

### **Sexual Harassment at Workplace**

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 woman 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.

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the subsequent Rules have been framed and put to operations on 9th December, 2013. However, the effective use of this legislation is possible only through awareness generations among the masses. Regular training programmes will create awareness among the people. This training programme would cover topics from rights of the victims at one end to duties of representatives of employer while processing subject complaints – on the other. HR Managers also need to be trained to be responsible for sensitizing all the employees about the fine line between healthy mixing of colleagues of different sexes and the behaviour amounting to sexual harassment. The focus is on the specific issue of sexual harassment at workplace – its prevention and redressal of complaints; if it happens.

#### **Meaning of Sexual Harassment at Workplace:**

According to the Act, "Sexual Harassment" includes the following, whether directly or by implication:

- a. Making sexually colored remarks
- b. Unwelcome physical, verbal or non-verbal conduct of sexual nature

- c. A demand or request for sexual favours
- d. Physical contact and advances
- e. Showing Ponography

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 categorised as physical, verbal and non-verbal conduct. Each category encompasses a wide range of actions, some of which are illustrated below.

### **Types of Sexual Harassment at the Workplace:**

Sexual harassment manifests itself in different forms – verbal, non-verbal and physical.

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

There are two legally recognized 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 (Equal Employment Opportunity Commission) 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.

1. **Quid pro quo:** It occurs when
  - Job benefit, including employment, promotion, salary increase, 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
  - 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.
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.

### 3. Process of Filing a Complaint

Step1: Report incident within 3 months	Step2: Complain to ICC	Step3: Notify to Respondent (7 Days)	Step4: Get Response (10 Days)
Step5: Does Respondent agrees ?	Yes	Settlement for punishment	Action to be taken in ( 60 days)
	No	Enquiry (90 Days) Findings and Action	If found guilty, proceed with Step:7(yes)

#### THE PROCEDURE OF ENQUIRY:

##### 1. Step 1- Statement of the Aggrieved and Respondent:

In a regular disciplinary inquiry, there is only one party against whom the disciplinary authority or inquiry authority, as case may be, draws up the substance of the imputations of misconduct, into definite and distinct articles of charge, as per procedure given in Rule 14(3) CCS CCA Rules, 1965. However, in case of sexual harassment at workplace there are two parties, the aggrieved and respondent, hence the woman's complaint itself may form the statement of the imputation of misconduct or misbehavior.

2. **Step 2- Article of Charges:** The complaint itself may be treated as the Article of Charges or Charge Sheet. However, there is no prohibition for specific charge sheet to be made on the basis of complaints. The purpose of framing a charge sheet is to give intimation to the respondent of clear, unambiguous and precise notice of what is alleged against him, subsequent to which he gets an opportunity of defending himself against the allegations. Hence, formulating the charges not only helps the committee in deciding the matter, but in case of appeal makes it easier for the Court to remain focused on the questions of law and facts, which it is called upon to decide.

3. **Step 3- Written Statement of Respondent:** Often, members of the complaint committee not being well versed with legal procedures are apprehensive of communicating with the respondent and informing him of the charges against him or not. The respondent also has rights and is innocent till proven guilty. He has a right to due process, fair treatment and access to process consistent with the principle of natural justice. These rights cannot be forfeited, however severe the alleged misconduct may be.

Implicit in the process is the respondent's right to-

- Know the charge
- Inspect documents
- Know the evidence
- Cross examine the witness
- Lead evidence

4. **Step 4- Plead guilty or innocent:** On receipt of the written statement of defense, there are two options:

1. Either the respondent admits to the charges against him; or
2. The respondent does not admit to the charges.

In the first case, wherein the respondent has admitted to the charges against him in his written statement of defense. In such circumstances the complaints committee shall record its findings on each charge after taking such evidence shall act in the manner laid down in rule.

If no written statement of defense is submitted by employee, then the complaints committee may itself inquire into the articles of charge.

A situation can also arise where the respondent, who despite having not admitted to the charges in his written statement, or not having submitted any written statement on appearing before the inquiry committee pleads guilty to the charge. In that condition the inquiring authority shall record the plea, sign the record and obtain the signature of the respondent.

If the charge is not admitted by the respondent then an inquiry is mandatory. It is obligatory to hold a formal inquiry before coming to a decision about the quantum of penalty.

5. **STEP 5-Non- Cooperation of Respondent:** If respondent fails to appear before the complaints committee within the specified time, omits to plead or produce the evidence, the case shall be adjourned to a later date not exceeding thirty days.

And in case the respondent fails to appear, or give a written defense or cooperate with the complaint committee, then the complaint committee may come to a decision with the available records

6. **STEP 6- Examining of witnesses and documents:** Once the written submissions of both the parties i.e. aggrieved party and respondent are complete, then on the date fixed for the inquiry, the oral and documentary evidence of the parties will be taken and witnesses will be examined and may be cross-examined. The complaints committee may also put such questions to the witnesses as it thinks fit. The committee must be conscious to the covert, private and insidious nature of sexual harassment; and take into account the fact that often the aggrieved party may not be able to lead direct or corroborative evidence.

The committee should

- Not permit any evidence or examination based on the aggrieved party's character, personal life, and conduct, personal and sexual history.
- Take note of the respective socio-economic positions of the parties, their hierarchy in the organization, the employer-employee equations and other power differences while appreciating the evidence.
- May disallow any questions which it feels are derogatory irrelevant or slanderous to the aggrieved party.

7. **STEP 7- OPTIONAL STEP: Final written briefs:** The inquiring Authority may, after the completion of the production of evidence permit the aggrieved party and respondent to file written briefs of their respective case, if they so desire.

**8. STEP 8- OPTIONAL STEP:** Interim directions, where ever necessary: The committee has the power to issue interim orders as provided in the 2013 Act on the demand of either the aggrieved party or any witness giving evidence in her support, to implement such measures as transfer, changing shifts etc. of either the complainant, witness or respondent; granting of leave to the complainant so as to protect the complainant and witnesses against victimization and discrimination and mental or physical distress; or any other such interim orders as may be deemed necessary to ensure the safety of the complainant or witness.

**THE INQUIRY REPORT:**

The inquiry report brings out correct facts of the case, after conducting an impartial and fair hearing inquiry, in accordance with the prescribed procedure. The report should clearly and in unambiguous language state the reasons for deciding in favour of the complainant or for refusing to grant her relief.

Broadly speaking, the ICC has to perform the following functions before recording the conclusion in the form of a Report: -

- To bring on record all documents in support of the charges and those permitted for the defense.
- To record oral testimony of the complainant and the respondent/defense witnesses after subjecting them to cross-examination.
- To examine the respondent after the evidence has been recorded, the purpose being to get clarifications from the respondent on the evidence against him.
- To analyze the evidence recorded by him and make correct and proper assessment of the effect of total evidence on record.
- To write a reasoned report of inquiry giving pointed findings whether the charges are proved or not proved.

***Findings***

The Inquiry Report may come up with following three types of findings:

❖ **Charges are proved:** In which case the Inquiry Report should contain action to be taken as per service rules of the respondent and/or deduct an amount from the salary as the ICC may deem appropriate to be given to the aggrieved woman.

❖ **Allegations not proved:** In which case the matter may be closed concluding no further action required. If the allegations have not been proved, it does not mean that the sexual harassment did not occur, but that there was not sufficient proof on record to prove a case of sexual harassment and ICC may recommend steps to be taken by employer to create a gender friendly environment at the workplace and take corrective actions.

❖ **Complaint is malicious:** In which case the matter may be referred for taking action in accordance with the service rules. Act provides that the in case the complaint is found to be malicious the action may be taken against the aggrieved party as per the service Rules.

Penalties classified as major and minor penalties that can be recommended to be imposed on an employee, are as under:-

❖ **Minor Penalties:**

1. Censure;
2. Withholding of promotion;
3. Recovery from his pay any pecuniary loss caused to the Government by negligence or breach of orders;
4. Reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, but without cumulative effect and not adversely affecting his pension.
5. Withholding of increments of pay;

❖ **Major Penalties:**

1. Reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay:



2. Reduction to lower time-scale of pay, grade, post or Service for a specified period, which shall be a bar to the promotion of the Government servant during such specified period
3. Compulsory retirement;
4. Removal from service;
5. Dismissal from service:
  - Reversion of a Government servant, appointed on probation to any other Service, grade or post;
  - Replacement of the services of a Government servant, whose services had been borrowed from a State Government or any authority.

#### **POST INQUIRY- SUBMISSION OF ENQUIRY REPORT TO EMPLOYER**

As per Section 13 of the 2013 Act, on the completion of an inquiry under the Act, the Internal Committee is required to provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry.

It is also mandatory to provide the Inquiry Report to both the aggrieved party and respondent. In case the committee finds that the allegations have been proved, it shall recommend to the employer, to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or to deduct, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman. In the event of the aggrieved party expiring during the Inquiry, her legal heirs are entitled, to the compensation amount recommended by the committee.

#### **PENALTY**

In most situations, the powers for imposing major penalties are generally entrusted to the Appointing Authorities, in view of Article 311 clause (1) which provides that no one can be dismissed or removed from service by an authority subordinate to the Authority which appointed him.

Thus, the Appointing authorities, who are also disciplinary authorities in the government, shall on receiving the inquiry report impose the recommended penalty on the respondent, within the prescribed time period.

### **COMPENSATION**

The purpose of compensation is to, as far as possible, put the aggrieved party in the place she would have been if the sexual harassment had not existed. Sexual harassment has been recognized as a form of discrimination and the law provides entitlement to the aggrieved party for the consequences of the discriminatory action.

As per Section 15 of the Act, the Committee for the purpose of determining the sum to be paid to the aggrieved woman, it shall take into regard the following-

- (a) the mental and suffering;
- (b) the loss in the career opportunity;
- (c) medical expenses incurred by the victim;
- (d) the income and financial status of the respondent;
- (e) feasibility of such payment in lump sum or in installments.

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