Sexual Harassment at the Workplace: Redressal Mechanisms

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Prevention of Sexual Harassment at the Workplace

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Introduction and Objectives

Introduction

From the information given in the previous Modules, we know that the Indian laws on sexual harassment at the workplace, state that the prevention and the redress of sexual harassment at the workplace is the duty of every employer. Putting in place effective structures and procedures for the redressal of sexual harassment complaints in is an important role and statutory obligation of the employer.

The purpose of this module is to clearly understand the redressal roles of the employer as stipulated by the law. It also puts down in a simple and easy to follow format, some practical recommendations and steps to effectively address sexual harassment within workplaces.

Unit 1 lays emphasis on the importance of creating appropriate structures to address the issue of sexual harassment within the workplace, as mandated by the law

Unit 2 discusses the various ways in which complaints can be filed by the aggrieved with the complaints committees, as well as with the local authorities

Unit 3 explores the procedures that can be followed during the investigation of complaints related to sexual harassment at the workplace

Objectives

The Module provides an in-depth understanding on:

- Compliance with legal mandates in the context of constituting complaints committees to address issues of sexual harassment within workplaces
- Understanding the redressal roles of the complaints committee
- Understanding the steps and procedures to be followed during the investigation including disciplinary actions, as recommended by the law.

Unit 1: Responding to Sexual Harassment at the Workplace

In a recent case of sexual harassment at the workplace, an employee of *Tehelka* weekly magazine accuses Tarun Tejpal, founder and editor-in-chief, of sexually assaulting her during an event organised by the magazine in Goa. The police file a First Information Report (FIR) (PTI, 2013). The complainant in the case is not only the same age as Tejpal's daughter but is also one of her closest friends.

The complainant had at one time idolized Tejpal for his pioneering approach to journalism and was a huge admirer of the left-liberal voice that *Tehelka* represented. But, no longer, since this young woman has described, in graphic detail, what he allegedly did to her on two different occasions at their annual jamboree THiNKfest (Poorie, 2013).

In her letter to the next in command, the managing editor of the magazine, reporting the incident, the survivor stated that Tejpal's text messages to her insinuated that she "misconstrued "a drunken banter". The survivor said it was not so and that it had been very "traumatic and terrifying" for her. She demanded that "*Tehelka* constitute an anti-sexual harassment cell as per the Vishakha guidelines immediately, to investigate this matter" (Mohan, 2013).

But as there was no complaints committee in the organisation, no investigation took place and the perpetrator, who in this case was the *Tehelka* editor-in-chief, only furnished an apology letter and "offering to recuse" himself from the editorship of *Tehelka*, and from the *Tehelka* office, for the next six months, stepped down as its editor(Mohan, 2013).

1.1. Constitution of Complaints Committees

In the *Tehelka* case illustrated above, the investigations are still at a preliminary stage. What makes matters worse for the *Tehelka* is that it is a magazine previously held in high esteem for its relentless battle against corrupt governance systems and sexual exploitation. But today, it is being severely criticised for not complying with the law and not having constituted an internal complaints committee as mandated by the directives of the Vishakha committee.

Not having such a structure in place to handle the case reported by a junior female staff has meant that the girl has not received justice, within her workplace. But, it also showcases the management's lack of accountability to its staff. As the value systems of the leadership (including the female second in command) of the magazine is being scrutinised by all, the organisation received a serious setback when it lost the backing of its own staff, as several of them stepped down following the incident. But, most importantly, the magazine has been affected by the loss of face and credibility in the face of this case.

Many large organizations do not seem to understand the urgency and importance of forming committees against sexual harassment. This is in all likelihood due to the lack of reporting of sexual harassment in these organizations. But, what they need to consider is that when there are no formal structures of redressal, women often hold back from sharing incidents about sexual harassment, as they are not sure of whom to approach. Moreover, not having a mechanism in place also points to the fact that the organisation does not recognise, or give priority to these issues, in turn, condoning violence, besides flaunting the law of the land, which places the onus of the prevention and redressal of sexual harassment at the workplace, squarely on the employer.

The role and responsibility of the employer is clearly defined by the Supreme Court of India in its Vishakha Directives, popularly known as the Vishakha Guidelines. This entails that the employer puts in place a redressal, settlement or prosecution mechanism that gives clear directions about whom to approach in case of sexual harassment, the procedures that will be adopted, the length of time for investigation, etc.

The newly enacted Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013, which is to replace the Vishakha Guidelines, also requires the constitution of Complaints Committees within workplaces, to address complaints of sexual harassment in a time bound manner, accessible, accountable, transparent and fair to all.

While, the Vishakha Directives mandates the formation of one complaints committee, the new Act of 2013, acknowledges that the aggrieved woman could be any woman

irrespective of her employment status or place of employment and with this in mind, it refers to two types of complaint committees:

1) Internal Complaint Committee (ICC): The Act mandates all employers (private/government), with more than 10 employees, to constitute an ICC at each of the administrative units and offices located at each of its divisional and sub-divisional levels. It also mandates them to provide the necessary facilities for the ICC to deal with the complaint and to conduct an inquiry.

2) Local Complaints Committee (LCC): The Act rules that every District Officer must constitute an LCC to receive complaints of sexual harassment from establishments where the ICC has not been constituted due to having less than 10 employees. The Central and State Governments have been mandated through this Act, to notify any of the following individuals to be the District officer:

- District Magistrate
- Additional District Magistrate
- Collector
- Deputy Collector

1.2. Composition of Complaints Committees

For its success and effectiveness, complaints committees have certain compositional requirements. The Sexual Harassment Act 2013 requires that the composition of the complaints committees must adhere to the mandate, as below:

1. The complaints committee must be chaired by a woman in a senior position who is articulate and has a reputation of being gender sensitive, as well as interested in women’s issues.

Internal Complaints Committee (ICC)	Local Complaints Committee (LCC)
Presiding Officer (1 female) <i>“If there is no senior level woman employed at a senior level; the presiding officer shall be nominated from other offices or administrative units of the workplace. If other offices do not have a senior level employee, the presiding officer shall be nominated from any other workplace of the same employer or other department or organization”</i>	Chairperson (1 female) <i>“To be nominated from amongst the eminent women in the field of social work and committed to the cause of women”.</i> (The Government of India, 2013)

2. The male and female composition of its members must be balanced:

At least half the members of the committee are required to be women. According to the new Sexual Harassment Act, a LCC committee must have a minimum of five people. Beyond five, the number of members in the committee may vary according the number of people employed in a particular organization.

Internal Complaints Committee (ICC)	Local Complaints Committee (LCC)
Member (1 male and 1 female) <i>“Employees with commitment to the cause of women, experience in social work, or legal knowledge”</i>	Member (1 Female) <i>“To be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district”</i> Ex Officio member (1 male/female) <i>“The concerned officer dealing with the social welfare of women and child development in the district” (ibid).</i>

3. There must be third party representation on the committee:

- To ensure neutrality, third parties become essential. Representation from an NGO worker, active in the field of women’s rights and who is an expert on the issue of sexual harassment, or an independent individual who can meet the established criteria needs to be sought.

- The role of the third party representative is not limited to handling of complaints. It can include drafting of policies; generating awareness and training of personnel on issues related to gender discrimination, as well the redressal and prevention of sexual harassment in the workplace. Furthermore, the role of the third party is to serve as both a watchdog and guide to the rest of the committee through the processes of investigation and redressal (Jayaram & Dannenbaum, 2005).

Internal Complaints Committee (ICC)	Local Complaints Committee (LCC)
<p>Member (1 female)</p> <p>Must be from a third party (e.g. NGO or association) and must have expertise and familiarity with gender issues and sexual harassment.</p> <p><i>“The member appointed from the NGO shall be paid such fees or allowances for holding proceedings of the ICC”</i></p>	<p>Members (1 Female and 1 Male)</p> <p>To be nominated from amongst such non-governmental organizations or associations committed to the cause of women or familiar with the issues relating to sexual harassment:</p> <ul style="list-style-type: none"> • <i>“At least one must be a woman</i> • <i>At least one of the members must have a background of law or legal knowledge</i> • <i>One of the nominees shall be a woman belonging to the scheduled caste, scheduled tribes or the other backward classes or minority community notified by the Central Government.”</i> <p>(The Government of India, 2013)</p>

The new legislation on the prevention, prohibition and redressal of workplace sexual harassment also stipulates tenure for each of these committees. All members of the committee (both ICC and LCC) are stipulated to hold office for up to 3 years from the date of their nomination. Committee members can be removed before the 3 year time period is up, if they are found to:

- Publish, communicate or make known to the public, press and media the details regarding particular cases, that is against the legal provisions
- Be convicted for an offense under any law or undergoing an inquiry into an offence under any law
- Found guilty in any disciplinary proceedings against him/her
- Abuse his/her position as a member of the committee.

Each workplace must constitute the spirit of neutrality and fairness of the complaints committee, by making sure that committee members are chosen through a democratic process of internal elections (Jayaram & Dannenbaum, 2005).

Recommended required qualities of members of Complaints Committee:

- ❖ Should belong to the cross section of hierarchies present in the workplace. This will make it easier for all employees across the organisation to approach the committee with ease in case of a complaint or advice.
- ❖ Should have a clear understanding of the definition of sexual harassment.
- ❖ Should be well aware of what are the physical, mental and emotional impacts of sexual harassment.
- ❖ Should be non-judgmental towards all cases and should not judge the complainant by their own personal moral standards.
- ❖ Should be sensitive to reasons why women do not come forward to complain about sexual harassment immediately and sometimes never at all.
- ❖ Should be aware of the fact that sexual harassment is a subjective reality. The interpretation of the terms “unwelcome” and “sexual” while assessing a case of sexual harassment will differ from individual to individual and from case to case.
- ❖ Should have received an extensive orientation on their roles and responsibilities as committee members.

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.

Example

In compliance with the orders of the Supreme Court of India, the first State Complaints Committee was set up by the Delhi Government in the year 1999 (order no. 179). The secretariat of the Committee is Delhi Commission for Women. The composition of the State Complaints Committee is as under:

1. Chairperson - Member Secretary of the Commission
2. Two Members - Two senior women IAS officers

Its roles have been defined as:

- a) Monitoring the work of Departmental Committees set up for registering and inquiring into the complaints of sexual harassment within the Departments, for time bound disposal within 30 working days
- b) Registering and inquiring into the complaints made directly to the Committee for complaints that amounts to a specific offence under the Indian Panel Code, any other law or the CCS (Central Conduct) Rules.
- c) Ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.
- d) Make enquiries whether a Departmental Committee, while dealing with the complaints, has followed guidelines of the Government of India and direct the departments to take appropriate action on the complaints.
- e) The committee shall submit an Annual Report to the Government.

(PRIA, 2011)

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).

Some factors to be considered by the Committee for maintaining confidentiality of the case:

- Members of the Complaints Committee must not discuss the case with other colleagues, while investigation is underway, unless it is a part of the investigation process.
- Neither, should they disclose the names of the complainant or the alleged harasser in any records that will be shared with people, who are not members of the Committee

Unit 2: Redressal Role of the Complaints Committee: Filing of Complaints

According to the Act, a complaint can be made to the Internal Complaints Committee, Local Complaints Committee or directly with the court of law.

2.1 Filing of Complaints with the Complaints Committee

Chapter IV of the Sexual Harassment Act highlights important procedures and mechanisms that need to be followed for filing a sexual harassment complaint with the complaints committees. These include the following:

Place: An aggrieved woman can submit a complaint of sexual harassment to the Internal Complaints Committee (ICC) or the Local Complaints Committee (LCC). In addition, the Act also states that the aggrieved woman can submit complaints to the designated nodal officer in every block, *taluka* and tehsil in the rural or tribal area and ward or municipality in the urban area, who is responsible to forward it to the concerned LCC within a period of 7 days. The jurisdiction of the LCC extends to the areas of the district where it is constituted.

Timeframe: Any aggrieved woman must be allowed to make a complaint within a period of 3 months from the date of the incident. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same, and the reasons must be recorded. If the complaint comprises of a series of incidents, then the complaint must be filed within 3 months from the date of the last incident.

If the aggrieved woman is unable to make a complaint due to physical or mental incapacity or death, her legal heir may make the complaint on her behalf.

Form of complaint: The complaint must be made in writing and assistance must be provided to the woman if she needs help in writing the complaint (ILO & PRIA, 2013).

Writing a Letter of Complaint

In order to make a formal complaint to the complaint committee, a written complaint must be submitted to initiate the process. The following are guidelines for what needs to be included in the letter of complaint regarding sexual harassment in the workplace.

- Date
- Identity of the harasser (full name, designation, and office address)
- Details of the incident: This should be provided in chronological order stating the series of events that occurred, where they occurred, what were the circumstances, etc.
- Duration of harassment
- Description of the incidents, encapsulating as many details of the events that occurred and how they transpired.

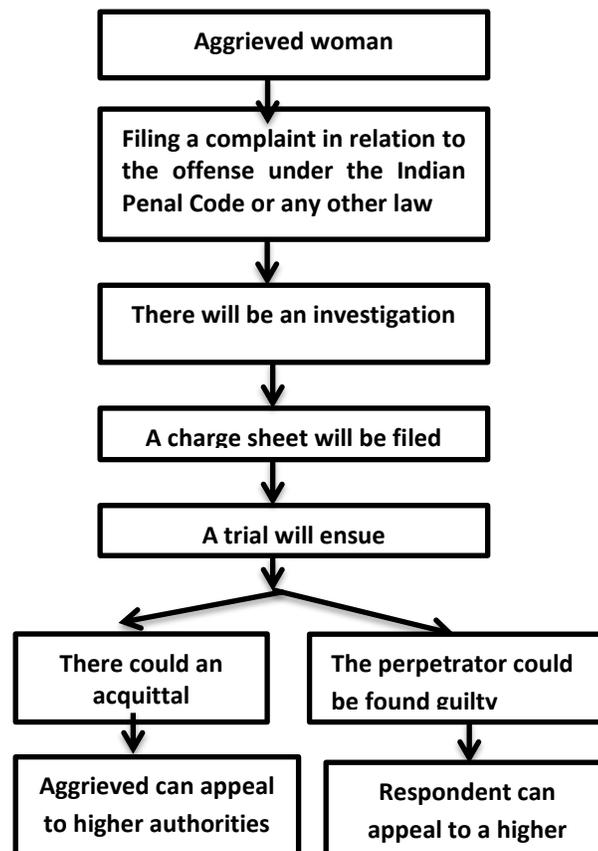
Points to remember for the Complaints Committee members

- No anonymous complaints against any individual should be accepted or action taken on the same
- Once a complaint of sexual harassment is brought to the committee, it must be registered immediately
- The Chairperson of the Internal Complaints Committee should convene a meeting of the Committee within 48 hours of the receipt of complaint
- A quorum should be maintained for the Complaints Committee meeting, which stipulates 50 per cent attendance of the members. The presence of Chairperson is mandatory.
- According to the principles of natural justice:
 - The alleged harasser should be informed of the complaint against him/her. It is suggested that this should be done via a formal charge sheet
 - On receipt of a formal charge sheet, he must submit his defense statement within the specified time frame. A time frame of 10 working days is suggested for the defendant to present his defense statement (ILO & PRIA, 2013).

2.2 Filing of Complaints with the Local Authorities

A complainant, who is filing a complaint outside the organization, directly under the Indian Penal Code, should be given assistance by the organisation where she is employed. When the instance of sexual harassment amounts to a specific offence under the Indian Penal Code, or under any other law, such as in the Tehelka case described above, the employer is obligated to initiate an appropriate action in accordance with the law by lodging a complaint with the appropriate authority.

The flow chart below illustrates the sequence of events that should happen on filing a complaint:



2.3 Other Mechanisms for Filing Complaints

Reporting of cases of sexual harassment takes courage and effort despite the presence of a committee to deal with the complaint. Though sexual harassment may not always be a physical assault to the body, it is always an emotional assault.

In the current social climate that currently exists in India, women often bear the brunt of sexual harassment due to patriarchal and discriminatory mindsets embedded not only institutionally, but through society at large. Previously, sexual harassment had been a closeted topic, pinned by stigma and victim blaming, relating such incidents to the woman's "character or lack of it". For this reason, sexual harassment remains an extremely sensitive topic, which requires dignity, respect, and above all sensitivity. Those who suffer from sexual harassment tend to keep silent for several reasons such as fear of losing their job, retaliation, and victimisation.

In such cases, informal mechanisms can work in creating an environment that is non-threatening and builds the confidence of an employee in speaking out about an incident of sexual harassment (ILO & PRIA, 2013). The role of supervisors and managers is critical in the redressal and prevention of sexual harassment in the workplace. A positive approach adopted by the organisation in the dealing with of all forms of gender discrimination, especially sexual harassment, is important because:

- It gives the employees evidence that the organization is supportive of such matters and builds their confidence to approach the committee
- It ensures that the committee accepts all complaints of employees and takes action on the same
- The committee may also request the support of the supervisor, manager concerned in counseling and conciliation of the alleged harasser
- The supervisor may ensure that there is no backlash on the employee that has complained and monitors further unacceptable behavior

- Such staff in senior positions understand and identify the nuances of sexual harassment
- Senior staff and committee members discuss informal mechanisms for the prevention of sexual harassment in the workplace

Recommendation:

Create different routes/channels for employees to file complaints, including

- ❖ chairperson of the Complaints Committee
- ❖ any committee member, that the individual is most comfortable with
- ❖ head of the institution
- ❖ supervisor
- ❖ helplines
- ❖ via e-mail/hand delivered written complaints, or
- ❖ strategically located and locked complaint boxes, which are checked on a daily basis.

Unit 3: Redressal Role of the Complaints Committee: Investigation of Complaints

According to the Act, when an incident of sexual harassment occurs, there are two options for dealing with it. First, an attempt can be made to resolve the matter informally through a conciliation process. If the conciliation fails or is deemed inadequate, a formal inquiry will begin (Jayaram & Dannenbaum, 2005).

3.1 Conciliation

The Act has a provision for the Complaints Committee to take steps to settle matters through conciliation, before initiating an inquiry. However, it is critical to bear in mind that this conciliation process can only occur on the request of the aggrieved. Further, money cannot be the basis of settlement in such a process.

Once a settlement has been agreed upon, a record of the settlement needs to be sent to the employer of the District Officer to take action as specified in the recommendation. The copy of the settlement should be sent out to the aggrieved woman and the respondent (ILO & PRIA, 2013).

As the Act stipulates that no further enquiries should be conducted after the settlement, it is important to ensure that no pressure be put upon the complainant to resolve the issue through a conciliation process. However, if the respondent does not comply with any of the conditions of the settlement, the aggrieved can go back to the Committee who will proceed to initiate an inquiry into the case of sexual harassment (ILO & PRIA, 2013).

3.2 Investigation of Complaints

While conducting the inquiry procedures of any case, the Committee has been given the same powers through this Act, as are vested in a civil court under the Code of Civil Procedure, 1908 with respect to the following:

- Summoning and enforcing the attendance of any person
- Examining the individual under oath
- Requiring the production of documents essential to the case.

Section 7 of the newly notified (9th December 2013) rules of the Act specifies steps for the manner of enquiry into complaints of sexual harassment. It is expected that all principles of natural justice are followed at every stage of the investigation and the complainant or the witnesses are not victimised or discriminated against, during the process. Further, the newly enacted Act stipulates that both the ICC and the LCC are bound to complete their inquiries within a specified time period of 90 days upon receiving the complaint. Please consult additional reading for complete details.

Recommended actions for Committee members during investigation

1. Take all allegations seriously

Listen to the allegations carefully. Get as many specifics as you can, find out what happened, when it happened and ask if there were any witnesses. You must show empathy, yet remain neutral. From your perspective, the incident may seem unimportant or the employee may appear to be over sensitive. You may know the alleged harasser and believe the action or remarks to have been made in fun or not intended to harass.

Remember that it is not the intent of the remark or the action, but it is the impact that it has on the harassed that matters.

2. Take Immediate Action

All complaints must be promptly addressed. Document the complaint with dates, times, places, names and quotes. Report the information to the Presiding Officer if the complainant has approached the committee member independently. Conduct the inquiry promptly. After hearing the aggrieved's story, repeat relevant facts so that she can correct any mistakes and can be assured that the incident was understood properly. Ask her if there is anything that has been missed out.

3. Investigate the complaint

Get the respondent's account of what happened. Also speak to any of the witnesses who have been named. It is important to conduct a thorough inquiry. Do not discuss the matter with anyone who does not need to know this case. These are sensitive issues. Do not become part of the office rumour mill.

3.2.1 Examination of Witnesses

Although, generally, any cross examination is done in the presence of the respondent, this is not so in case of enquiries into allegations of sexual harassment. The rationale behind such a step is that sometimes the very presence of the respondent may discourage witnesses from coming out with the truth. Moreover, cross- examination in the presence of the respondent would invariably result in disclosing the identity of the aggrieved and/or witnesses, even where it is not necessary to disclose their identity. The necessity of withholding the identity of the aggrieved and/or witnesses of sexual harassment were acknowledged by Supreme Court in the Bidyug Chakraborty judgement, when it directed cross-examination of the witnesses, by way of interrogatories through a Local Commissioner.

3.2.2 Standards and Approaches to Assess Complaints of Sexual Harassment

The most predominant 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

The key words to bear in mind in assessing a situation of sexual harassment are 'unwelcome' and 'sexual'

i. 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.

This approach has emerged from the earlier used reasonable man standard where the perspective of a 'reasonable man' was used to determine whether sexual harassment had indeed occurred. This stance was found to be flawed and supported existing male dominant positions of power, which discriminate against women. In today's courts of law across the world, as well as in India, the reasonable woman approach is gaining acceptance due to its logic and gender sensitive reasoning which supports the view of a woman in ascertaining the occurrence of sexual harassment.

In the case of *Punita K. Sodhi v. Union of India & Ors.*, W.P. (C) 367/2009 & CMS 828, 11426/2009, Justice Muralidhar raised the bar for workplace discrimination and sexual harassment cases by modifying long held patterns which discriminate against women who complain of workplace sexual harassment. According to him, "If we only examined whether a reasonable person would engage in allegedly harassment conduct, we would run the risk of reinforcing the prevailing level of discrimination." A complete understanding of the victim's view requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. A male supervisor might believe, for example, that it is legitimate for him to tell a female subordinate that she has a 'great figure' or 'nice legs'. The female subordinate, however, may find such comments offensive. Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object." The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who rarely face sexual harassment, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that women may perceive.
(Delhi District Courts, 2010)

ii. 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!"

It does not matter what was the intent behind the behaviour....

...What matters is the impact of the behaviour on the harassed

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.

iii. 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.

iv. High Probability of Occurrence of Sexual Harassment:

The Supreme Court recognized, 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).

3.2.3. Other Factors to Consider While Conducting the Inquiry Procedures

Upon a written request made by the aggrieved woman, the Committee may recommend

- Transfer of the aggrieved or the respondent to any other workplace
- Grant leave to the aggrieved woman up to a period of 3 months, which is in addition to the leave that she is entitled to
- Grant other relief as appropriate, such as provisions for counselors or any other support services in case either party should ask for one.

One of the reasons for this provision is that usually an act of sexual harassment is the result of power dynamics at play; therefore, the daily proximity of the aggrieved with her “harasser” has a deep and lasting negative impact on the emotional, physical and social functioning of the aggrieved, who is often of a more subordinate position than the respondent (ILO & PRIA, 2013).

3.3 Preparing the Inquiry Report

The Vishakha Directives, and the new Act, deems the Complaint Committee to be an inquiry authority and the report of the Complaints Committee is deemed to be the final inquiry report with no further inquiries being conducted once the committee submits its report.

The onus of preparing the report however rests with the Presiding Officer/Chairperson of the Complaints Committee. She may seek support from other Committee members. However, it must be noted that caution must be exercised in maintaining the confidentiality of the case and the identity of the aggrieved at all times.

The Act mandates that on completion of the inquiry, the ICC and the LCC must prepare a report stating the decision of the Complaints Committee and submit it to the head of the institution who will forward the same to the disciplinary authority within a period of 10 days of completion of the inquiry.

The report must present all the evidence that has been acquired in the proceedings of the complaint. It shall build up an argument of the conclusion reached in the case. It may also contain suggested penalties for the respondent and shall also provide the rationale for the suggested penalty to be imposed if the case of sexual harassment had been proven.

3.3.1 Types of Verdicts

The inquiry report may contain 3 types of verdicts:

1) If the allegation against the respondent has **not been proved**, the ICC/LCC recommends to the employer or the District Officer that no action is required to be taken.

2) If the allegation against the respondent has **been proved**, two things can happen:

- LCC can recommend to the District Officer or the ICC can recommend to the employer to take action on sexual harassment as misconduct in accordance with the provision of the service rules. If there are no such service rules then the appropriate rules need to be prescribed
- The committee can also recommend deduction of an appropriate sum of money from the salary of the respondent or ask him to pay the sum as compensation to the aggrieved. The amount may be determined by the ICC/LCC members on the basis of:
 - The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
 - The loss of career opportunities due to the incidence of sexual harassment
 - Medical expenses incurred by the aggrieved for physical and psychological treatment
 - Income and financial status of the aggrieved
 - Feasibility of such payment.

3) If the allegation against the respondent has been proved to be a **false and malicious complaint**, or if the aggrieved or anyone else has produced a false document, the Act provides for a penalty according to the Service Rules.

The Vishakha directives were written with the basic assumption that all complaints that are filed by women are true and correct. Thus, the Act has been heavily criticised for penalising false complaints and by not upholding the spirit in which the Vishakha directives were formulated.

However, this clause of the Act does have a safeguard in the form of an inquiry prior to establishing the malicious intent. This means that the onus of proving that the complaint was of a false and malicious intent lies with the Complaints Committee. Mere inability to prove the case or a lack of evidence will not attract penalty under this provision.

However, there is a fear that this provision may deter women from lodging complaints, in case they are 'proven' malicious due to an existing negative attitude towards women who raise their voices against such matters.

3.3.2. Disciplinary Actions

When an act of sexual harassment amounts to misconduct as defined by the relevant service rules, appropriate disciplinary action (e.g. demotion, transfer, suspension, probation or dismissal) should be initiated by the employer in accordance with those rules. But, when the act of sexual harassment amounts to an offense under the Indian Penal Code, the employer shall initiate action by making a complaint with the appropriate authority. In case the aggrieved is not willing to initiate action under the Indian Penal Code, as a good practice and a measure of caution, the employer can record this in writing from the concerned person.

The Complaints Committee can only recommend disciplinary action. The ultimate decision on this lies with the employer or the disciplinary authority of the organisation that can either choose to accept the suggested actions or change them. Penalties may be imposed based on the recommendations of the Committee and in keeping with the disciplinary norms of the institution.

The employer, in the case of the ICC, or the District Officer in the case of an LCC, is mandated to **act on the recommendation within 60 days of receiving the report** by the Committee.

If the parties involved in the case are not satisfied with the investigations, the decisions or the recommendations of the complaints committee, they may approach a court of law to secure justice. The court of law will call upon the complaints committee to submit its report and all other documents for review and verification. Most often, the court takes a serious view of proceedings of the complaints committee and ascertains whether principles of natural justice have been followed and that the committee has done its level best to examine all angles of the complaint in reaching its final conclusion (ILO & PRIA, 2013).

Summary

It is the responsibility of the employer to prevent and discourage acts of sexual harassment in the workplace; as well as take responsibility to provide redressal, settlement or prosecution mechanisms through the creation of active complaint committees. The Government of India has brought the Sexual Harassment of Women at the Workplace (Prevention, Prohibition, Redressal) Act, 2013, as an addition to the Vishakha Guidelines.

It lays stress on the fact that the employer is responsible for the prevention and redress of cases of sexual harassment at the workplace. It mandates the formation of Internal Complaints Committees and Local Complaints Committee to address cases of sexual harassment at the workplace.

When executed properly, complaints committees can address complaints of sexual harassment in a time bound fashion; provide a familiar setting that is safe for employees; guarantee a process that is accessible, accountable, transparent and fair to all.

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