



**INTERNATIONAL ACADEMY**

Initiative in Education & Lifelong Learning

## **Appreciation Programme**

# **Prevention of Sexual Harassment at the Workplace: A user's guide to compliance with the Indian law**

## **Module - II**

The development of Appreciation Programmes has been made possible through the technical and financial support of DVV International, SDC, FORD Foundation, University of Victoria (UVic) and PRIA

**Prevention of Sexual Harassment at the Workplace: A user's guide to compliance with the Indian law**

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## Introduction and Objectives

### Introduction

In the earlier module we discussed that though the term 'sexual harassment at the workplace' is of recent origin, the phenomenon has existed as long as women and men have worked together. In this module we will understand that sexual harassment at the workplace is behaviour of a sexual nature, which humiliates, intimidates or coerces someone, through personal attack. It can cause the recipient to experience severe embarrassment, discomfort and deep emotional distress.

**Unit 1** builds upon these discussions and attempts to explore in depth, sexual harassment as a nuanced behaviour, the resulting impact of which is long lasting, negative and traumatic; with impacts on the personal, as well as the work life of the individual.

**Unit 2** states the technical definitions of sexual harassment and also discusses its various types and forms, as recognised by the law in India and internationally.

**Unit 3** brings clarity to the provisions of the Indian law on sexual harassment at the workplace.

### Objectives

The objectives of this Module are to build:

- Understanding on the definition of sexual harassment at the workplace
- Conceptual clarity on the impact of sexual harassment in the workplace
- Awareness on the existing legal provisions in Indian laws

## Unit 1: Conceptual understanding on sexual harassment at the workplace

### 1.1 Understanding behaviours related to sexual harassment at the workplace

Three decades ago, there was no word or phrase to define behaviour or conduct in the workplace, which was sexual and inappropriate in nature. The lack of opportunity and social spaces to speak about such behaviour also made it impossible to categorise and define such acts. Constance Jones, in her book *Sexual Harassment*, has identified incidents of sexual harassment going as far back to the 1830s, when increasing numbers of women began working in the textile mills in New England (Jones C. , 1996).

Catherine MacKinnon was among the first to argue that sexual harassment should qualify as a form of sex discrimination, by linking the phenomenon to gender inequality and patriarchy (MacKinnon, 1979). In her book, she shares that sexual harassment is a behaviour for which there are no apparent boundaries or succinct meanings. Governments and international agencies across the world, working on the issue of sexual harassment have tried to provide a common accepted definition of the term by describing it as discriminatory treatment and a form of violence against women.

Behaviour which has the effect of humiliating, intimidating, or coercing someone through personal attack; behaviour which can cause the recipient to be emotionally distressed, be embarrassed or uncomfortable is termed as harassment.

Sexual harassment is specifically harassment of a sexual nature.

And despite the lack of a universal definition of what constitutes sexual harassment, there is a general consensus today that such behaviour is:

- (1) Related to or about sex;
- (2) An act which has sexual overtones, is intimidating, coercive and bullying;
- (3) Unwelcome, not returned and not mutual (Minnesota Advocates for Human Rights, 2003).

Sexual harassment at the workplace, is one of the most talked about issues today, in the context of institutions, their internal systems and policies, as well as amongst lawyers and judges in courts of law, across the world. It is characterised by behaviour that:

i) Affects employment opportunities and/or the terms or conditions of employment; when submission to or rejection of such conduct:

- Is made an implicit condition of an individual’s employment
- Affects decision concerning the target’s employment status or conditions

ii) Creates an intimidating, hostile, or offensive working environment;

Sexually harassing conduct in the workplace usually occurs in subtle ways. Very often, the various forms of sexual harassment are so subtle and covert, that it is common for it to go unnoticed or be ignored by many employees in the workplace, even women staff. Women are hesitant to speak out about them; in fact they are unsure whether certain behaviour classifies as sexual harassment.

This is further exacerbated by the fact that sexual harassment within workplaces can also occur in numerous different ways, most common of which might be seen as being: (University of South Florida, 2000)

- *Father figure or the counselor- helper figure*: The harasser tries to create a mentor-like relationship with their target, all the while masking their sexual intentions with pretenses towards personal, professional, or academic attention.
- *One of the gang*: Harassment occurs when groups of men or women, embarrass others with lewd comments, physical evaluations, or other unwanted sexual attention.

When does flirting begin hurting?	
Flirting	Sexual Harassment
Feels good	Feels bad
Reciprocal	One – sided
Feels attractive	Feels unattractive
Is a compliment	Is degrading
In control	Feels powerless
Equality	Power – based
Positive touching	Negative touching
Wanted	Unwanted
Legal	Illegal
Open	Invading
Flattering	Demeaning
Happy	Sad/angry
Participatory	Forced
Positive self-esteem	Negative self – esteem
(Dannenbaum, Jayaram, Mukadam, & Patwardhan, 2005)	

## 1.2 Myths, gender biases and sexual harassment

A key underlying theory on the cause of sexual harassment is that harassers use it to maintain traditional gender roles and to promote stereotyped gender conformity, by making women who do not conform, the recipients of sexual jokes, remarks, or innuendoes or propagating myths that reinforce such biased thinking.

According to a 1992 ILO study: "Sexual harassment is inextricably linked with power and takes place in societies, which often treat women as sex objects and second class citizens." (Langelan, 1993)

Catherine A. MacKinnon has noted that due to the "unwanted imposition of sexual demands in a relationship of unequal power, a woman worker can be swept off balance by reminders, that she can be raped, fondled, or subjected to repeated sexual demands (MacKinnon, 1979). Her resulting anxiety, fear or vulnerability prevents her from feeling, or being viewed as, the equals of their male counterparts in the workplace".

## 1.3 Impact of sexual harassment on the workplace

Although both women and men experience sexual harassment around the world, sexual harassment is a problem that particularly affects women.

Considering that sexual harassment is an occupational hazard concerning the safety of women at workplaces, it is

ILO studies reveal that sexual harassment at the workplace is a reality for a large number of women: 55% of women from the ages of 14 to 55 in Italy have been subjected to sexual harassment (2004); sexual harassment in the United States army has cost close to \$250 million (1999 survey); 40 to 50% of women in the European Union have faced some form of sexual harassment; and a 2002 survey by Sakshi (a non-governmental organisation) of 2,000 persons across workplaces found 80% acknowledging that workplace sexual harassment existed in India (Kapur, 2012)

believed to be one of the most pervasive ways of subjugation, intimidation and discrimination against women at workplaces, as a result of power dynamics existing primarily because of the unequal power relations that exist between men and women in the workplace.

**Such behavior is often illustrated by certain myths and misinterpretation of facts:*****Myth: Women enjoy sexual harassment.***

*Fact:* Sexual harassment is humiliating, intimidating, painful and frightening for the person at the receiving end.

***Myth: Sexual harassment is harmless flirtation. Women who object have no sense of humour.***

*Fact:* Sexual harassment is often regarded as a harmless act, frequently cloaked in the seemingly innocuous term “eve-teasing”. In reality, it is far from being a “harmless” act. It carries grave consequences for the victim. Gender discrimination is so universally widespread and deep rooted, that most people, including the “victims” are quick to dismiss it as “normal” interaction between men and women (Dannenbaum, Jayaram, Mukadam, & Patwardhan, 2005)

***Myth: Only women who are provocatively dressed are sexually harassed.***

*Fact:* This is the classic way of shifting blame from the harasser to the victim. Even women covered in a veil or in the most traditional of clothes, are harassed. Therefore, it is not the clothes of a woman which is the cause; it is the mindsets of men that are responsible. Blaming sexual harassment on the women by insisting she would not be harassed had she dressed differently is a form of victim blaming. No person asks to be harassed.

***Myth: Women who say ‘no’ actually mean ‘yes’.***

*Fact:* This “convenient” argument is used by men to justify sexual aggression and one-sided sexual advances. If an encounter between two people is not mutually consensual, it is a form of sexual harassment. No always means no.

***Myth: Sexual harassment is “natural” male behaviour.***

*Fact:* There is nothing “natural” about sexual harassment! It is behaviour which is learned within the context of a sexist and patriarchal environment that perpetuates control over women’s sexuality, fertility labour, and bodies.

***Myth: Sexual harassment is not really an issue and does not hurt anyone.***

*Fact:* This thinking does not consider that persons who are subjected to sexual harassment experience a wide range of physical and psychological ailments. There are economic consequences as well as concerns for the victim’s physical and mental wellbeing. Further, the organisation’s productivity, efficiency and work ethic also take a dip.

***Myth: Women keep quiet about sexual harassment, it means they like it.***

*Fact:* Women remain silent because they want to avoid the stigma attached to being harassed, as well as retaliation from the harasser. They are also afraid that they will be accused of provoking the behaviour, thus being further victimised, or being called liars and made the subject of gossip.

***Myth: If women go to places where they are not welcome, they should expect sexual harassment.***

*Fact:* Not only is it a woman’s constitutional right to be in a workplace, it is also her legal right to work in a safe workplace. Such sexually discriminatory behaviour and abuse is unlawful.

However, the power and control exercised by men who are often in all the senior positions of the workplace creates a “culture of silence” in which the powerless do not speak out against their subjugation and exploitation. “Women in workplaces, lacking such power, collude to sustain such a culture of silence as they are unable to speak out against such behaviour” (Farrell, 2012)

The resulting impact of sexual harassment is long lasting, negative and traumatic; with impacts on their personal and work life. Victims of sexual harassment refrain from reporting due to several reasons, some of which are:

- Embarrassment and humiliation about the incident
- Fear that the matter will be trivialised and disregarded
- A fear of being blamed for either ‘inviting’ or even for raising the issue for addressal
- A sense of insecurity and fear that they could be blamed for lodging false complaints, as very often there is no proof of the incident
- Dread of becoming the subject of gossip and further humiliation
- Hesitation that the institution will not take any action and the perpetrator will be allowed to go free.
- Fear being asked to leave or taking a transfer, even if the harasser is found guilty;
- Fear of negative repercussions and retaliation from the harasser;
- Not wanting to violate social norms, where women are taught to keep silent and to overlook ‘bad behavior’ by men.
- Fear of being made victim twice over if they raise their voices about sexual harassment, first by complaining and secondly when they are re - victimised for having filed the complaint (Bhagat, 2003):

And it is this silence and the resulting invisible nature of such an act that misleads employers and others to believe that the issue is trivial and erratic and that it does not require to be addressed in a systematic manner within the organisation. But its negative impacts can also affect the other workers in the organization, thus, impacting the workplace by bringing negative consequences such as compromising team work, economic losses and hindering development.

<b>Impact of sexual harassment at the workplace</b> <b>No society or company can afford to condone sexual harassment.</b> <b>(ILO. Sexual harassment at work factsheet)</b>		
<b>Individuals</b>	<b>Employers/Enterprises</b>	<b>Society</b>
<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>

## Unit 2: Defining sexual harassment at the workplace

### 2.1 Legal definitions of sexual harassment at the workplace

The United States was among the first countries in the world to address the issue of sexual harassment through recourse to the law. The Supreme Court Title VII of the Civil Rights Act of 1964 (as amended in

1991) is a landmark legislation “*forbids employers to exact sexual contact in exchange for compensation or advancement and/or to subject workers to intimidating, hostile, or offensive working environments because of their sex*” (Weiner, Winter, Rogers, & Arnot, 2004).

“Unwelcome sexual advances or verbal or physical conduct of a sexual nature which has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, abusive or offensive working environment.”

The U.S. Equal Employment Opportunity Commission (EEOC) describes sexual harassment as “*unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when 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*” (Government of USA, 2009, p. 1). The EEOC thus recognizes both quid pro quo and hostile work environment harassment, which we will discuss in the later sections of this unit (McLaughlin, Uggen, & Blackstone, 2009).

The United Nations General Recommendation 19 to CEDAW defines sexual harassment as including: “*Such unwelcome sexually determined behaviour 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*” (Minnesota Advocates for Human Rights, 2003).

The International Labor Organization (ILO) has addressed sexual harassment as a prohibited form

of sex discrimination under the Discrimination (Employment and Occupation) Convention 111 (ILO, 1958).

The ILO has made it clear that sexual harassment is more than just a problem of safety and health, as well as unacceptable working conditions, but is also a form of violence.

In India, the Supreme Court brought the issue of workplace sexual harassment into the legal discourse in 1997, as a violation of human rights. The Court issued a set of mandatory guidelines that for the first time provided a comprehensive definition of sexual harassment. It also laid down provisions for the employers to ensure a healthy and safe work environment for all women employees. The Vishakha Directives defined sexual harassment as:

*“Unwelcome sexually determined behaviour” such as: Physical contact; Demand or a request for a sexual favour; Sexually coloured remarks; Showing pornography and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.”*

Almost 16 years after the Directives issued by the Supreme Court, the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 (No. 14 of 2013) passed by the Indian Parliament on 23rd February 2013. The Act defines sexual harassment to include:

*“any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: i) Physical contact and advances; ii) A demand or request for sexual favours; iii) Making sexually coloured remarks; iv) Showing pornography; v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature”.*

Further, it also 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:

*“i) Implicit or explicit promise of preferential treatment in her employment in her employment; or*

*ii) Tacit or explicit threat of detrimental treatment in her employment; or*

*iii) Implied or explicit threat about her present or future employment status; or*

*iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her; or*

*v) Humiliating treatment likely to affect her health or safety”*

## 2.2 Types of sexual harassment at the workplace

In the workplace, sexual harassment can be categorised under two broad headings:

*i) Quid pro Quo:* Literally translated from Latin, it means “this for that” or “something for something else”. Sometimes, also referred to as “power play”, quid-pro-quo implies seeking sexual favours or advances, in exchange for benefits at the workplace. This can include promises of promotion, higher pay or academic advances. It also implies that the rejection of such an advance is met with retaliatory action such as dismissal, demotion, difficult work conditions. The focus of quid pro quo sexual harassment is on the employer's actions and not on the actions of the victim (Minnesota Advocates for Human Rights, 2003).

Some examples are:

- A supervisor requesting sexual favours from a junior in return for a promotion or other employment benefits
- Asking a person to spend the night in return for a promotion.
- Asking a person to have a sexual relationship in return for an increment.
- Asking a person to have sex or to engage in sexual conduct with promises of out of turn or undeserved favours like a foreign trip.
- A worker is threatened with dismissal for non-cooperation in complying with sexual favours.
- A boss makes intrusive inquiries into the private lives of employees, or persistently asks them out on dates.

*ii) Hostile work environment:* is a more pervasive form of sexual harassment that involves work conditions or behaviour that make the work environment “hostile” for the woman employee to be in. Most sexual harassment complaints are classified as hostile work environment type of harassment. This occurs when sexual conduct in the workplace interferes with a worker’s job or creates a hostile, intimidating, or offensive work environment for them. Certain sexist remarks, display of pornography or sexist/obscene graffiti, physical contact/brushing against female employees are some examples of hostile work environment.

Whether or not a work environment is abusive depends on the circumstances, including the frequency and severity of the conduct, and its effect on the employee's work performance. Hostile work environment type of harassment is typically a repetitive conduct rather than a single episode (Minnesota Advocates for Human Rights, 2003).

Some examples of a hostile work environment are:

- *Conduct that interferes with an individual's work and/ or creates an intimidating, hostile or offensive environment.*
- *Verbal or nonverbal behaviour in the workplace/institution, that focuses on the sexuality of another person*
- *Verbal or nonverbal behaviour is severe or pervasive enough to affect the person's environment, including safety and health*
- *Someone that an individual has dated in the past persists in seeking to continue the relationship or in making sexual advances, comments or gestures, which are not welcome to the individual concerned.*
- *A group of workers joke and snigger amongst themselves about sexual matters, in an attempt to humiliate or embarrass another person*

### **2.3. Forms of sexual harassment at the workplace**

We have already established that sexual harassment is a reflection of unequal power dynamics in the work place. It affects the dignity and self-respect of women and its presence in the workplace makes it hostile for women. Sexual harassment can range from mild misbehaviour of an irritating nature, to sexual abuse and assault, including rape. It includes unwelcome sexually determined behaviour which can be physical, verbal or non-verbal. Therefore, critical features of any behaviour or conduct that is categorised and defined as sexual harassment is based on a) whether it was unwelcome to the receiver and b) whether it was sexual in nature.

Sexual harassment is usually categorised under four forms: verbal, non-verbal visual and physical.

**Forms of Unwelcome Behaviors Which Can Constitute Sexual Harassment**

<i>Verbal</i>	<i>Non-verbal</i>	<i>Visual</i>	<i>Physical Contact</i>
<ul style="list-style-type: none"> <li>• Derogatory comments of a sexual nature, or based on gender</li> <li>• Sexual or gender-based jokes or teasing, including comments about clothing, personal behavior, or a person's body</li> <li>• Requesting sexual favors, pressure for dates, graphic descriptions of pornography, obscene phone calls,</li> <li>• Telling lies or spreading rumors about a person's personal or sex life</li> <li>• Turning work discussions to sexual topics (using "puns")</li> </ul>	<ul style="list-style-type: none"> <li>• Staring, sizing up a person's body (looking up and down)</li> <li>• Derogatory gestures of a sexual nature</li> <li>• Sexually suggestive looks</li> <li>• Facial expressions of a sexual nature; winking, licking lips</li> </ul>	<ul style="list-style-type: none"> <li>• Presence of sexual visual material, such as posters, cartoons, drawings, calendars, pinups, pictures, computer programmes of a sexual nature</li> <li>• Written material that is sexual in nature, such as notes or e-mail containing sexual comments</li> <li>• Knick-knacks and other objects of a sexual nature</li> </ul>	<ul style="list-style-type: none"> <li>• Unwelcome hugging, sexual touching or kissing</li> <li>• Standing too close or brushing up against another person, leaning over, invading a person's space</li> <li>• Patting, stroking, grabbing or pinching</li> <li>• Blocking someone's path with the purpose of making a sexual advance</li> <li>• Stalking</li> <li>• Rape or attempted rape</li> <li>• Actual or attempted sexual assault, or forced fondling</li> </ul>

## Unit 3: Scope of Indian law on sexual harassment at the workplace

### 3.1 Vishakha Directives and its rulings

Sexual harassment hit the Indian legal map in 1992, when Bhanwari Devi, a *saathin*<sup>1</sup> (from a lower caste) in Rajasthan, prevented a child marriage from taking place, within an upper caste family. Though the police stopped the marriage, this was only temporary and it took place a couple of hours later. Enraged by the fact that a lower caste person, and that too a woman, had the temerity to oppose the actions of an upper caste, some members of this family decided to teach Bhanwari Devi and her community a lesson. A few days later, Bhandari Devi and her husband were severely beaten up by some male members of the upper caste family and she was subject to gang-rape. 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).

<sup>1</sup> Literally meaning 'friend' here it refers to the grassroots worker of the Women's Development Programme (WDP) run by the Government of Rajasthan.

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 (26.4.2004)]**

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).

### **3.2 Highlights of the Sexual Harassment of women at the Workplace Act**

Sexual Harassment of Women in the Workplace (Prohibition, Prevention & Redressal) Act 2013, recognises that with India's ratification of CEDAW, it is obligated to women's protection against sexual harassment, as a human rights issue as well as and the right to work with dignity. The Act considers sexual harassment to be a violation of the fundamental rights of a woman to equality as guaranteed under Articles 14 and 15 of the Constitution of India and her right to live with dignity free from violence as per Article 21 of the Constitution. Sexual harassment at the workplace has also been considered as a violation of a woman's right to practice or to carry out any occupation, trade or business under Article 19(1) (g) of the Constitution, which includes the right to a safe environment free from harassment. This new Act also takes into its ambit the judgments made by the Courts of India while trying the various cases of sexual harassment at the workplace, as defined by the Vishakha Directives.

Some of the salient features of this Act are:

1. It deems it the responsibility of the employer to prevent and prohibit sexual harassment in the workplace from occurring within the workplace and provides a clearly defined set of roles for the same.
2. It mandates the constitution of Internal Complaints Committees at each office or branch, of an organization employing at least 10 employees and a Local Complaints Committees in organisations employing less than 10 employees for the redressal of complaints of sexual harassment at the workplace.
3. The Act stipulates a penalty of up to INR 50,000 to employers for non – compliance of the Act and a failure to follow the procedures laid down in it. A repetition of the same offence

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could result in the punishment being doubled and / or a revocation of the organisation's statutory business licenses.

4. The ambit of the Sexual Harassment Act is very wide, some of the well-defined terms used in the Act as in the table below:

<b>Some relevant definitions as described in the Sexual Harassment of Women at the Workplace (Prevention, Prohibition and Redressal) Act 2013</b>	
<b>Sexual harassment</b>	The definition of sexual harassment as given by this Act is in line with the Supreme Court's definition in the Vishakha Judgment. It has already been discussed above.
<b>Employee</b>	<p>All women employed at a workplace for any task on regular, temporary, ad hoc or daily wages basis; either directly, through an agent or a contractor with or without the knowledge of the principal employer:</p> <ul style="list-style-type: none"> <li>• for remuneration or not,</li> <li>• working on a voluntary basis or not,</li> <li>• Whether terms of employment are expressed or implied.</li> </ul> <p>An employee could also be a co-worker, contract worker, probationer, trainee, apprentice etc.</p>
<b>Aggrieved woman</b>	Woman of any age employed in a workplace or in a dwelling place or house irrespective of her employment status who alleges to have been a subject of any act of sexual harassment by the respondent
<b>Domestic worker</b>	<p>A woman who is employed:</p> <ul style="list-style-type: none"> <li>• to do the household work in any household</li> <li>• either directly or through any agency</li> <li>• on a temporary, permanent, part time or full time basis</li> <li>• for remuneration whether in cash or kind</li> </ul> <p>It does not include any member of the family of the employer</p>
<b>Respondent</b>	A person against whom the Aggrieved Woman has made a complaint under the Act
<b>Employer</b>	(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a

	<p>local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;</p> <p>(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.</p> <p>(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;</p> <p>(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.</p>
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### 3.3 Comparing various legal instruments related to sexual harassment at the workplace

Activists, lawyers and others who have been working on the issue of sexual harassment at the workplace have been critical of the recently enacted Act. Naina Kapur has expressed that while “constitutional equality was the backbone” of Vishakha, the new Act is but a diluted version of the Vishakha which even fails to retain the spirit of the Vishakha Judgment. According to Subhasini Ali, (an Indian politician and a member of the Communist Party of India (Marxist)); the greatest injustice that this Act contains is that it says that women, whose complaint is found to be untrue, will be punished. This will act as a great deterrent to the filing of complaints and goes against the spirit of the Act. (The Hindu. 2013) Several others have also expressed the same views<sup>2</sup>.

Since the Act specifically mentions that its provisions will be in addition to existing laws, the table below will provide you with salient features of existing legal instruments that address the issue of sexual harassment at the workplace in India:

<sup>2</sup> You can learn more from this article at <http://blogs.wsj.com/indiarealtime/2013/04/29/new-workplace-sexual-harassment-law-already-out-of-date/>

	<b>Supreme Court judgment in Vishakha vs. State of Rajasthan</b>	<b>Sexual Harassment of Women in the Workplace (Prohibition, Prevention &amp; Redressal) Act 2013</b>	<b>Section 11 Protection of Children from Sexual Offences Act, 2012</b>	<b>Section 354 A of the Amended Criminal Law Act, 2013</b>
<b>Definition</b>	Sexual harassment at the workplace was defined for the first time through this judgment	Adopts the same definition as Vishakha's but adds situations of workplace harassment, domestic workers and agricultural workers in its ambit	Wide definition	Clear definition
<b>Prevention of Sexual harassment</b>	Holds employers responsible for any incidences of sexual harassment occurring in the workplace	Considers prevention to be one of the roles of the employer		
<b>Complaints Mechanism</b>	Makes the constitution of a complaints committee mandatory to be formed by all organisations	Mandatory formation of: Internal Complaints Committee in organisations having more than 10 employees  Local Complaints Committees at the district level for organisations having less than 10 employees, informal sector etc.		
<b>Conciliation</b>		Allows conciliation		
<b>False &amp; malicious complaint</b>	Assumption that all complaints filed are true and correct	Women can be punished for filing a false complaint if it is determined to be so by the complaints committees		

<b>Time period for filing complaint</b>	Whenever the complainant is comfortable	Within 3 months of the incident or the last incident		
<b>Transfer of complainant</b>	States that the complainant should have the option to seek transfer of perpetrator or their own transfer	ICC or LCC can transfer aggrieved or grant leave to her		
<b>Compensation &amp; liability</b>		Mandates an amount to be deducted from salary of respondent & paid to the aggrieved woman  Employer to be fined up to 50,000 for non Compliance of the Act with the possibility of their operating license to be revoked.	Imprisonment for a term which may extend to 3 years and shall also be liable to be fined.	Rigorous Imprisonment of up to 1 year or 3 years or fine or both
<b>Criminal proceeding</b>	Employer to initiate action with law	The complaints committees (ICC, LCC) to make inquiry and forward complaint to police for registering case		
<b>Workers initiative</b>	Employees to raise issues of Sexual harassment at workers meetings and employer employee meetings	No such mention		

## Summary

- Sexual harassment is harassment of a sexual nature that is intimidating, coercive and bullying. It is defined as an unwanted sexually determined behaviour that causes harm to the victim.
- It is a problem that particularly affects women. The resulting impact of sexual harassment is long lasting, negative and traumatic; with impacts on the personal and work life of the aggrieved woman.
- It creates an intimidating, hostile, or offensive working environment.
- Sexual harassment at the workplace affects employment opportunities and/or the terms or conditions of employment when submission to or rejection of such conduct is made an implicit condition of an individual's employment and/or affects decisions concerning the target's employment status or conditions.
- There are two types of sexual harassment at the workplace: quid quo pro and hostile work environment.
- The four forms of sexual harassment at the workplace are: verbal, non-verbal, physical and visual.
- In India, the Supreme Court brought the issue of workplace sexual harassment into the legal discourse in 1997, as a violation of human rights. The Court issued a set of mandatory guidelines called the Vishakha Directives that for the first time provided a comprehensive definition of sexual harassment. It also laid down provisions for the employers to ensure a healthy and safe work environment for all women employees.
- Almost 16 years later, the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 (No. 14 of 2013) was passed by the Indian Parliament on 23rd February 2013.

## References

- Bhagat, R. (2003). *Where the male continues to rule*. Businessline.
- Dannenbaum, T., Jayaram, K., Mukadam, R., & Patwardhan, R. (2005). *Combatting sexual harassment at workplace- a handbook for women, employers and NGOs*. New Delhi: India Centre for Human Rights and Law.
- Farrell, M. (2012). *PhD thesis*. New Delhi: unpublished.
- Jones, C. (1996). *Sexual harrassment*. Facts on File, Incorporated.
- Kapur, N. (2012, April 16). *Paving the way- judging workplace sexual harassment* . Retrieved from Legal Services India: <http://www.legalservicesindia.com/article/article/paving-the-way-judging-workplace-sexual-harassment-1087-1.html>
- MacKinnon, C. A. (1979). *Sexual harassment of working women: a case of sex discrimination*. New Haven, Connecticut: Yale University Press.
- McLaughlin, H., Uggen, C., & Blackstone, A. (2009, October 3). *Sexual harassment, workplace authority, and the paradox of power*. Retrieved from Brandeis University: [https://www.brandeis.edu/investigate/teenSH1/PDFarticles/Uggen-et-al\\_Sexual\\_Harassment\\_Workplace\\_Authority\\_and\\_the\\_Paradox\\_of\\_Power\\_2009.pdf](https://www.brandeis.edu/investigate/teenSH1/PDFarticles/Uggen-et-al_Sexual_Harassment_Workplace_Authority_and_the_Paradox_of_Power_2009.pdf)
- Minnesota Advocates for Human Rights. (2003). *Stop violence against women: sexual harassment*. The Advocates for Human Rights. Retrieved from The advocates for human rights: <http://www1.umn.edu/humanrts/svaw/harassment/explore/1whatis.htm>
- Pandey, A. (2008, December 21). *Sexual harassment at the workplace: implement the guidelines*. Retrieved from Boloji: <http://www.boloji.com/index.cfm?md=Content&sd=Articles&ArticleID=1523>
- University of South Florida. (2000). *Sexual harassment awareness training*. Retrieved from University of South Florida System: <http://usfweb2.usf.edu/EOA/sexualharassment.asp>
- Weiner, R., Winter, R., Rogers, R., & Arnot, L. (2004). The effects of prior workplace behaviour on subsequent sexual harassment judgements. *Law and human behaviour*, 47-67.