



SEXUAL HARASSMENT

AT WORKPLACE IN INDIA:
LET'S STOP IT TOGETHER

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P R E F A C E

WHY SHOULD YOU READ THIS BOOK?

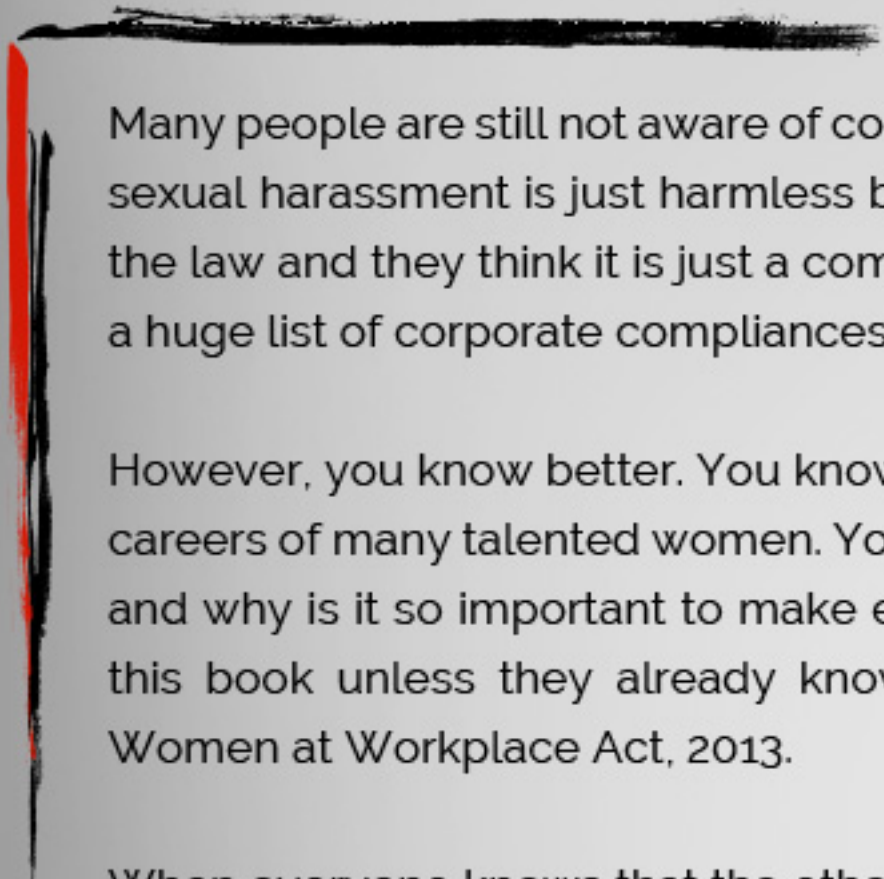
You are a woman and you care about the women who are suffering due to sexual harassment. You know how many women had to sacrifice their career to avoid sexual harassment and you do not want this unfairness to perpetuate. Read this book because you care.

Maybe you are not a woman but you care anyway. Read this book, share it with your male and female colleagues.

You, or someone you know, is facing sexual harassment at workplace. Maybe someone you know faced in the past, and nothing was done about it. Maybe it is not happening now, but it can happen again – to someone else you know. It can happen before your eyes, under your nose. Your friend, your colleague, your family members – they may not tell you every time it happens to them, but it is a reality. Too many women face sexual harassment to ignore it.

Men face sexual harassment too. Men face false allegations of sexual harassment sometimes. We must condemn all unfairness, all injustice.

You could put an end to it. You could learn your rights as a working woman or even a man. You could learn where a man must draw the line. You could tell others how they can protect themselves and what to do if they face sexual harassment. You could learn yourself, and spread the knowledge to others. Both men and women need to know what is sexual harassment and what can be done to redress sexual harassment. Study after study has shown that when all stakeholders in a workplace are trained – instances of sexual harassment go down significantly.




Many people are still not aware of consequences of sexual harassment. For many people sexual harassment is just harmless banter or necessary evil. Or worse, they know about the law and they think it is just a compliance check. A tick mark amongst many others in a huge list of corporate compliances.

However, you know better. You know that sexual harassment is a problem that destroys careers of many talented women. You know the importance of awareness of legal rights, and why is it so important to make every working man and woman in this country read this book unless they already know about the Prevention of Sexual Harassment of Women at Workplace Act, 2013.

When everyone knows that the other person is aware of how to take action against perpetrators, and that everyone is supposed to know the same thing – it is difficult for potential perpetrators to engage in delusions or to deny that they are committing a crime. They cannot feign ignorance or claim misunderstanding. If they are still doing it – they are doing it willingly, unequivocally with criminal intention. Studies suggest that much fewer people engage in sexual harassment of a colleague or make false allegations when they cannot claim that they were ignorant or that they misunderstood something.

This is why your role in spreading this knowledge is crucial in changing the prevailing situation in Indian workplaces.



In December of 2013, the government notified a new law to fight sexual harassment at workplace. However, it is still not implemented by an overwhelming majority of businesses. They ignore a lot of other labour laws, and this is yet another compliance checkbox. They may or may not care.

However, you must care. If you are a conscientious, educated man or woman who are going to bring a change, you can do it very easily now. The time is right. The tools are all in your hands.

You should read this book because we want to share with you crucial knowledge and information that every working man and woman should know. This ebook is an effort, and definitely not adequate. If any of you want to translate this and take the knowledge to others who cannot read English – please feel free to do so. Just let us know, and attribute us in the translated work.

If you want to take this knowledge and share it – feel free to do so. Just email a link of this ebook, or simply attach and email it to your friends. That way you will contribute in the fight against sexual harassment by spreading the correct knowledge.

You can take a print out and leave in your office library. You can even give a copy to your HR or directors. If your company is not complying with the law, share this checklist (or press Ctrl + P to take a printout) with your HR or your operations manager. If they don't take action, share with your top bosses if you can.

You can ask why your organisation is not compliant with such an important law that is intended for protecting women if they don't listen to you. As the empowered men and women of this generation, I believe we can find our voice to do this.

If you don't find that voice, at least share the link of this PDF file with someone, and maybe they will find the right voice.

There is another very strong reason to read this manifesto. Someone you know may accuse you or another person maliciously, or under a misunderstanding. If you are at the receiving end, prior knowledge of how things work, and the consequences of false accusations will help you to draw up your battle and rescue plans very quickly, very efficiently.

At the end of this book, we have also shared some information on how one can make an excellent career by helping Indian businesses to implement sexual harassment laws and manage cases of sexual harassment on their behalf, as external member of internal complaints committees or even as a workplace harassment consultant. Thousands of experts are needed to implement the law at an estimated 2 million workplaces covered under the law in India. If you want to find out how to become one of these experts, you can head over to this link of an [executive program to certify sexual harassment experts](#) and development of standard practices.

So go on, read this book, benefit from it and share it widely.
End Sexual Harassment at Indian workplaces.

QUICK ACTION LINKS:

Ask your HR manager or those in charge of operations (in absence of HR) to use the [checklist](#) provided at the end of this ebook to be sure if the organisation is fully compliant with sexual harassment laws. You can simply forward it to her.

Help your employer to implement sexual harassment laws within 48 hours – send across this link to your HR/ branch head/ CEO.

Share with your directors and CXOs about what liability they can have if the law is not complied with. They can read about the same from [this link](#), or from this ebook itself.

Email this ebook to your friends and co-workers.

Share the link of the download page on [f](#) Facebook & [t](#) Twitter.

You can [learn here](#) while the sexual harassment law is not gender neutral in India. If you are serious about understanding the issue of sexual harassment, do read this article on [psychology of sexual harassment](#).

C O N T E N T S

| | |
|----------------------|--|
| 2 | Why should you read this book? |
| 8 | A manifesto for fighting sexual harassment |
| CHAPTER ONE | Let's get it straight, what is sexual harassment? |
| 10 | The difference between sexual assault and sexual harassment |
| 11 | Is it a crime to ask out your colleague? |
| 11 | What if I pursue my co-worker with a not sexual but romantic interest? |
| 12 | What if I am having a consensual relationship with a co-worker? |
| 12 | What if you are discriminated against because of your looks? |
| 13 | What if a colleague passes comments behind your back? |
| 13 | What about preferential treatment due to sexual interest? |
| 14 | Scenario based questions – identify whether the conduct qualifies as sexual harassment |
| CHAPTER TWO | How can you help someone who is a victim of sexual harassment? |
| 18 | Employment status of the woman is she protected as per the act? |
| 20 | Did the harassment occur at the 'workplace'? |
| 20 | Scenario based questions Identify whether the incident occurs at a 'workplace' |
| 22 | Is the perpetrator under the control of the employer? |
| 23 | Which situations are not covered under the act? |
| 24 | Scenario based problems |
| CHAPTER THREE | What steps can be taken in case a woman faces sexual harassment? |
| 28 | What can be done if the woman is unable to personally submit a complaint |
| 30 | Interim measures |
| 31 | What is the procedure after filing a complaint with the ICC? |
| 32 | Appeal process |
| CHAPTER FOUR | Employer's duties under the Sexual Harassment Act |
| 34 | How do you know if your employer has done all these above things? |
| 35 | What can you do if your employer is not complying with the laws? |
| 36 | What action can a woman take in case an employer has not constituted the ICC? |
| CHAPTER FIVE | Consequences of violation of obligations |
| 40 | Annexure 1: Sample complaint letter |
| 42 | Annexure 2: Compliance Checklist |

I N T R O D U C T I O N

A 2010 survey of India's information technology and outsourcing industry found that 88% of women employees have faced some form of sexual harassment at work. Similarly a survey conducted in 2012, by consulting firm Ipos, revealed that 38% of the respondents believed that men in India are subjected to sexual harassment at workplace. While there are provisions under the Indian Penal Code (IPC) to address situations of sexual harassment, not all instances of sexual harassment at workplace may be covered under the IPC. Further, instances of sexual harassment at the workplaces are barely escalated to employers or reported to law enforcement agencies, because of fear of adversely affecting her work environment or losing her employment itself (especially when seniors are involved).

Therefore, addressing the issue at the level of the employer becomes extremely important. Although the Supreme Court of India had laid down guidelines for both private and government organizations to prevent sexual harassment as far back as 1997 (in a famous case called the Vishakha vs. State of Rajasthan or the Vishaka case). These guidelines were not strictly followed and the stance of different private and government organizations vis-à-vis sexual harassment at the workplace varied widely. Most private organizations and many state governments had not implemented a policy against sexual harassment at all [interested readers can go through the Supreme Court's comments in [MedhaKotwal Lele vs. Union of India \(2012\)](#)].

The Parliament has enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Sexual Harassment Prevention Act) which came into force from 9th December 2013. The act imposes certain obligations on employers to ensure that working women do not face sexual harassment at the workplace. Employers are required to constitute an Internal Complaints Committee (ICC) to deal with cases of sexual harassment at the workplace. A woman who faces sexual harassment can approach the ICC, which is empowered to award certain remedies to a woman who has been sexually harassed (discussed later). Though the act grants tremendous protection to women and does not protect men from sexual harassment at the workplace, false complaints of sexual harassment against men carry serious consequences.

In addition, employers also have certain other filing and reporting obligations under the act (discussed in detail below). Before we discuss the steps that can be taken to enforce women's rights against sexual harassment (as per the act), we need to understand in which situations women are protected and what constitutes sexual harassment – the answers to some of these issues are quite tricky. In a real situation, when a woman is of the opinion that she has faced sexual harassment, she will have to run some quick mental tests to identify whether she is protected under the act, before approaching a complaints committee or taking other legal action. These checks are explained in the next chapter.



CHAPTER 1

LET'S GET IT STRAIGHT, WHAT IS SEXUAL HARASSMENT?

IF THERE IS ONE THING THAT EVERY EMPLOYEE SHOULD UNDERSTAND ABOUT SEXUAL HARASSMENT, THEN THAT IS THIS ONE THING: WHAT KIND OF BEHAVIOUR QUALIFIES AS SEXUAL HARASSMENT IN THE WORKPLACE.

THE DIFFERENCE BETWEEN SEXUAL ASSAULT AND SEXUAL HARASSMENT

People understand what is a sexual assault. They also understand that sexual assault at the workplace is unwelcome and illegal. Sexual assault means aggressive sexual touching or forceful attempt to engage in any act of sexual nature, like kissing, touching etc. These of course qualify as sexual harassment if such assault takes place in the workplace. However, there is much more that which is covered under definition of sexual harassment at workplace, which most people are completely unaware of.

According to this Act, sexual harassment includes any of the following unwelcome acts or behaviour:

- a) unwelcome physical contact and advances,
- b) showing pornography, making "sexually colored" remarks and
- c) any other unwelcome physical, verbal or non-verbal conduct of sexual nature
- d) creating a hostile work environment
- e) Asking for sexual favours

Remember, that even if there is no sexual assault, wherever there is any behaviour that creates an unduly hostile work environment for a woman, which maybe related to her looks, dressing, sex, etc, and involves an interest of sexual nature, there is a need to examine if sexual harassment has taken place.

Let's take a look at a few common instances.

REMEMBER, THAT EVEN IF THERE IS NO SEXUAL ASSAULT, WHEREVER THERE IS ANY BEHAVIOUR THAT CREATES AN UNDULY HOSTILE WORK ENVIRONMENT FOR A WOMAN, WHICH MAYBE RELATED TO HER LOOKS, DRESSING, SEX, ETC.

IS IT A CRIME TO ASK OUT YOUR COLLEAGUE?

It is indeed not a crime to simply ask out your female colleague, although you may want to check the policy regarding this in your organization. Sexual harassment goes beyond just asking out. It certainly does not include consensual dating between colleagues. However, if your proposal is of a sexual nature, and the woman feels harassed, she is free to pursue a complaint against you.

Usually, a woman does not file a complaint unless she is repeatedly pursued to the point of inconvenience and frustration. However, theoretically it is possible that a woman may file a successful complaint against you even if you make a proposal of sexual nature to her even only once.

WHAT IF I PURSUE MY CO-WORKER WITH A NOT SEXUAL BUT ROMANTIC INTEREST?

Is it illegal to ask out a colleague on a date, coffee or drinks? Will it qualify as sexual harassment? The language of the law does not cover such situations specifically, and I am afraid that creative interpretation by judges in the future may include such situations in the purview of sexual harassment as this has happened in some countries. However, based on present legal standard, I would venture out on a limb and say that asking out a colleague for coffee, movie, drinks or such other social invitations to mingle does not qualify as sexual harassment under current Indian law. Still be aware that an oversensitive person may treat this as sexual harassment and she would have the right to file a complaint against you.

However, the situation turns on its head if you keep pursuing her in an unreasonable manner and cause inconvenience. If you are making your colleague's life difficult with proposals for going out on a date with you, you are treading on dangerous grounds as any complaints committee is likely to consider this as sexual harassment, since the harassment part is pretty obvious here.

WHAT IF I AM HAVING A CONSENSUAL RELATIONSHIP WITH A CO-WORKER?

The law related to sexual harassment does not prohibit consensual sexual or romantic relationships at workplace. However, if you are in a consensual relationship, you need to be careful. A big chunk of the sexual harassment complaints at workplace that I have come across came out of breaking up of consensual relationships.

Let me give an example. A CEO, let's call him X and his secretary, Y, were in a consensual romantic and sexual relationship for less than a year. However, after a point Y was planning to get married and stopped the relationship. X kept pursuing her to get back to the relationship. At one point, Y felt that her position at the job is at threat due to unreasonable and discriminatory behaviour by X. X had also requested a transfer of Y on ground of lack of performance. When Y complained of sexual harassment to the Internal Complaints Committee, her allegation of sexual harassment was accepted and action was taken against X.

WHAT IF YOU ARE DISCRIMINATED AGAINST BECAUSE OF YOUR LOOKS?

When one's looks have nothing to do with performance at workplace, discrimination based on looks may qualify as sexual harassment. For example, when pin-up models are judged by their looks, this is not sexual harassment. However, if a marketing manager or a telecaller is discriminated against based on her looks, this may qualify as sexual harassment. This is so because sexual interest also includes discrimination based on lack of sexual interest in a person at the workplace.

WHAT IF A COLLEAGUE PASSES COMMENTS BEHIND YOUR BACK?

What happens when no one directly caused affront with you, but passed sexual comments, or commented about your looks behind your back? That would also qualify as sexual harassment. Yes, gossiping at work about the looks of a woman who works in the same workplace is indeed dangerous, and illegal!

WHAT ABOUT PREFERENTIAL TREATMENT DUE TO SEXUAL INTEREST?

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

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

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

SCENARIO BASED QUESTIONS – IDENTIFY WHETHER THE CONDUCT QUALIFIES AS SEXUAL HARASSMENT

1. MISS RITU WORKS IN A MNC, HER BOSS MR. RAJ OFTEN USES ABUSIVE NAMES (HINDI NON-SEXUAL SLANGS) WHILE REPRIMANDING HIS SUBORDINATES, IRRESPECTIVE OF THEIR GENDER. MISS RITU TOOK OFFENCE AGAINST SUCH ABUSIVE LANGUAGE AND FILES A COMPLAINT FOR SEXUAL HARASSMENT? WHETHER SUCH CLAIM IS SUSTAINABLE?

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

2. PRIYA IS A NEW HIRE IN A COMPANY. THERE'S A LOT OF WORK IN THE ORGANIZATION AND HER SUPERIOR OFTEN REQUIRES HER TO STAY IN OFFICE AND WORK LATE NIGHT TO COMPLETE THE TASKS AT HAND. SHE FINDS THIS TOO STRESSFUL AND DISTURBING AND WANTS TO MAKE A COMPLAINT FOR SEXUAL HARASSMENT. DOES SUCH A CLAIM QUALIFY AS SEXUAL HARASSMENT?

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

3. MISS PRIYA WORKS IN A LAW FIRM, WHERE A SENIOR PARTNER OF THE FIRM USUALLY MAKES REMARKS AT HER APPEARANCE AND DRESSES, SPECIFICALLY DEMANDING HER TO WEAR CERTAIN ATTIRE THAT MAKES HER MORE ATTRACTIVE. AGGRIEVED BY THE ACT, SHE FILES A COMPLAINT FOR SEXUAL HARASSMENT? WHETHER THIS CLAIM IS SUSTAINABLE UNDER SEXUAL HARASSMENT ACT?

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

4. MR. SOBHAN OFTEN WATCHES PORNOGRAPHIC VIDEOS IN THE OFFICE IN A DELIBERATE EFFORT TO MAKE IT VISIBLE TO THE FEMALE COLLEAGUES WHO ARE UNCOMFORTABLE BY THIS ACT. ONE OF THE FEMALE COLLEAGUES WHO SAT AT THE ADJOINING DESK FILED A COMPLAINT FOR SEXUAL HARASSMENT. IS THE CLAIM SUSTAINABLE UNDER SEXUAL HARASSMENT ACT?

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

5. MRS SOBHA WORKS IN A MULTINATIONAL COMPANY. IN A STRAY INCIDENT, HER MANAGER PROMISES PREFERENTIAL TREATMENT AT WORK, IF SHE CONSENTS TO HIS SEXUAL FAVORS . CAN SHE FILE A COMPLAINT IN RESPECT OF SEXUAL HARASSMENT WITH RESPECT TO SUCH A ONE-OFF INCIDENT?

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



CHAPTER 2

HOW CAN YOU HELP SOMEONE WHO IS A VICTIM OF SEXUAL HARASSMENT?

WANT TO HELP SOMEONE TO DEAL WITH SEXUAL HARASSMENT? EITHER FORWARD THIS EBOOK, OR READ THE REST CAREFULLY AND IMPLEMENT IT YOURSELF.

YOU NEED TO FIRST GO THROUGH THIS CHECK LIST AND CONFIRM THAT ANSWER TO ALL THESE QUESTIONS IS YES:



Does the conduct qualify as sexual harassment?

You have already read about which conducts can constitute sexual harassment under the Act. If you are not clear about what constitutes sexual harassment, please refer back to the earlier section.



Employment status – is she covered under the Act?

Generally, all women working within the organisation, irrespective of the contractual arrangement is covered under the Act.



Did the harassment occur at the workplace?

All places of work, including while on official assignments and conferences are covered under the law.



Is the perpetrator under the control of the employer?

Every actor involved in causing the harassment may not always be within the control of the employer – in which cases the employer may have limited power to take corrective action under the Act. It is important, whether the ICC of the organisation will be able to provide adequate remedy.

ALTHOUGH AN EMPLOYEE CAN ALWAYS APPROACH THE COMPLAINTS COMMITTEE OR THE ORGANISATION'S HUMAN RESOURCE DEPARTMENT (HR) FOR CLARIFICATION OR UNDERSTAND WHETHER THE PARTICULAR SITUATION SHE CONSIDERS TO BE SEXUAL HARASSMENT, IS ACTUALLY COVERED UNDER THE ACT, IT IS SUGGESTED THAT THE COMPLAINANT SHOULD MAKE THE ABOVE PRELIMINARY CHECKS BEFORE APPROACHING THE COMPLAINTS COMMITTEE.

EMPLOYMENT STATUS OF THE WOMAN - IS SHE PROTECTED AS PER THE ACT?

The Sexual Harassment Act protects women in the following work capacities:

- 1) Women employed on full-time, part-time, ad hoc or daily basis
- 2) Temporary employees
- 3) Women employed as contract workers or
- 4) Indirect women employees – for example, women employed through agents or contractors,
- 5) Probationers, trainees, apprentices and interns
- 6) Women who are not employed for remuneration and women working on a voluntary basis are covered.

SCENARIO BASED TEST – IDENTIFY WHETHER THE WOMAN IS ENTITLED TO PROTECTION

1. MISS PRIYANKA WORKS AS AN INTERN AT A LAW FIRM WHICH HAS 20 EMPLOYEES. SHE WAS SEXUALLY HARASSED BY A SENIOR ASSOCIATE ON HER LAST DAY OF INTERNSHIP. CONSIDERING SHE IS AN INTERN AND IS ALSO DONE WITH HER INTERNSHIP PERIOD, CAN PRIYANKA CAN FILE A COMPLAINT UNDER THE SEXUAL HARASSMENT ACT?

Answer. Yes – interns, apprentices, and trainees are protected under the Sexual Harassment Act. In determining a case of sexual harassment, it is irrelevant whether there is any relationship of employment with the complainant. In this case, even though it was her last day in the law firm, she can file a complaint with the ICC (even after her internship is over – within the time limit of 90 days), as the harassment occurred when she was still working with the law firm.

2. MISS ANESHA, AN EMPLOYEE OF AN IT-SERVICES PROVIDER WORKS AS ONSITE STAFF AT THE PREMISES OF THE CLIENT. SHE WAS SEXUALLY HARASSED BY AN EMPLOYEE OF THE MNC DURING THE OFFICE PARTY AT THE CLIENT'S PLACE- CAN SHE FILE A COMPLAINT UNDER SEXUAL HARASSMENT ACT WITH THE MNC?

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

3. MISS MONIKA, A SOCIAL ACTIVIST, WORKS IN A NGO ON VOLUNTARY BASIS WITHOUT ANY REMUNERATION. SHE WAS SEXUALLY HARASSED BY A COLLEAGUE. CAN SHE FILE A COMPLAINT WITH THE APPROPRIATE COMMITTEE UNDER THE SEXUAL HARASSMENT ACT?

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

4. MRS. SHIVANI IS TEMPORARILY WORKING AS A JANITOR IN A COMPANY AND IS PAID WAGES ON A DAILY BASIS. SHE WAS SEXUALLY HARASSED BY A SECRETARY OF ONE OF THE DIRECTORS AFTER THE OFFICIAL WORKING HOURS WITHIN THE OFFICE. IS SHE PROTECTED UNDER THE SEXUAL HARASSMENT ACT?

Answer: Yes, women working on ad hoc basis or on daily wage basis are protected under the ambit of Sexual Harassment Act. If the sexual harassment has occurred within the "workplace", the time of such occurrence is irrelevant, as long as the premises is owned or has rights to the premises.

5. MISS RENUKA WORKS AS A SALESGIRL IN A DEPARTMENTAL STORE ON PART-TIME BASIS AFTER COLLEGE HOURS. SHE WAS SEXUALLY HARASSED BY HER FLOOR MANAGER. CAN RENUKA FILE A COMPLAINT UNDER SEXUAL HARASSMENT ACT?

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

DID THE HARASSMENT OCCUR AT THE 'WORKPLACE'?

'Workplace' includes the premises of all government and private entities which operate on a commercial basis (that is, they are involved in any economic activity) or work in education, entertainment, vocational services, sports facilities (such as stadiums, sports institutes and sports complexes), health services, hospitals and nursing homes. Societies, trusts and non-governmental organizations are also included. Organizations where voluntary work is performed will be included. With respect to domestic workers, even a house is considered as a workplace.

Further, any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey, or an official conference organized at a hotel is considered as workplace for the purpose of the Sexual Harassment Act.

SCENARIO BASED QUESTIONS – IDENTIFY WHETHER THE INCIDENT OCCURS AT A 'WORKPLACE'

1. MRS RISHITA PRACTISES IN A SPORTS TRAINING INSTITUTE. SHE IS SEXUALLY HARASSED BY HER TRAINER. CAN SHE FILE A COMPLAINT UNDER SEXUAL HARASSMENT ACT?

Answer: Yes, she can approach the complaints committee as per the act – sporting institutes, stadium, sport complex or game venues are covered under the definition of workplace under the Sexual Harassment Act. She can file a complaint under the Act.

2. RAMANA WORKS AS A NURSE IN A PRIVATE HOSPITAL. ONE NIGHT A DOCTOR FROM THE HOSPITAL SEXUALLY HARASSED HER IN THE HOSPITAL'S PARKING LOT. SHE IS SEXUALLY HARASSED BY A DOCTOR AT THE HOSPITAL. IS SHE ENTITLED TO THE REMEDIES UNDER SEXUAL HARASSMENT ACT?

Answer: Yes – hospitals and nursing homes are covered under the definition of workplace under the Sexual Harassment Act. As the harassment occurred at the hospital's parking lot (which is naturally accessible in the process of travelling to work or going back home after work from the hospital), it will be construed to be the workplace which is in the control of the hospital authority, Ramana can approach the internal or local complaints committee, depending on the situation.

3. SNEHA IS AN INTERN IN A LAW FIRM. SHE IS SEXUALLY HARASSED BY A SENIOR ASSOCIATE IN THE COMPANY'S CAR THAT DROPS THEM HOME EVERY NIGHT. CAN SHE FILE A COMPLAINT UNDER SEXUAL HARASSMENT ACT?

Answer: Firms which provide professional services and any employer provided transportation services are covered under the definition of workplace under the Sexual Harassment Act – Sneha can file a complaint under the act.

4. ANURADHA WORKS IN A SALON, WHERE SHE IS SEXUALLY HARASSED BY A CLIENT. CAN SHE FILE A COMPLAINT UNDER SEXUAL HARASSMENT ACT?

Ans: Private service providers (salons, hospitals, etc.) providing commercial services are covered under the definition of workplace under the Sexual Harassment Act. However, as she was harassed by an external person the complaints committee mechanism under the act will be ineffective in providing her effective reliefs – however, her employer has the duty to assist her in filing a FIR with the police, in case she approaches him or the ICC.

5. ANAMIKA IS A MANAGEMENT CONSULTANT, WHO OFTEN WORKS WITH SEVERAL STARTUP COMPANIES. HER TYPICAL MEETINGS WITH HER CLIENTS (STARTUP COMPANIES) ARE OFTEN SCHEDULED AT COFFEE SHOPS OR AT THE PERSONAL HOMES OF ONE OF THE FOUNDERS, SINCE THEY WORK FROM HOME. DOES ANAMIKA HAVE ANY RIGHTS TO COMPLAIN IN CASE SHE FACES SEXUAL HARASSMENT IN SUCH SITUATIONS?

Answer: As the premises where the harassment occurred was used for the work of the employer, they premises would constitute a "workplace," under the Sexual Harassment Prevention Act. As the sexual harassment occurred where there the complaint is against the employer himself, she can file a complaint with the LCC of the concerned area.

IS THE PERPETRATOR UNDER THE CONTROL OF THE EMPLOYER?

The process of approaching the Internal or Local Complaints Committee (described later) works well when the perpetrator is working under the same employer, because the employer can take action against him for engaging in sexual harassment. However, workplace includes many other locations other than the office premises themselves – for this reason, an employer may not necessarily be the paymaster for the person alleged to have harassed the woman. For example, travelling in a vehicle arranged by the office is considered to be a workplace. Similarly, a field visit to an off-site location will also qualify as a workplace.

Similarly, 'outsiders' often visit the premises of the employer for commercial transactions and business meetings. For example, Chartered Accountants may visit the client's office for carrying out an audit, lawyers and bankers may visit the office in connection with diligence work, a software vendor's staff may visit a client's office for carrying out training for the client's employees.

In such situations, remedies such as deduction of salary as per the Sexual Harassment Act may not be effective to provide relief, since the employer himself does not have control over the person.

WORKPLACE INCLUDES MANY OTHER LOCATIONS OTHER THAN THE OFFICE PREMISES THEMSELVES – FOR THIS REASON, AN EMPLOYER MAY NOT NECESSARILY BE THE PAYMASTER FOR THE PERSON ALLEGED TO HAVE HARASSED THE WOMAN.

WHAT REMEDIES DOES A WOMAN HAVE IF SHE FACES HARASSMENT IN SUCH SITUATIONS?

HOW CAN A WOMAN SAFEGUARD HERSELF IN SUCH CASES?

Every actor involved in causing the harassment may not always be within the control of the employer – in which cases the employer may have limited power to take corrective action. With respect to such categories of people, employers may have limited power to provide remedies, as described below:

- i) They may be able to terminate their commercial relationship with such contractors or agents escalate the issue to a senior level official of the contractor, or in suitable cases, assist the woman in filing an FIR.
- ii) Where the person alleged to have harassed the employer is not at all under the control of the employer (for example, imagine a situation where a woman conducting a survey is harassed by an interviewee), the employer can only assist her in approaching the police.

WHICH SITUATIONS ARE NOT COVERED UNDER THE ACT?

Situations where a male employee is sexually harassed by a woman or another male employee may not be covered under the act. However, the management can take proactive steps to implement a gender neutral anti-sexual harassment policy in the organization to cover such incidents. Further, there can be situations where the person accused of the harassment is not under the employer's control – e.g. where a woman is conducting a field survey for a research organization. While these situations qualify as workplace, it may be difficult for the employer to take substantial measures under the Sexual Harassment Act.

WHILE IN THE USA, THE EMPLOYERS ARE SUPPOSED TO COMPENSATE VICTIM ONCE SEXUAL HARASSMENT IS PROVEN WHILE IN INDIA THE COMPENSATION IS TO BE PAID BY THE PERSON WHO HAS HARASSED BY THE VICTIM; THERE IS NO MONETARY LIABILITY ON THE EMPLOYER IN THIS REGARD

SCENARIO BASED QUESTIONS – IDENTIFY WHETHER THE CONDUCT QUALIFIES AS SEXUAL HARASSMENT

QUESTION 1: A WOMAN WORKING AT AN NGO WHICH EMPLOYS 20 PEOPLE HAS BEEN SEXUALLY HARASSED AND WANTS TO KNOW AVAILABLE REMEDIES. DOES SHE HAVE THE RIGHT TO COMPLAIN TO THE INTERNAL COMPLAINTS COMMITTEE OF THE NGO AS PER THE SEXUAL HARASSMENT ACT (CONSIDERING IT IS NOT A COMMERCIAL VENTURE)?

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

A WOMAN WHO WORKS AS AN ANALYST AT A MARKET RESEARCH FIRM FACED AN INSTANCE OF SEXUAL HARASSMENT FROM THE DRIVER WHILE SHE WAS TRAVELLING IN THE COMPANY CAB FOR FIELD RESEARCH. IS SHE PROTECTED UNDER THE SEXUAL HARASSMENT ACT?

Ans: Yes, the woman will be entitled to remedies under the Sexual Harassment Act. Under the act, 'workplace' includes places visited out of or in the course of employment and any transportation provided by the employer for such visits.

QUESTION 3: NIMISHA, AN INTERN WORKING IN A STOCKBROKING FIRM HAS RECEIVED SEXUALLY OFFENSIVE SMSes FROM HER SENIOR. THE BROKING OUTFIT HAS 30 EMPLOYEES, ONLY 5 OF WHOM ARE WOMEN. CAN SHE UTILIZE THE MACHINERY UNDER THE SEXUAL HARASSMENT ACT IN THIS SITUATION?

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

QUESTION 4: TASNEEM, AN ASSOCIATE AT AN ACCOUNTING FIRM VISITS A CLIENT'S OFFICE FOR AN AUDIT AND FACES HARASSMENT FROM A MANAGERIAL LEVEL EMPLOYEE OF THE CLIENT. BOTH ORGANIZATIONS HAVE MORE THAN 10 EMPLOYEES. WHOM SHOULD SHE COMPLAIN TO?

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

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

UNDER THE SEXUAL HARASSMENT ACT,
WORKPLACE INCLUDES OFF-SITE
LOCATIONS - THE CLIENT'S OFFICE
WILL BE CONSIDERED HER 'WORKPLACE'
IN THIS SITUATION.



CHAPTER 3

WHAT STEPS CAN BE TAKEN IN CASE A WOMAN FACES SEXUAL HARASSMENT?

IN CASE THE WOMAN IS UNABLE TO COMPLAIN
DUE TO ANY OTHER REASON THE COMPLAINT CAN
BE MADE BY ANY PERSON WHO HAS KNOWLEDGE OF
THE INCIDENT, WITH WRITTEN PERMISSION OF
THE WOMAN.

IN CASE A WOMAN IS OF THE OPINION THAT SHE HAS BEEN SEXUALLY HARASSED, SHE CAN COMPLAIN TO:



The Internal Complaints Committee (ICC) constituted by the employer, if the organization has 10 or more employees



The Local Complaints Committee, where the organization has less than 10 employees or where the employer has not constituted the ICC, or the complaint is against the employer himself.

Notes:

- 1) The complaint must be filed within 90 days of the occurrence of the incident.
- 2) The complaint must be filed in six (6) copies along with supporting documents and names and addresses of the witnesses by the complainant. One (1) copy will be submitted by the Complaints Committee to the perpetrator.
- 3) The parties cannot be represented by a lawyer during the proceedings

THE COMPLAINT MUST BE FILED IN SIX (6) COPIES ALONG WITH SUPPORTING DOCUMENTS AND NAMES AND ADDRESSES OF THE WITNESSES BY THE COMPLAINANT. ONE (1) COPY WILL BE SUBMITTED BY THE COMPLAINTS COMMITTEE TO THE PERPETRATOR.

WHAT CAN BE DONE IF THE WOMAN IS UNABLE TO PERSONALLY SUBMIT A COMPLAINT ON ACCOUNT OF BEING BEDRIDDEN, ILL, OR FOR SOME OTHER PHYSICAL OR MENTAL INCAPACITY, OR DEATH?

In case of physical incapacity, the complaint can be made by:

- i) her friend or relative
- ii) a co-worker
- iii) an officer of the National Commission for Women or State Women's Commission
- iv) any other person who knows about the incident - with written permission of the aggrieved woman

In case of mental incapacity, the complaint can be made by:

- i) her friend or relative
- ii) a special educator
- iii) a qualified psychiatrist or psychologist
- iv) any person who has knowledge of the incident, jointly with her friend or relative, or a special educator or a qualified psychiatrist or psychologist under whose care the woman is.

In case the aggrieved woman is dead, the complaint can be made by any person who has knowledge of the incident, with written permission of the legal heir of the woman.

In case the woman is unable to complain due to any other reason the complaint can be made by any person who has knowledge of the incident, with written permission of the woman.

If the ICC finds an employee to be guilty of sexual harassment, it will require the employer to take disciplinary proceedings against the employee or award compensation to the woman. In case the complaint is filed with the Local Complaints Committee, its recommendations are sent to the District Officer.

The compensation amount can be deducted from the remuneration of the employee. The amount of compensation can vary depending on the situation and circumstances of the woman – for example, consider a woman who has been on leave for two months due to an incident of harassment, and who has consequently missed out on a critical transaction that would determine her prospects of promotion in the following year. In another situation, a woman may have suffered tremendous psychological trauma and may have needed medical assistance. The ICC is permitted to consider such factors while determining compensation.

As per the act, compensation must be determined based on mental trauma, pain, suffering and emotional distress caused to the woman, loss of career opportunity due to the incident, medical expenses incurred by the woman (e.g. for any physical or psychiatric treatment) and the income and financial status of the person who is accused.

The ICC may consider whether the amount should be paid in lumpsum or instalments.

AS PER THE ACT, COMPENSATION MUST BE DETERMINED BASED ON MENTAL TRAUMA, PAIN, SUFFERING AND EMOTIONAL DISTRESS CAUSED TO THE WOMAN, LOSS OF CAREER OPPORTUNITY DUE TO THE INCIDENT, MEDICAL EXPENSES INCURRED BY THE WOMAN (E.G. FOR ANY PHYSICAL OR PSYCHIATRIC TREATMENT) AND THE INCOME AND FINANCIAL STATUS OF THE PERSON WHO IS ACCUSED.

Important points to remember

1. A woman must preserve records that substantiate her allegations of harassment – any form of communication such as emails, SMSes or telephonic or in-person conversation records and any other materials that can be helpful in establishing her claim.
2. The victim should take care to ensure that her complaint is genuine and not made with any ulterior motives such as an attempt to gain publicity, extort monetary compensation, embarrass or bring a colleague, staff member or the management to disrepute or as a way to extract vengeance. False complaints carry the same consequences as being involved in sexual harassment itself – the consequences could range from – warnings to dismissal.


3. The woman may consider settlement, so long as there is clarity on future action points for both the woman and the respondent (harasser). The option to settle is not mandatory, but has been provided so that it can be utilized where feasible – amicable settlement has the potential to ensure a better working relationship and makes the environment more congenial.
4. Records and materials to substantiate her claim must not be retained exclusively on equipment owned by the employer, to reduce risk of tampering. A back up of the records may be retained by the woman by keeping printout of such message taking copies on her own machine or disks is also a good idea, only if the IT policy of the company allows retention of such copies of documents for the purpose of providing evidence. A copy of these materials should be submitted to the ICC.
5. At the time of making a complaint, the woman may remind the ICC about the confidentiality of her identity – although the ICC is bound to ensure confidentiality under the act – a reminder may be helpful to bring attention to the issue, so that there are no accidental oversights.
6. The aggrieved woman has the option to request an interim measure that can be taken pending inquiry and decision of the ICC – since the inquiry by the ICC can take time, it is advisable that the woman is not uncomfortable pending completion of the inquiry.
7. Retaining a copy of the complaint and supporting materials is advisable for the inquiry process.

Interim measures

If the woman specifically requests, the ICC can recommend her employer to i) transfer the woman or the person accused of the harassment to another location, ii) grant additional leave of up to 3 months to the woman (without any deduction of salary) – this leave is in addition to her statutory or contractual leave and iii) restrain the person accused of sexual harassment from reporting on the work performance or writing in the confidential reports of the woman. In case of an educational institution, there can be a restriction on supervision of the academic activity of the woman. However, the prohibition of reporting on work performance or supervision of academic activity can only be recommended to the employer if a written request is made by the aggrieved woman to the ICC who has to recommend to the employer. ICC has no control over the employee/alleged accused.

WHAT IS THE PROCEDURE AFTER FILING A COMPLAINT WITH THE ICC?

After hearing the woman's complaint, an ICC typically has the following options:

-  The ICC may at the request of the aggrieved woman give an opportunity to peacefully settle the matter through a conciliation process. If the conciliation is successful, it will result in a settlement agreement between the parties. The settlement agreement will typically specify:
 - That the perpetrator apologizes for his prior conduct towards the woman,
 - Any legitimate monetary compensation – this can include reimbursements for any medical treatment or expenses, reasonable compensation for loss of a significant work opportunity. Please note that monetary compensation cannot be the basis of conciliation, so the ICC should be careful to ensure that monetary compensation is reasonable and not arbitrarily high. This will also disincentivize employees from filing false complaints or using the settlement mechanism as a means of extortion.
 - That the woman agrees to withdraw all legal proceedings with respect to the instances of harassment in question, reserving her right to initiate fresh proceeding, in case the perpetrator continues to harass her subsequently.
 - It may also specify details pertaining to the future course of conduct between the perpetrator and the woman - for example, whether they agree to interact and collaborate (in personal or professional capacity) in future on a need basis, pointers on manner of collaboration, etc.

THE SETTLEMENT ARRIVED BETWEEN THE EMPLOYEE AND VICTIM MUST BE FORWARDED BY THE ICC TO THE EMPLOYER AND IN CASE OF THE LOCAL COMPLAINTS COMMITTEE TO THE DISTRICT OFFICER.

- If conciliation is not feasible, the ICC will begin its inquiry into the matter (see below for how the inquiry process is commenced after filing the complaint). The inquiry must be completed in 90 days, followed by a report recommending the action to be taken by the employer. This report should be submitted in another 10 days.

Note:

The employer will have to provide necessary assistance for smoothly carrying out the inquiry and ensure that the witnesses and the perpetrator are present at the ICC proceedings.

- If the woman has requested an interim measure, on the recommendation of the ICC, the employer must grant it pending completion of its inquiry / completion of the conciliation process.
- In an appropriate case, the ICC may suggest the woman to approach the police and file an FIR. The employer is required to provide all necessary support to the woman in this process.

APPEAL PROCESS

What can be done if the woman or the perpetrator is dissatisfied with the decision of the complaints committee?

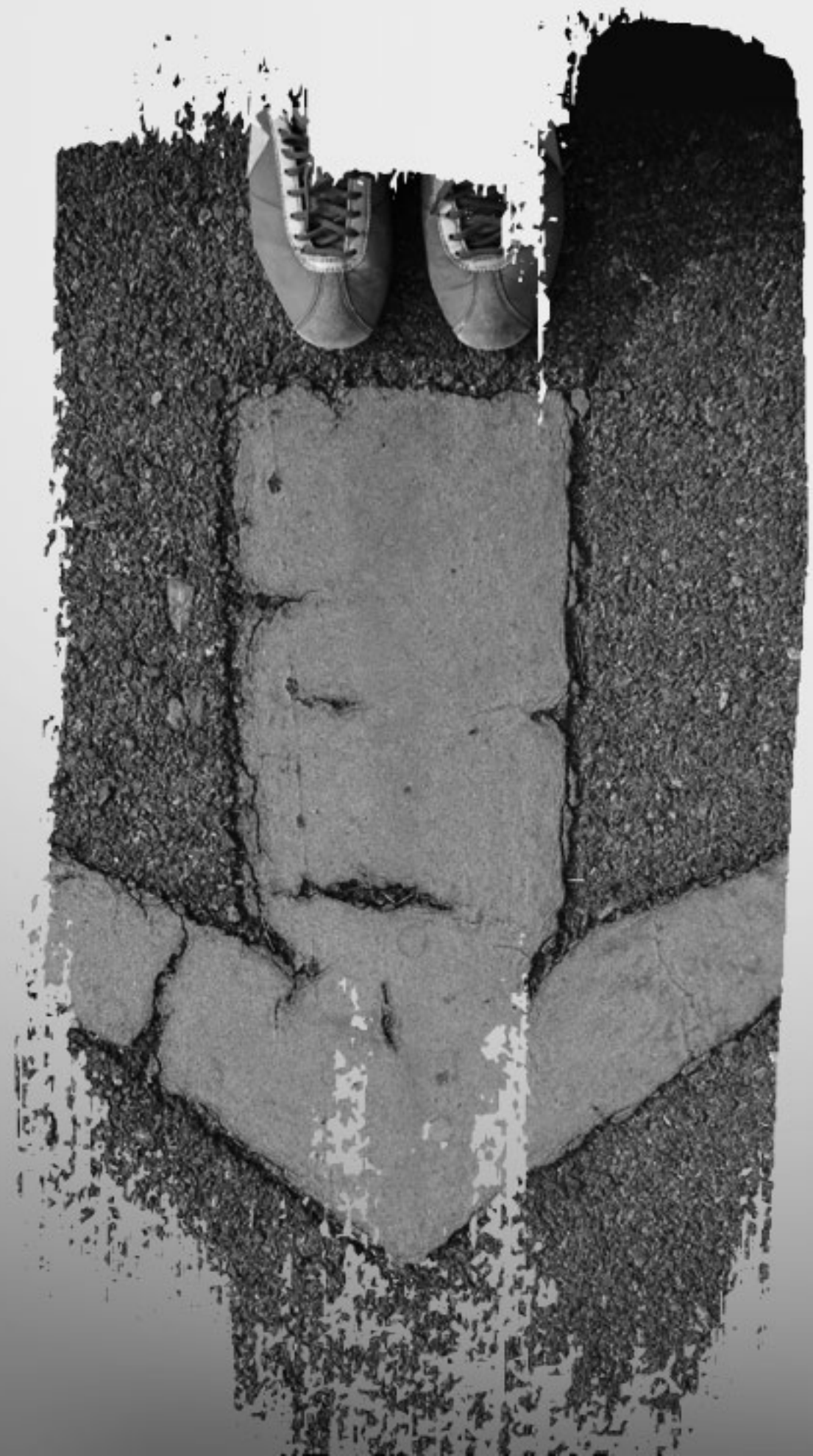
Any person who is aggrieved by the decision of the ICC or Local Committee has an option to file an appeal.

- If service rules made by the government are applicable to the employee, then the authority mentioned under such service rules can be approached.
- In other cases, the appeal can be made to an authority notified by the government under the Industrial Employment (Standing Orders) Act, 1946. This statute applies to industries which have a very large number of workers, that is, at least 50 or 100 (depending on the state). However, for the purpose of appealing against the LCC or the ICCs order, people from other organizations have also been allowed to file an appeal to this authority.

CHAPTER 4

EMPLOYER'S DUTIES UNDER THE SEXUAL HARASSMENT ACT

IF YOU CANNOT REMEMBER BEING INFORMED OF A SEXUAL HARASSMENT POLICY OR AN INTERNAL COMPLAINTS COMMITTEE, CHANCES ARE HIGH THAT YOUR EMPLOYER, LIKE A MAJORITY OF OTHER INDIAN EMPLOYERS, IS YET TO COMPLY TO THE SEXUAL HARASSMENT LAWS.



UNDER THE SEXUAL HARASSMENT ACT, EMPLOYERS WHO HAVE MORE THAN 10 PEOPLE WORKING AT THEIR OFFICE OR WORK PREMISES ARE REQUIRED TO COMPLY WITH THE FOLLOWING:

- 1) They must constitute an Internal Complaints Committee within the organization to deal with instances of sexual harassment
- 2) They must treat sexual harassment as a form of misconduct under the employment contract or service rules.
- 3) They must display a notice at the workplace explaining the penal consequences of sexual harassment and the composition of the Internal Complaints Committee.
- 4) They must organize training and workshops to sensitize employees and the members of the ICC on laws related to sexual harassment.
- 5) Employers have a number of filing and reporting obligations – they must include information on the status of sexual harassment cases in the organization in their annual report or in a separate disclosure that must be submitted to the district officer.
- 6) They must initiate criminal action against the perpetrator for sexual harassment, if the perpetrator is not an employee, or assist an employee in commencing criminal proceedings against an instance of sexual harassment.

HOW DO YOU KNOW IF YOUR EMPLOYER HAS DONE ALL THESE ABOVE THINGS?

First, remember. Have you ever done any compliance training, where sexual harassment was a part of it? Was there any lecture on sexual harassment that you were a part of in the last 1 year?

Second, please check if you have been informed over email or orally about any committee that would hear sexual harassment complaints. Also check if there is any sexual harassment policy and name and phone number of ICC members prominently displayed in your office, since this is a legal requirement.

If you cannot remember being informed of a sexual harassment policy or an internal complaints committee, chances are high that your employer, like a majority of other Indian employers, is yet to comply to the sexual harassment laws.

WHAT CAN YOU DO IF YOUR EMPLOYER IS NOT COMPLYING WITH THE LAWS?



You can make a difference here. Here are a few things you can do to increase the likelihood that your employer will implement the sexual harassment laws:

1. Ask your HR if your organization has a policy, a committee and a training program to stop sexual harassment at workplace. No need to say it's a legal requirement, he or she already knows.
2. When there is no HR, talk to the operations manager or the owner directly. You may have to tell them that there is a new law to stop sexual harassment. It is easy to comply with and not complying to this law is a serious offence for directors/owners.
3. Tell them you are willing to help with the initiative if any help is needed. Then share this ebook by email. It will help the HR a lot in making the right decisions and implementing the law.
4. Even if you are too shy to say anything else, just email this book to the relevant people and some of your co-workers.
5. If nothing works, just quietly email us and let us know. Here is an id for that: esh@ipleaders.in. We will contact your organization and suggest to them that they implement the law. We will, of course, not divulge your identity at all.
6. If you are a woman, legally you have the right to do much more such as complaining to the district magistrate. Keep reading for details on this.

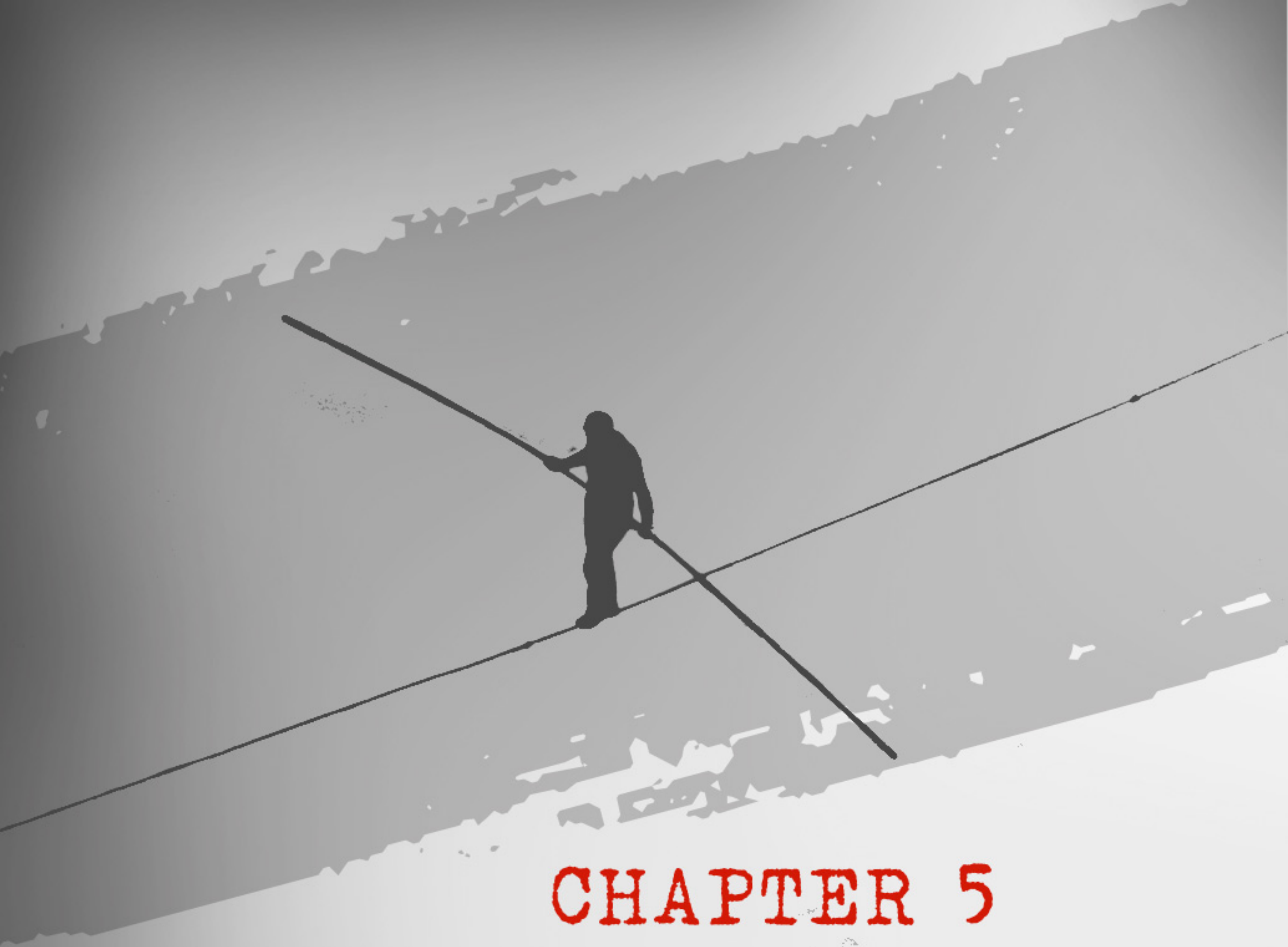
**EVEN IF YOU ARE TOO SHY TO SAY ANYTHING ELSE,
JUST EMAIL THIS BOOK TO THE RELEVANT PEOPLE
AND SOME OF YOUR CO-WORKERS.**

WHAT ACTION CAN A WOMAN TAKE IN CASE AN EMPLOYER HAS NOT CONSTITUTED THE ICC?

In case an employer who has more than 10 employees has not constituted an ICC, a woman has three options:

-  She can issue a notice requesting the employer to comply with the act. Starting with a notice may be prudent and can save time as the employer has the opportunity of complying with the act. She can report the immediate case of Sexual Harassment to the Local Complaints Committee (LCC) in the district. Sample complaint to the LCC should be worded in the same way as a complaint to the ICC.
-  She can approach the Magistrate (a Metropolitan Magistrate in metropolitan areas and a judicial magistrate of the first class in other areas) and report the non-compliance. The Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 if an employer fails to constitute an Internal Complaints Committee. Repeated non-compliance of this provision can result in the punishment being doubled or even cancellation of the license by the government or local authority to carry on business. This can be a serious deterrent to non-implementation of the act.

THE SEXUAL HARASSMENT ACT PRESCRIBES A MONETARY PENALTY OF UP TO INR 50,000 IF AN EMPLOYER FAILS TO CONSTITUTE AN INTERNAL COMPLAINTS COMMITTEE.



CHAPTER 5

CONSEQUENCES OF VIOLATION OF OBLIGATIONS

IPLADERS HAS WORKED WITH INDUSTRY BODIES SUCH AS NASSCOM, CII AND COMPANIES ACROSS TECHNOLOGY, REAL ESTATE, MANUFACTURING AND INFRASTRUCTURE SECTORS.

WHAT ACTION CAN BE TAKEN IF THE EMPLOYER DOES NOT IMPLEMENT THE DECISION OF THE ICC?

If the employer does not implement the decision of the ICC, a complaint can be made to the Magistrate – the employer will have to pay a fine of Rs. 50,000 if a complaint is made to the Magistrate. The complaint may be made by the ICC or a woman who claims to have been subjected to sexual harassment.

Further non-compliance will subject the employer to the risk of cancellation of his licence with the local or statutory authority to carry on business.

SUPERVISION OF LOCAL COMPLAINTS COMMITTEES

Under the Act, the Local Complaints Committee is required to perform certain functions and forward certain reports to the State Government. The ICC is monitored by the employer – but who will monitor the functioning of the Local Complaints Committee?

Functions of the Local Complaints Committee and submission of reports by the ICC and Local Complaints Committee to the State Government are supervised by the 'District Officers' appointed under the act – the District Officers must be of the rank of the District Magistrate, Additional District Magistrate, Collector or Deputy Collector.

IF THE EMPLOYER DOES NOT IMPLEMENT THE DECISION OF THE ICC, A COMPLAINT CAN BE MADE TO THE MAGISTRATE – THE EMPLOYER WILL HAVE TO PAY A FINE OF RS. 50,000 IF A COMPLAINT IS MADE TO THE MAGISTRATE.

Increasing regulation of workplace environment is opening up new career opportunities for professionals (lawyers, company secretaries, chartered accountants) or those working in HR, training, compliance and legal teams, whose help is required not only to comply with sexual harassment laws but also in creating conducive workplace environments which are gender-neutral and free from discrimination and harassment. There is significant scope to build an independent employment and HR advisory practice for consultants. National University of Juridical Sciences, Kolkata, a top law university in India is collaborating with industry experts to help professionals in developing essential workplace-diversity related skillsets through a three month Executive Certification Program in Sexual Harassment Prevention and Workplace Diversity. [Click here](#) to find out more about the course.

iPleaders has worked with industry bodies such as NASSCOM, CII and companies across technology, real estate, manufacturing and infrastructure sectors. After extensive discussion and learning from the experience of over hundred companies, four universal pain points have been identified, which are preventing organizations from effectively implementing the law, iPleaders has built an online cloud based compliance toolkit which will allow organizations to effectively sensitize all employees with very little effort.

Click here to know more about the toolkit.

IPLEADERS HAS WORKED WITH INDUSTRY BODIES SUCH AS NASSCOM, CII AND COMPANIES ACROSS TECHNOLOGY, REAL ESTATE, MANUFACTURING AND INFRASTRUCTURE SECTORS.

ANNEXURES

ANNEXURE 1: SAMPLE COMPLAINT LETTER

[Draft Complaint against Sexual Harassment at the Workplace to be submitted in six copies]

Date: _____

[Insert name of any member of the Internal Complaints Committee (ICC) / Local Complaints Committee, as applicable]

[Insert address of the employer and organization with respect to whom the complaint is being made]

Dear [Sir / Ma'am],

Subject: Complaint against sexual harassment at the workplace as per Section 9(1) of Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013

1) I am currently working as [a/ an] _____ [mention the capacity in which you are working] in the organization mentioned above.

2) This is to inform you that I have been subjected to certain instances of sexual harassment at the workplace, which are described below:

[Insert dates and the event / series of events and actions which in your opinion constitute sexual harassment. Describe the events briefly. Clearly mention the name and designation of the perpetrator]

3) I strongly believe that the above mentioned act(s), constitutes "sexual harassment" as per Section 2(n) of Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Continued...

5) I possess certain evidence with me pertaining to the incident, which I can furnish upon request – it may help the committee in conducting the inquiry.

6) The incident has made me feel unsafe in the current working environment – therefore, I will request you to kindly [grant me leave for _____ days / transfer me to another office] [you can request a specific measure] an interim measure, pending completion of the inquiry, or grant me any other suitable interim measure, as the [Internal Complaints Committee / Local Complaints Committee] [choose as applicable] feels appropriate.

7) [I hereby state that the incident occurred at a place which does not have an Internal Complaints Committee and within the territorial jurisdiction of the Local Complaint Committee, and hence got the jurisdiction to initiate and conduct inquiry proceedings under the Act.] [Insert this paragraph in case the complaint is made before a LCC]

8) Kindly intimate me the response of the Committee. I request and expect you to maintain utmost confidentiality. I shall be grateful for your consideration of the matter.

Thanking You,

Yours sincerely

[Insert signature]

[Insert your name and designation]

1. The complaint must be made to the Local Complaints Committee if the organization employs less than 10 people in the concerned premises or if the complaint is against the employer himself.

2. These could be electronic or hard copy communication (SMSes, emails, notes), photographs, audio recordings or any other means. Oral evidence can also be provided, although documentary evidence and recordings will be more reliable.

ANNEXURE 2: COMPLIANCE CHECKLIST

COMPLIANCE REQUIREMENTS UNDER SEXUAL HARASSMENT LAW

CHECKLIST FOR BUSINESSES

| No. | Activity | Timeline |
|-----|--|---|
| 1 | Create an Anti-Sexual Harassment policy | Immediate |
| 2 | Constitute an Internal Complaints Committee (ICC) for each branch or office which has 10 or more workers | Immediate |
| 3 | Annual report must be sent by ICC to employer and district officer containing prescribed details of sexual harassment proceedings | Annually (for each calendar year). The last date is not prescribed currently, but is likely to be specified in amended rules. |
| 4 | Annual report of the business must include information about pending and resolved sexual harassment cases | Annually, timeline is the same as that for the annual report of the company – i.e. 30 days from the date of the AGM |
| 5 | Confirm that sexual harassment is specified as a form of misconduct under the employment contract or applicable service rules | Immediate |
| 6 | Display notices at prominent places in the organization's premises which inform employees about the organization's consequences of engaging in conduct which amounts to sexual harassment, and information about the members of the ICC. | Immediate |
| 7 | Conduct periodic workshops and seminars to sensitise employees about their rights | Periodic |

Continued...

CHECKLIST FOR BUSINESSES

| No. | Activity | Timeline |
|-----|---|--|
| 8 | Conduct an orientation programme for the members of the ICC, capacity and skill-building workshops for the members of the ICC, provide necessary facilities to the ICC for dealing with sexual harassment proceedings | Periodic |
| 9 | Where necessary, assist the harassed employee to make a criminal complaint in the police station | As needed (it is important to have the necessary systems in place for this purpose) |
| 10 | Monitor functioning and performance of the ICC (For example, check whether complaints are being decided within prescribed time limits, whether necessary procedures are being followed, etc.) | On a periodic basis |
| 11 | Implement gender-neutral versions and protect male employees from sexual harassment (optional) | Optional |

Corporate India's biggest challenge in tackling sexual harassment at workplace is an acute shortage of trained experts and resource persons. Would you like to make a difference in this area?

Visit www.sexualharassment.nujs.edu