

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

Vishakha Guidelines

Supreme Court of India Judgement 1997

(Ref: *Vishakha and Ors. V State of Rajasthan*)

“In the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for this purpose. ...and it is further emphasised that this would be treated as the law declared by this Court under Art. 141 of the Constitution.”

The judgment of August 1997 provided the basic definitions of Sexual Harassment at the workplace and provided guidelines to deal with it. It is seen as a significant legal victory for women's groups in India

Established that **“Sexual Harassment violates a woman’s right in the workplace and is thus not just a matter of personal injury”**

ADVENT OF LAW

By adopting the Vishakha Guidelines and recommendations of Justice Verma Committee, the Parliament enacted **the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act in 2013** read with **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013** (effective Dec 2013)

This statute supersedes the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

The Statute extends to the “Whole of India”

It is only for the protection of “Women at Workplace”

Preamble

An Act to

- provide protection against sexual harassment of women at workplace
- for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

NO WOMEN SHALL BE SUBJECTED TO SEXUAL HARASSMENT AT ANY WORKPLACE [SEC 3(1)]

Understanding Basics

What is

- Sexual Harassment
- Workplace
- Aggrieved Woman

AGGRIEVED WOMAN

- All women working or visiting any workplace
 - Regular employee
 - Temporary employee
 - Adhoc
 - Daily wages
- Engaged directly or indirectly (contractor)
- Working for remuneration, voluntary or otherwise
- Terms of employment may be express or implied
- Could be a co-worker, contract worker, probationer, trainee, apprentice, visitor
- Also covers woman working in dwelling place or house

Workplace

- Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer
- Covers organised and unorganised sector
- Govt organisations
- Pvt sector organisations
- Hospitals/nursing homes
- Sports institutes, facilities
- Dwelling or house

Workplace.. extended

- Office parties
- Off sites
- Out bound trainings
- Client meetings
- Training sessions
- Travel for office purpose
- Any place where one visits in the course of due to employment

SEXUAL HARASSMENT (Sec 2(n) of the Act)

Sexual Harassment includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely :

- physical contact and advances; or
- a demand or request for sexual favour; or
- sexually colored remarks; or
- showing pornography; or
- other offensive or derogatory pictures, cartoons; or
- any other unwelcome physical, verbal or non-verbal conduct of sexual nature.



Sec 3(2) of the Act

Following acts when in relation to behaviour of Sexual Harassment may amount to sexual harassment

(i) implied or explicit promise of preferential treatment in her employment; or

(ii) implied or explicit threat of detrimental treatment in her employment: or

(iii) implied or explicit threat about her present or future employment status; or

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) Humiliating treatment likely to affect her health or safety.

Forms of Workplace Sexual Harassment

- Quid Pro Quo (*this for that*)
 - Implies or explicit promise of preferential / detrimental treatment in employment
 - Implied or express threat about her present or future employment status
- Hostile Work Environment
 - Creating hostile, intimidating or an offensive work environment
 - Humiliating treatment likely to affect her health and safety

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Sexual Advances

Unsavoury remarks

Jokes causing or likely to cause awkwardness or embarrassment

Gender based insults or sexist remarks

Unwelcome sexual overtones in any manner

Touching or brushing against any part of the body and the like

Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings

Forcible physical touch or molestation

Physical confinement against one's will and any other act likely to violate one's privacy

Abuse of authority or power

In short....

Workplace Sexual Harassment is when the behaviour is

- Unwelcome
- Sexual in Nature
- A Subjective Experience
- Impact not the intent matters

Workplace Sexual Harassment

typically involves acts of which the victim has *reasonable apprehension* that they are

- Humiliating
- Unsafe
- Unhealthy
- Discriminatory
- Career limiting
- Otherwise causing adverse circumstances

**Sexual Harassment is a serious
criminal offense!!!**

Civil Remedy under POSH

Criminal Remedy under the IPC

SECTION II
PREVENTION
AND
PROHIBITION

Prevention

- Employer is responsible and accountable
- Workplace free of sexual harassment

Employer defined

1. Workplace of Central Government / State Government/ Local Authority/Body

The Head or the Officer Specifies

2. Private Workplace

The Person responsible for the management/supervision/control

3. Dwelling House

The person who employs /benefits from the employment

Duties of employer

Every employer shall--

- (a) Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- (a) Display at any conspicuous place in the workplace, the penal consequences of sexual harassments: and the order constituting, the Internal Committee under this law;
- (b) Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (c) Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (d) Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

Duties of employer

- f) Make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under this law
- (g) Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code(45 of 1860) or any other law for the time being in force;
- (h) Cause to initiate action, under the Indian Penal Code(45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- (i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) Monitor the timely submission of reports by the Internal Committee

The Employer shall

- Create and communicate a detailed Policy
- Ensure Awareness and Orientation on the issue
- Constitute Complaints Committee
- Ensure that the Complaints Committee is trained in skill and capacity
- Prepare Annual Report to be submitted to the DO
- Report in the Directors Report

It is the Employer's responsibility to...

prevent or deter the committing of any act of Sexual Harassment by means of

- Creation of appropriate working conditions
- Ensuring female employees are not treated as sex objects
- Ensuring that no male employee *or third party* will outrage or insult the modesty of a female colleague
- Ensuring that no male employee *or third party* will make any type of sexual advances to female colleagues
- Establishment of a Complaints Committee

ICC/LCC

- Members to hold office for a term not exceeding three years
- ICC for each branch, offices if there are multiple
- Functions
 - To educate and sensitize employee about the issue
 - To address the compliant, conduct enquiry etc.
- Operates as a Quasi Judicial Body with powers to
 - Summon and enforce attendance
 - Call for evidence, documents

Internal Complaints Committee

(constituted through a written order)

50% shall always be women

Chairman	Women Working at senior level as employee;
2 members	From amongst the employees committed to the cause of women/ having legal knowledge/experience in social work
Member	From amongst NGO/ associations committed to the cause of women or a person familiar with the issue of sexual harassment

If a offices are located at different palces, each place needs to have an ICC

Local Complaints Committee

(constituted by District Officer)

50% shall always be women

Chairman	Eminent Women in the field of social work and committed to the cause of women
Member	Nominated from among the women working in the block, tehsil or ward
2 members	From amongst the employees committed to the cause of women/ having legal knowledge/experience in social work
Ex Offio Member	The concerned officer dealing with social welfare of women and child development in the district

Complaint Committee should

- I. Be thoroughly prepared
- II. Know the Act, Policy and/or relevant Service Rules
- III. Gather and record all relevant information
- IV. Determine the main issues in the complaint
- V. Prepare relevant interview questions
- VI. Conduct necessary interviews
- VII. Ensure parties are made aware of the process and their rights/responsibilities within it
- VIII. Analyse information gathered
- IX. Prepare the report with findings/recommendations
- X. Maintain Confidentiality
- XI. Be impartial, non retaliation
- XII. Clinical

SECTION IV

REDRESS

The Complaint mechanism

- Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Complaints Committee, within a period of **three months** from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.
- The time limit may be **extended for another three months** if the ICC is satisfied with the reasons for non-filing
- If woman is unable to make a complaint in writing, ICC to provide assistance

Who can make the complaint

- The woman herself
- In case of mental incapacity
 - Her relative
 - Friend
 - Special educator
 - Qualified psychiatrist/ psychologist
 - Guardian under whom she is receiving care
 - Any person who has information about incident with written consent of any of the above

Who can make the complaint

- In case of Physical incapacity
 - Her relative, Friend, Co-worker
 - Officer of the National / State commission for women
 - Any person who has information about incident with the written consent of woman
- In case of death any person who has information about incident with the written consent of legal heir
- In any other case, by any person Any person who has information about incident with the written consent of woman
- is unable to make complaint due to death or physically or mentally incapacity, her legal heir or a person authorised by her may make the complaint

The Complaint

- The complaint (six copies) by the aggrieved person should contain all the material and relevant details concerning the alleged sexual harassment which includes
 - the name of contravener
 - the complainant
 - Date
 - Time
 - Location
 - Working Relationship between parties
 - Names and addresses of witnesses, if any

The Complaint mechanism

- On receiving such a complaint, the chairperson will inform other members of Committee at the earliest possible and Committee will take further steps in the matter as required. The first meeting is to be held immediately within reasonable time but **not later than 07 working days of receiving the written complaint of the Aggrieved** .
- The ICC shall investigate the Complaint and submit its Report containing the findings/ recommendations along with relevant documents
- In conducting inquiry, a minimum of three members of ICC including chairperson to be present

Upon Receipt of Complaint

- Review the Complaint to ensure
 - It has all the information
 - The conduct of respondent was towards complainant and
 - is improper and may form SH at Workplace
 - The incident occurred in workplace or at any location/any event related to work
- Send complaint to Respondent within seven days of receipt to respond within 10 days
- Meet up with complainant for any settlement/conciliation

Conciliation

- Initiate conciliation process in the form of
 - Verbal warning
 - Counselling
 - Educating
 - Appoint neutral conciliator to resolve
- Forward the findings/ conciliation resolution to employer
- The choice is of the complainant

Inquiry

- Initiate enquiry
- Interview the Complainant, Respondent, Witnesses
- Listing of the Events
- Fact Finding
- Confidentiality and Impartiality is the key

Inquiry Process

- Follow the Principles of natural Justice
- Order Ex-parte or terminate the proceedings if the complainant or Respondent fail to be present for three consecutive hearings
- Legal Practitioners are not permitted
- Confidentiality to be maintained

Committee must adhere to the Rules of Natural Justice

There are three important rules to be observed by the Committee:

- Hearing - Nobody can be condemned without being heard
- Fair Play - The judge must be impartial and act fairly and in good faith
- Reasoned Orders

Interim Measure

- To prevent ongoing SH at the written request of the woman or event otherwise, CC may recommend
 - Restrain the respondent from
 - reporting on work performance of the Aggrieved woman
 - Writing her Confidential Report, appraisal
 - Supervising her academic activities
 - Transfer the Complainant or Respondent
 - Place Complainant or Respondent on Leave

Recommendations

- In case allegations are Proven
 - Service Rules to be followed as for “misconduct”
 - Disciplinary Actions like Written Apology; Warning;
 - Reprimand
 - With-holding of promotion
 - With-holding of pay increase or increments
 - Counselling Sessions
 - Community Service
 - Termination from services
 - Financial Damages
 - Additional recommendations to address underlying factors

False or malicious complaint

- › Where the Internal Committee, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer, to take action against the woman or the person who has made the complaint, as the case may be, in accordance with the provisions applicable to her or him. Provided further that the malicious intent on part of the complainant has been established after an inquiry in accordance with the procedure prescribed, before any action is recommended.
- › If the ICC comes to the conclusion that any witness has given wrong statement or evidence, it may recommend the employer to take action against such employee as well

TIMELINES	
Submission of Complaint	Within 3 months of the last incident
Notice to the Respondent	Within 7 days of receiving copy of the complaint
Completion of Inquiry	Within 90 days of complaint
Submission of Report by ICC/LCC to employer/DO	Within 10 days of completion of the inquiry
Implementation of Recommendations	Within 60 days Appeal Within 90 days of the recommendations

Confidentiality

The Act prohibits the disclosure of:

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

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