

CHAPTER V

**LEGAL PROVISIONS FOR PREVENTION
AND PROHIBITION OF SEXUAL HARASSMENT
AT WORKPLACE**

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality.....”¹

A safe workplace is a legal right of women rightfully derived from the Constitution of India enshrined in the very preamble as equality of status and opportunity must be secured for its entire citizens. The Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013 is not only the beginning of an era securing rights and privileges of a women at work but also have redesigned the dignity and respect towards the gender as committed by the constitution of India. This provision fulfills the India’s commitments under CEDAW and also reflects culmination of the Apex Court’s initiative towards a meaningful legislation and safer work place environments for woman. This reflects the constant toil, relentless efforts and workouts by various organizations and public-spirited individuals. It is a positive step towards recognition of women’s basic rights as human rights as included in the Vienna Accord 1994 and the Beijing World Conference 1995.

Sexual harassment is considered as a gross violation of women’s right and dignity. This has rooted in the concept of patriarchy and a generous acceptability of men being superior to women and in order to maintain that it is acceptable to accuse violence against women, as one most stringent form of harassment is sexual harassment at workplace.

¹ Late chief Justice J.S. Verma, Supreme Court of India, Vishaka V. State of Rajasthan.

It is a two-way suffering for the victim considering as infringement of the Fundamental Right of a woman. under Article 19(1) (g) of the constitution of India permits to practice any profession or to carry out any occupation trade or business; and similarly, it erodes equality to facilitate the dignity and physical and psychological wellbeing of workers which are at risk.² It hampers productivity and has negative impact on the lives of people. The socio-cultural behavior and traditional outlook patterns, designs in creating a gender hierarchy; places responsibility on the victim that increase inequality pattern in the workplace and in the society as a whole.³

The victims of sexual abuse don't come forward to make complain of such issues and thus it goes unreported with reasons of fear of reprisal for the harasser, losing one's livelihood, being stigmatized or losing professional standing and personal reputation.⁴ This has been increasing globally constructing male privileges and reflecting a mirror of male power over women that shows typical social attitude, sustains patriarchal values and relations.⁵ It involves harmfulness towards health, economic and social costs that manifest themselves in the overall development indices of a nation.⁶

Sexuality at work is an unseen menace. Although sexuality has probably always been present at work, it has been practically invisible. If we presume, people may think that such activities were relatively infrequent and when they did occur had only minor repercussions both for the individuals involved and for the organization where they worked. The idea of frequent occurrence of sex at work was at odds with rational models of organizational behavior. Sexuality is emotional behavior. It may be an important aspect of life, but can be varied as a frivolous concern at work compared to weighty matters of commerce, government and education. Thus, an organization

² Sikri Rehana, *women and sexual exploitation (Harassment at work)*, Kanishka Publishers, New Delhi

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

viewing itself as rational may respond to any expression of sexuality at work by ignoring, overlooking, suppression or denying it.⁷

Though, sexual harassment was been a fact of life since humans first inhabited the earth, it has very recently acknowledged as a serious evil. The survey done by International Labor Organization, more and more companies are realizing that sexual harassment is a significant problem from the perspective of working conditions and human resources and therefore taking action against it.⁸

In India, in the absence of any statutory definition, it has become difficult to specify sexual harassment cases and to subject it towards necessary punishment or conviction. It has left scope for Supreme Judiciary to do the needful with relying upon the sources of various International and National conventions basically General recommendations of CEDAW constituted by the General Assembly. However, in the case of Vishaka, the Supreme Court for the first time attempted to define sexual harassment which is almost in pari Materia with the one suggested by CEDAW.

5.1 INITIATION OF THE ACT:

This Act was designed to ensure that women are protected against any incidence of Sexual Harassment at work places either public or private which will contribute towards realization of their right to gender equality, life and liberty and equality in working conditions everywhere.⁹ The sense of security at the workplace will improve women's participation in work and will result in economic empowerment and inclusive growth of women and society at large.

Although, critics have expressed concern that the Vishaka case stepped outside its bounds and into the domain of parliament by enacting guidelines to act as law, few pointed out this is best classified as a necessary evil. It is unfortunate that the

⁷ Sikri Rehana, *women and sexual exploitation (Harassment at work)*, Kanishka Publishers, New Delhi

⁸ Ariane Reinhart, "Sexual Harassment, an ILO survey of company practice" (International Labour Office, ILO 1999), Forwarded by Goran Hultin, Executive Director, Employment sector ILO.

⁹ Gupta Ritu, *Sexual Harassment at Workplace*, Lexis Nexis, 1st Edition, 2014

parliament has abdicated its responsibility by not taking action on a relevant and very much identifiable problem, and the court then actually had to step in to plug it.¹⁰

It is more than 10 years since the Vishaka was decided. Over that period of time, a vast range of experience has accumulated in implementing the Vishaka guidelines in both government and private institutions. The absence of legislation has inspired innovative efforts which have extended law and social change beyond four walls of a court room.

The International Labor Organization made agreements with national governments, employers and trade unions to adopt a symposium on equality of opportunity and treatment for both the genders in all industrialized countries held in Geneva in 1990¹¹. The following excerpts from the resolution are relevant:

Measures relating to sexual harassment must be initiated by governments, employers and workers organizations so as to prevent the occurrence of sexual harassment instances at their premises. It may be legal remedy of redress through equal employment opportunity legislation or specific legislation on sexual harassment as well as trade unions and employer's politics, including guidelines educational activities and awareness campaigns at the work place.¹² Sexual harassment is a disciplinary offence, grievance procedures and protection to ensure that the complainant is not retaliated against for making the complaint.¹³

¹⁰ Litigating reproductive Rights: Using public Interest litigation and international law to promote gender justice in India Avani Mehta Sood center for Reproductive Rights, 2006 Page 63. This is an excellent Article which details the landmark process and impact of the Vishaka in terms of women's human rights and Sexual Harassment.

¹¹ Ibid.

¹² Sikri Rehana, *women and sexual exploitation (Harassment at work)*, Kanishka Publishers, New Delhi

¹³ Report of Tripartite Symposium on equality of opportunity & Treatment for men and women in Employment in Industrialized countries [ILO, Geneva 1990], document No. SEE IC/1990/2. Also see," (Vol. II, conditions of work digest I/1992, ILO) 44-45

The legislature and executive have the responsibility to ensure a safe working environment and to ensure the same with suitable legislation. It must create a mechanism for its enforcement, and to combat sexual harassment at work.¹⁴

In *Vishaka V. State of Rajasthan*¹⁵ as the existing civil and criminal laws did not specifically addressed to sexual harassment, the Supreme Court of India laid down certain guidelines in this regard in the year 1997. It took 16 years, to design and fulfill the guidelines as well as the commitments for a specific statute to be enacted and brought into force, viz, sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013.¹⁶

5.2 REDEFINING SEXUAL HARASSMENT:

Sexual Harassment encompasses a wide range of unwanted Sexual advances by way of physical contact, touching, patting, unwelcome remarks, compromising invitations, demands of sexual favor etc. Sexual Harassment is a deliberate violation of fundamental right to gender equality and the right to life and liberty violating the mandate of equal treatment for men and women at work without any discrimination on the ground of sex or gender. Sexual Harassment covers sex discrimination, as the victim's gender is the determining factor.¹⁷

In a case of *Brook V. Canada subway ltd.*¹⁸ the then C.J. Dickson explained the meaning and impart of the terms "sex discrimination" "and" Sexual Harassment in the context of employment that encompasses wide range of behavior. It was defined that

¹⁴ Sikri Rehana, *women and sexual exploitation (Harassment at work)*, Kanishka Publishers, New Delhi

¹⁵ 1997 6 SEC 241

¹⁶ The Act received the assent of the President on 22/04/2013: The short title of the Act describes in to be '[a]n Act to provide protection against sexual harassment of women at workplace and for the prevention and Redressal of complains of sexual harassment and for matters connected therewith or incidental thereto.

¹⁷ Bhasin Alok, *Law relating to sexual Harassment at Work*, Eastern Book company, Lucknow, 2nd edition, 2015

¹⁸ 1989 ISCR, 1219: (1989)

equality in employment means no one is denied opportunities for reasons that have nothing to do with inherent ability. It means equal access, free from arbitrary obstructions.

One of the essential characteristics of sexual harassment is the behavior suffered by the victim was unacceptable and unwelcome. It is her discretion to decide as what amounts of behavior is derogatory or uncomfortable and offensive to her personality. Sometimes a behavior amounts normal to one person may be deterrent to another. It may be tolerable to one but derogatory to others and the adjudicating authority must dismiss it as it appears in the face of it.

The Supreme Court in the case of Addl. District & Sessions Judge V High Court of M.P.¹⁹ expressed its view that the evaluation of a charge of Sexual Harassment would depend on the manner in which it is perceived. Each case should be decided on the merit of the respective case. Whether the perception of the harassed individual was conveyed to the person accused would be very material in case falling in the realm of our-sensitivity. In that, it would not be open for him thereafter, to defend himself by projecting that he had not sexually harassed the person concerned, because in his understanding the alleged action was unoffending.²⁰

Sexual Harassment is an arbitrary barrier to Sexual equality at workplace:

The Equal Employment Opportunities Commission (EEOC) has specified certain guidelines defining sexual harassment as a violation of civil rights of a woman. It has to be dealt as discrimination based on sex that has created hostile or abusive work environment. However, Supreme Court of Canada has rightly forwarded its argument that gender need not to be the sole ingredient in the discriminatory action. In Janzen's case, C.J. Dickson noted that 'while the concept of discrimination is rooted in the notion of treating an individual as part of a group rather than on the basis of the individual's personal characteristics and does not require uniform treatment of the

¹⁹ WP(C) No. 792 of 2014

²⁰ Bhasin Alok, *Law relating to Sexual Harassment at work*, Eastern Book Company, Lucknow, page no 115

members of a particular group. It is sufficient that ascribing to an individual a group characteristic is one factor in the treatment of that individual.

The definition that has been provided by the Indian Supreme Court in *Vishaka V. State of Rajasthan*²¹ also employed that test of reasonableness. It stated as –²²

Sexual Harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- a) Physical contact and advances.
- b) A demand or request for sexual favors;
- c) Sexually colored remarks;
- d) Showing pornography;
- e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.²³

The definition provided under Section 2(n) of Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 makes no direct reference to any test or concept of reasonableness yet includes any one or more of the following unwelcome acts or behavior whether directly or by implication namely-²⁴

- i) Physical contact and advances, or
- ii) A demand or request for sexual favors, or
- iii) Showing pornography; or
- iv) Making sexually colored remarks; or
- v) Or any other unwelcome physical, verbal or non –verbal conduct of Sexual nature;²⁵

²¹ 1997, 6 SCC 24, 1997 SCC (Cri) 932: AIR, 1997 SC 30II)

²² Sikri Rehana, *women and sexual exploitation (Harassment at work)*, Kanishka Publishers, New Delhi

²³ Ibid.

²⁴ Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013

²⁵ Bhasin Alok, *Law relating to sexual Harassment at Work*, Eastern Book company, Lucknow, 2nd edition, 2015

Sexual Harassment at workplace is literally a kind of attack on individual dignity and self-respect. It is humiliating and demeaning which even makes the victim to avoid taking action against the harasser may be to bear or reprisal or may be the victim does not prefer to remember and relive the incident.²⁶

Sexual Harassment is not only confined to women yet in the present sex stratified labor market, those with the power to harass sexually will pre dominantly be male and those facing the greatest risk of harassment will tend to be female. Women may be at greater risk of being sexually harassed as they tend to occupy low status jobs in the employment hierarchy.²⁷

The evil of sexual harassment is highly insulting and disgusting behaviors that constitutes profound affront to the dignity and respect of the employees forced to endure it. The one who suffers sexual harassment face psychological and health effects like stress, depression, anxiety, shame and so on. It pollutes the working environment and may cause devastating effect upon the self-esteem, confidence, morale and performance of its recipients. Sexual Harassment has a strong negative impact on productivity and profitability of organization and physical and mental stability of the individual.

Thus, sexual harassment at workplace is a serious problem for both victims and employers. It is an important issue affecting the working conditions and equal opportunities of women and the victims which may eventually make them to suffer from tangible job detriments, or a hostile working environment or both. Thus, to eliminate such existing inequalities affecting women in working life and to promote better balance between the sexes in employment the legislative interpretations to create a mechanism in a most significant way the Supreme Court of India has reddened different guidelines and after 16 years of Vishaka V. State of Rajasthan²⁸ the sexual

²⁶ Action against Sexual Harassment at work in Asia and the Pacific" ILO 2001

²⁷ Bhasin Alok, *Law relating to sexual Harassment at Work*, Eastern Book company, Lucknow, 2nd edition, 2015

²⁸ 1997 6 SEC 241

harassment of women at workplace (Prevention, Prohibition and Redressed) Act, 2013 was enacted and brought into force.²⁹

5.3 SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013:

The preamble of the constitution of India provides for equality of status and opportunity that must be secured for all its citizens. A safe workplace is a priority and a fundamental requirement of women under the Constitutional dimensions of equality and personal liberty provided under Articles 14, 15 and 21 of the Indian Constitution.

This right to safe work place has been ratified by UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and also ratified by India as a member of international community.³⁰ This convention has recognised the international bill of rights for women; it promoted equality of both genders with regard to human rights and fundamental freedoms in all spheres of human life. It emphasises on the norms that there is no case of any discrimination and attack on women's dignity as it violates the principle of equality of rights and liberty which amounts to Sexual harassment. It has rooted in patriarchy and perception exists in superiority of men to women.³¹

One of such evil associated with workplace is sexual harassment that recognises various forms of such harassment, as harmless, trivial and inoffensive. Many a times it is excused as 'natural' male behaviour or 'harmless flirtation' that is perceived as enjoyed by women. Nevertheless, these perceptions, causes grievous harm and is a strong manifestation of sex discrimination at the workplace. It is an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the

²⁹ Alok Bhasin, Law relating to sexual Harassment at Work, eastern Book company, Lucknow, 2nd edition, 2015, page no 178

³⁰ Ibid.

³¹ Handbook on Sexual Harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

Constitution of India “to practice any profession or to carry out any occupation, trade or business.”³²

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build proper and positive work environments that respect women’s right to work, right to equality of status and opportunity.³³ An effective implementation of the Act will contribute towards the realization of their right to gender equality, life and liberty, equality in working conditions, right to work and overall wellbeing of every human constituting the sensitive gender of women.³⁴

The sense of security, protective environment at the workplace will improve women’s participation in work, resulting in their economic empowerment and inclusive growth and overall personality development.³⁵ However, available studies on sexual harassment shows that this evil do exist in India today and this is why the legislation is an important step forward to bring this offence under control and restrict its commission at all levels.

The official figures of women’s work participation reveals that their participation is low and it is basically affected by unsafe work environment and less protective attitude. women’s overall work participation should be 86.2 but the official figure shows that women’s work participation rate is around 25.3 per cent in rural areas and 14.7 per cent in the urban areas which estimates that there is a huge workforce of women engaged in all these sectors without entitling to secure their workplace and attached benefits.³⁶

³² Handbook on Sexual Harassment at workplace released by Ministry of women and children, Government of India 2015

³³ Sikri Rehana, *women and sexual exploitation (Harassment at work)*, Kanishka Publishers, New Delhi

³⁴ Gupta Ritu, *Sexual Harassment at workplace*, Lexis Nexis, 1st edition, 2014

³⁵ Ibid.

³⁶ Handbook on Sexual Harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

. With less no. of laws or mechanisms to protect them, proactive measures are required to make their workplaces safe and healthy and hopefully a protective work environment will ensure safe working conditions for women. It will however, in the long-run must initiate positive impact on their participation by increasing their productivity. A sensitiveness of women if utilised economically are key to the nation's overall development and this can only be achieved if it is ensured that women's workspaces across all sectors and all over the country have a safe and secure environment for work.³⁷

It is important to give more emphasis on prevention rather than punitive action and hence mass awareness should be generated towards the Act from the end of employer's managers and the workers. The most vulnerable section of society that is women suffers this evil of sexual harassment and cry in silence but no action is taken to curb this act on their part. They need to realise that they should come in front to deal with it so that no fellow counterpart suffers the same wrong again and again. In order to change such ill attitudes, it is urgent to come up with measures to change mind-sets and attitudes of every section of society by creating awareness about sexual harassment and the steps that can be taken to address it and preventive measures given by the legislative inputs.

SECTION 1 and 2 of the Act³⁸: This preliminary chapter I deal with the short title extent and commencement as well as definitions of sexual harassment, aggrieved woman, workplace etc.

Section 2(a) defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment.³⁹

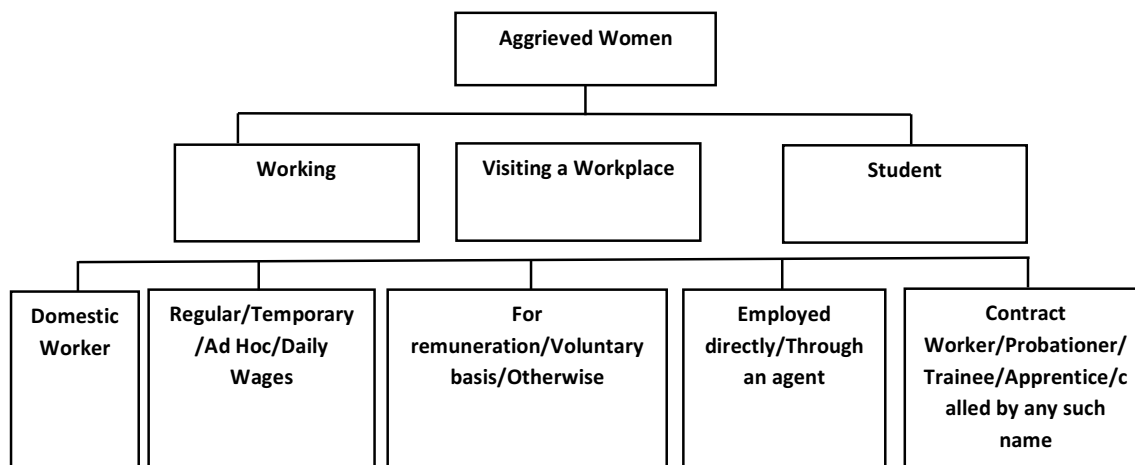
This Act recognizes the right to a safe and secure workplace environment. It is the right of all women working or visiting any workplace in the capacity of regular,

³⁷ Ibid.

³⁸ The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013

³⁹ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

temporary, ad hoc, or daily wages basis. They are protected by these provisions of law.⁴⁰



Source: Handbook on Sexual Harassment at Workplace released by Ministry of Women and Children, Government of India.

As per section 2(o) of the Act defines workplace as:⁴¹

A workplace is “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” This definition covers both organised and un-organised sectors.⁴²

As per the Act, workplace includes: -⁴³

- Government organizations, including Government company, corporations and cooperative societies;-
- Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational,

⁴⁰ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

⁴¹ The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴² Ibid.

⁴³ Ibid.

educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;

- Hospitals/Nursing Homes;
- Sports Institutes/Facilities;
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

The Act defines the Unorganised Sector as:

- Any enterprise owned by an individual or self-employed worker engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.⁴⁴

Section 2(n) defines Sexual Harassment:⁴⁵

“Sexual Harassment” includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.⁴⁶

⁴⁴ Handbook on Sexual Harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

⁴⁵ The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013

⁴⁶ Ibid.

KEY ELEMENTS OF WORKPLACE SEXUAL HARASSMENT:

Mostly, the situations starting with good note may end up in inappropriate and unprofessional behaviours.⁴⁷ The workplace sexual harassment is sexual, unwelcome and bitter experience. In case of events like sexual harassment the impact on the victim is accountable rather than the intention of the harasser. It is possible that a woman may experience a single instance of sexual harassment or a series of incidents over a period of time and the extent of such incidence may vary in each case as every case is a unique one and should be examined in its own context according to the surrounding circumstances.

The following table highlights the subjective nature of the experience and the impact it may have on the person involved, irrespective of the intent of such behaviour.⁴⁸ To enable prevention of sexual harassment at the workplace, it is critical to recognize and differentiate between welcome and unwelcome sexual behaviour. Listed are some examples of how “unwelcome” and “welcome” behaviour is experienced.⁴⁹

Unwelcome	Welcome
Feels bad	Feels good
One sided	Reciprocal
Feels powerless	In control
Power based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Cause anger/sadness	Happy
Cause negative self esteem	Positive self esteem

Source: Handbook on sexual harassment of women at workplace (prevention, prohibition and Redressal Act, 2013 by ministry of women and child development

⁴⁷ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

⁴⁸ Ibid.

⁴⁹ Ibid.

Professional	Personal
Decreased work performance	Depression
Increased absenteeism, loss of pay	Anxiety, panic attacks
Loss of promotional opportunities	Traumatic stress
Retaliation from the respondent, or colleagues/ friends of the respondent	Sleeplessness
Subjected to gossip and scrutiny at work	Shame, guilt, self-blame
Being objectified	Difficulty in concentrating
Becoming publicly sexualised	Headaches
Defamation	Fatigue, loss of motivation
Being ostracized	Personal difficulties with time
Having to relocate	Eating disorders
Job and career consequences	Feeling betrayed or violated
Weakened support network	Feeling angry or violent towards the respondent
	Feeling powerless
	Overall loss of trust in people
	Problems with intimacy
	Withdrawal and isolation

Source: Handbook on Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 by Ministry of Women and Child Development, New Delhi

Section 3 of the Act defines Prevention and Prohibition⁵⁰

This section provides for the one who are responsible and accountable to prevent workplace sexual harassment as per the Act.⁵¹

⁵⁰ The Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013

⁵¹ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

This Section stands as:

- 1) No woman shall be subjected to sexual harassment at any workplace.
- 2) The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behaviour of sexual nature 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.⁵²

PREVENTIVE AUTHORITIES PRESCRIBED UNDER THE ACT:⁵³

EMPLOYER:⁵⁴

An EMPLOYER refers to:

1. The head of the department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the Appropriate Government or local authority or such officer specified in this behalf.
2. Any person (whether contractual or not) responsible for the management, supervision and control of a designated workplace not covered under clause (I).
3. A person or a household who employs or benefits from the employment of domestic worker or women employees.⁵⁵

⁵² The Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013

⁵³ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

⁵⁴ Ibid.

⁵⁵ Handbook on Sexual Harassment at workplace released by Ministry of Women and Children, Government of India, New Delhi, 2015

APPROPRIATE GOVERNMENT:⁵⁶

As per the Act, Appropriate Government means:

- i. In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—
 - a. By the Central Government or the Union Territory administration, the Central Government;
 - b. By the State Government, the State Government;
- ii. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.⁵⁷

DISTRICT OFFICER (DO)

State Governments will notify a District Magistrate/Additional District Magistrate/ Collector/ Deputy Collector as a District Officer at the local level. The District Officer will be responsible for carrying out the powers and functions under the Act at the district levels (including every block, taluka, tehsil, ward, and municipality).⁵⁸

RESPONSIBILITIES OF THE AFORE MENTIONED AUTHORITIES⁵⁹

Under the law the employer/DO is obliged to create a workplace free of sexual harassment. It is the responsibility of the Employer/District Officer in general to:

1. Create and communicate a detailed policy;
2. Ensure awareness and orientation on the issue;

⁵⁶ Handbook on Sexual Harassment at workplace released by Ministry of Women and Children, Government of India, New Delhi, 2015

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

3. Constitute Complaints Committee/s in every workplace and district so that every working woman is provided with a mechanism for redress of her complaint(s);
4. Ensure Complaints Committees are trained in both skill and capacity;
5. Prepare an annual report and report to the respective state government;
6. District Officer will also appoint a nodal officer to receive complaints at the local level.⁶⁰

Section 4, 5 and 6 of the Act deals with constitution of Internal Complaints Committee/s, Local complaint Committee/s⁶¹

Section 4 deals with Constitution of Internal Complaints Committee. ⁶²—

- a. Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the “Internal Complaints Committee”: Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.
- b. The Internal Committees shall consist of the following members to be nominated by the employer, namely: —
 - (a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1): Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from

⁶⁰ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

⁶¹ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁶² Ibid.

- any other workplace of the same employer or other department or organisation;
- (b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;
 - (c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment: Provided that at least one-half of the total Members so nominated shall be women.
- (3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.
- (4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.
- (5) Where the Presiding Officer or any Member of the Internal Committee, —
- i. contravenes the provisions of section 16; or
 - ii. has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - iii. he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - iv. has so abused his position as to render his continuance in office prejudicial to the public interest, such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.⁶³

⁶³ The Sexual Harassment At workplace (Prevention, Prohibition and Redressal) Act,2013

The Act provides for two kinds of complaints mechanisms:

The Act has clearly stated about two types of redressal mechanism.

1. Internal Complaints Committee (ICC) and 2. Local Complaints Committee (LCC). All Complaints Committees must have 50 per cent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.⁶⁴

- 1) Internal Complaints Committee (ICC) Every employer is obliged to constitute an ICC through a written order. The ICC will be composed of the following members:

No	Member	Eligibility
01	Chairman	Women working at senior level as employee; if not available then nominated from another office/units/department/ workplace of the same employer
02	2 members	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
03	Member	Member From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment Where the office or administrative units of a workplace are located in different places, division or sub-division, an ICC has to be set up at every administrative unit and office

Source: Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India.

⁶⁴ Handbook on sexual harassment at workplace released by Ministry of Women and Children, Government of India, New Delhi, 2015

2. Local Complaints Committee (LCC) The District Officer will constitute an LCC in every district so as to enable women in the unorganised sector or small establishments to work in an environment free of sexual harassment.⁶⁵

The LCC will receive complaints from:

1. women working in an organisation having less than 10 workers;
2. When the complaint is against the employer himself;
3. From domestic workers.⁶⁶

No	Member	Eligibility
01	Chair person	. Chairperson Nominated from amongst the eminent women in the field of social work and committed to the cause of women
02	Member	Member Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district
03	2 members	Nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that: <ul style="list-style-type: none"> • At least one must be a woman • At least one must have a background of law or legal knowledge
04	Ex-officio Member	The concerned officer dealing with social welfare or women and child development in the district

Source: Handbook on sexual harassment of women at workplace (prevention, prohibition and Redressal Act, 2013 by Ministry of Women and Child Development

⁶⁵ Handbook on sexual harassment at workplace released by Ministry of women and children, Government of India, New Delhi, 2015

⁶⁶ Ibid.

WHO CAN COMPLAIN AND WHERE?

COMPLAINTS COMMITTEE

In case of physical incapacity:

- Complainant's relative
- Complainant's friend
- Co worker
- Officer of NCW or SCW
- Any person who has knowledge of the incident with the written consent of the complainant

In case of mental incapacity:

- -complaint's relative
- Complainant's friend
- Special educator
- Qualified psychiatrist/psychologist
- Guardian/authority under whose care the complainant is received treatment/care any person with knowledge of the incident, jointly with any person mentioned above

Source: Handbook on sexual harassment at workplace released by Ministry of Women and Children, Government of India

Section 9 deals with Complaint of sexual harassment.⁶⁷ —

- (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, 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: Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the

⁶⁷ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013

woman for making the complaint in writing: Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months , if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

- (2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section. ⁶⁸

Section 10 provides for Conciliation.⁶⁹ —

- (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation: Provided that no monetary settlement shall be made as a basis of conciliation.
- (2) Where settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.
- (3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.
- (4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.⁷⁰

Section 11 provides for Inquiry into complaint.⁷¹ —

- (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee,

⁶⁸ The Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013

⁶⁹ Ibid.

⁷⁰ Ibid.

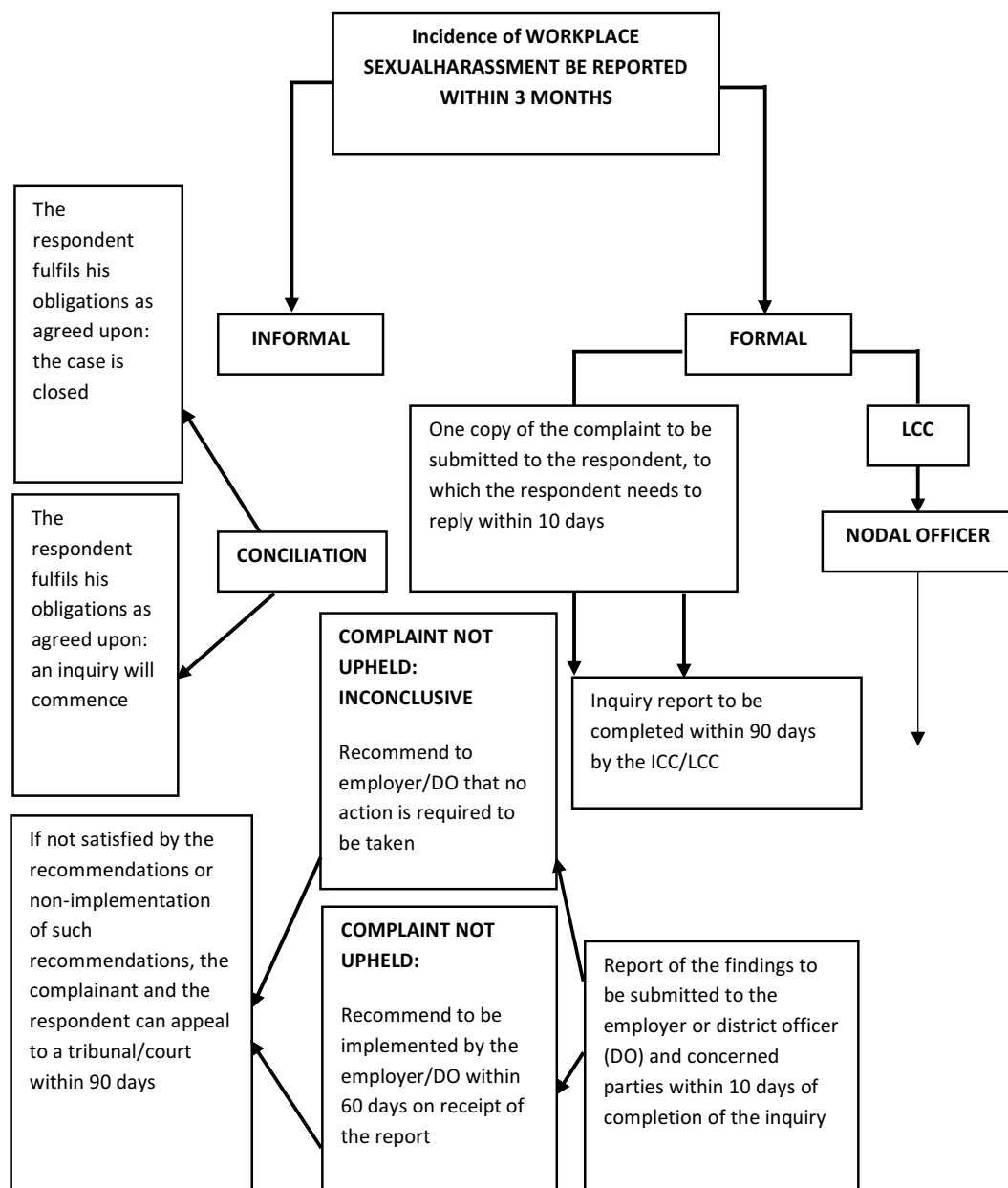
⁷¹ Ibid.

proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable: Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police: Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

- (2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.
- (3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely: —
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents; and
 - (c) Any other matter which may be prescribed.

- (4) The inquiry under sub-section (1) shall be completed within a period of ninety days.⁷²

THE SEXUAL HARSSMENT COMPLAINT PROCESS



Source: Handbook on sexual harassment of women at workplace (prevention, prohibition and Redressal Act, 2013 by Ministry of Women and Child Development

⁷² The Sexual Harassment at workplace (Prevention, prohibition and Redressal) Act, 2013

Section 12⁷³ provide for Action during pendency of inquiry. —

- (1) During the pendency of an inquiry on a written request made by the aggrieved woman, the Internal Committee or the local Committee, as the case may be, may recommend to the employer to—
 - (a) transfer the aggrieved woman or the respondent to any other workplace; or
 - (b) grant leave to the aggrieved woman up to a period of three months; or
 - (c) Grant such other relief to the aggrieved woman as may be prescribed.
- (2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
- (3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.⁷⁴

Section 13:⁷⁵ It deals with Inquiry report. — (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties. (2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.⁷⁶

⁷³ The Sexual Harassment (Prevention, Prohibition and Redressal) Act, 2013

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

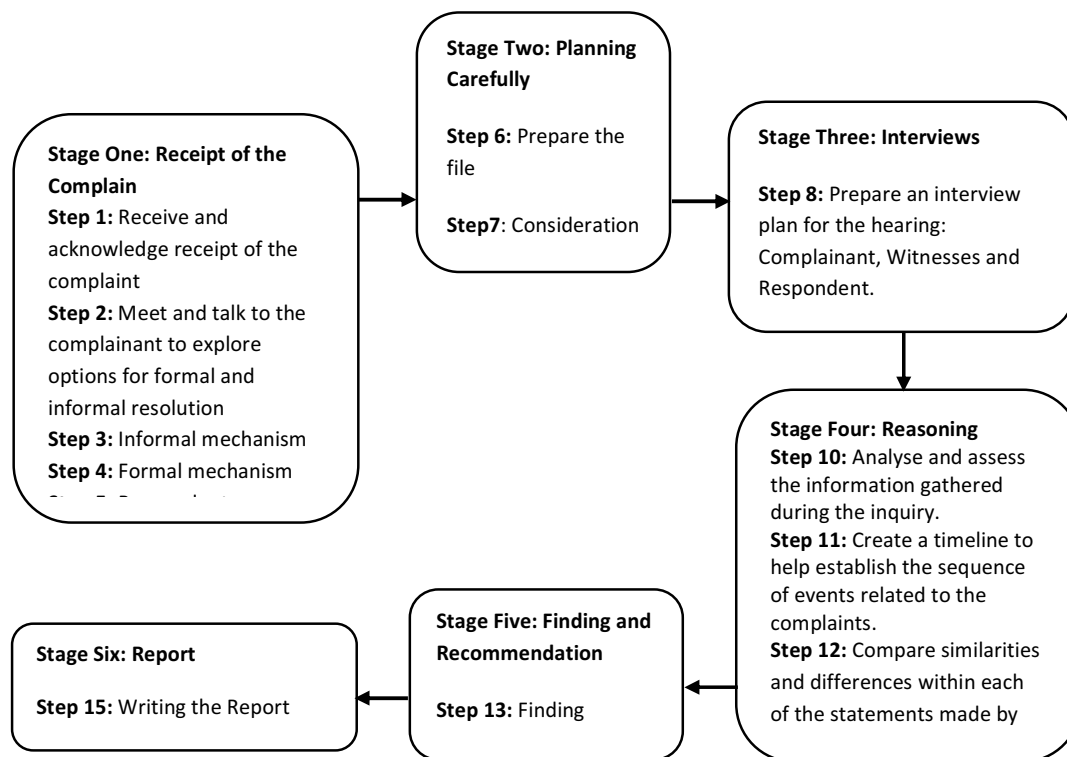
(I) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15, Provide that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman: Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or as, the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.⁷⁷

⁷⁷ Sexual Harassment at workplace (Prohibition, Prevention and Redressal) Act, 2013

INQUIRY REPORT AT GLANCE CHART



Section 14 provides for Punishment for false or malicious complaint and false evidence.⁷⁸

(1) Where the Internal Committee or the Local Committee, as the case may be, 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 or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as

⁷⁸ Sexual Harassment at workplace (Prohibition, Prevention and Redressal) Act, 2013

the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed: Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section: Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.⁷⁹

Section 15 deals with Determination of compensation⁸⁰.—It provides that For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to— (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman; (b) the loss in the career opportunity due to the incident of sexual harassment; (c) medical expenses incurred by the victim for physical or psychiatric treatment; (d) the income and financial status of the respondent; (e) feasibility of such payment in lump sum or in instalments.⁸¹

Section 16 provides for Prohibition of publication or making known contents of complaint and inquiry proceedings.⁸²—Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken

⁷⁹ Sexual Harassment at workplace (Prohibition, Prevention and Redressal) Act, 2013

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner: Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.⁸³

Section 17 provides for Penalty for publication or making known contents of complaint and inquiry proceedings⁸⁴ —

Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.⁸⁵

Section 18 provides for appeal⁸⁶ —

(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.⁸⁷

⁸³ Sexual Harassment at workplace (Prohibition, Prevention and Redressal) Act, 2013

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ Sexual Harassment at workplace (Prohibition, Prevention and Redressal) Act, 2013

19. Duties of employer⁸⁸. — Every employer shall—

- (a) provide a safe working environment at the workplace
- (b) To display at any conspicuous place in the workplace, the penal consequences of sexual harassments;
- (c) To organise workshops and awareness programmes at regular intervals
- (d) To provide necessary facilities to the Internal Committee or the Local Committee,
- (e) To assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee,
- (f) To make such information available to the Internal Committee or the Local Committee, as it may require having regard to the complaint made under sub-section (1) of section 9;
- (g) To provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code ,1860 or any other law for the time being in force;
- (h) To cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force;
- (i) To cause to initiate action, under the Indian Penal Code 1860 or any other law for the time being in force, in the workplace at which the incident of sexual harassment took place;
- (j) To treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (k) To monitor the timely submission of reports by the Internal Committee⁸⁹

5.4 THE CRIMINAL LAW AMENDMENT ACT, 2013:

The Criminal Law in the country need to be sensitive enough towards the societal conditions in order to scuttle to growth and development of personality and to

⁸⁸ Ibid.

⁸⁹ The Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act,2013

protect both male and female from the inception to natural end. These penal provisions are an index of the level of sophistication of the legal system of a country and the level of civilizations attained by it. The masculinity that has been reflected in these criminal and penal codes are easily understandable by the language used to ascertain the male sentiment. The term “Sexual Harassment” has not been systematically as well as specifically defined in the existing criminal law of India. Though there are certain provisions incorporated under Indian Penal Code to curb the lust of men or to protect women hood from losing dignity by way of indecent behavior of men yet many scopes are left untouched to safeguard the decency and morals of female counterparts.

This Criminal Law (Amendment) Act, 2013 is also popularly known as Nirbhaya Act and also can be known as Anti-Rape Law which is an elaborate effort of Indian Legislature to restrict the unwelcome behavioral designs on the part of male members of the society. This particular Act has listed detailed amendments relating to Indian Penal Code, Indian evidence Act and Code of Criminal Procedure on laws relating to Sexual offences.⁹⁰

“The duty of man is the same in respect of his own nature as in respect to the nature of all other things, namely not to follow it but amend it – John Stuart Mill.”⁹¹

The Fundamental Rights guaranteed under Part III of the Indian Constitution include the right life with dignity, Right to Equality of women and freedom to choose any profession that impliedly include the right against sexual exploitation of women. Though we have all these laws signifying the rights and duties of women and society towards each other yet this class of people are mostly vulnerable and exposed to various sexual offence. After the widespread outrage due to the barbarous gang rape incident of ‘Nirbhaya’ the Indian Legislature is forced to act against the crimes that affects the rights and dignity of a women.

⁹⁰ Gupta Ritu, *Sexual Harassment at workplace*, Lexis Nexis, 1st edition, 2014

⁹¹ Joggi Kumar Nabin, *The Criminal Law Amendment Act, 2013*: Describing Rape laws at the eleventh hour

The main provocation for passing this Act is provided by the “Nirbhaya” gang rape case that led to setting up of Justice Verma Committee and on the basis of report and recommendations of this committee the then president of India late Pranab Mukherjee assented on this Act on 2nd April, 2013.

The changes introduced by Criminal Law Amendment Act, 2013 are-

Amendments to Indian Penal Code Section 100: -

This section added the offence of Acid Attack, so as to use the right of Private defense of the body so as to cause death.

This section 100 reads as – An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such act.”

Insertion of New Sections 166A & 166B

Section 166A: This section is inserted with a view to punish the public servant who disobeys the direction given by law. They shall be punished with rigorous imprisonment for a term of 6 months which may extend to 1 year and may include fine.

This Section 166A reads as:

Whoever, being a public servant, -

- (a) Knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person, for the purpose of investigation into an offence or any other matter, or,
- (b) Knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation or
- (c) Fails to record any information given to him Under Section 154(1) of Cr. PC, 1973 in relation to cognizable offence shall be punished with rigorous imprisonment for a term not less than 6 months and can extend to 2 years and shall also be liable to fine.

Section 166B: It was inserted in order to provide punishment for non-treatment of victims by hospitals under any authority with an imprisonment which may extend to one year and with fine.

Section 354: This particular section was amended to increase the punishment for the offence of assault or use of criminal force to women with intent to outrage her modesty from 2 years to 5 years of imprisonment.

Section 354A: This is one of the principle sections that changed the outlook of criminal offence committed against women. This section deals with offences of sexual harassment. Section 354A was inserted in order to introduce the offence of sexual harassment and the punishments of rigorous imprisonment for a term of one year which may extend to three years along with fine.

Section 354A: (1) Prescribes that a man committing any of the following acts-

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favors, or
- (iii) Showing pornography against the will of a woman; or
- (iv) Making sexually colored remarks shall be made liable for committing an offence of sexual harassment and shall be liable for rigorous imprisonment of three years or with fine or with both.

Section 354 B: This section includes the crime of assaulting or compelling a woman to disrobe or compelling her to be naked for which he could be punished with imprisonment for a term of three years that may extend to seven years and fine.

Section 354 C: This section deals in detail with the crime of voyeurism. Any man who watches, or captures the images of a women engaged in a private act in circumstances where she would usually have that expectation that she is not being observed by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished in his first conviction with imprisonment of one year that may

extend to three years and shall also be liable for fine and on subsequent conviction shall be punished with imprisonment of 3 years which may extend to 7 years and fine.

Section 354 D: Section 354 D deals with the offence of stalking which means following her, monitoring the use by a woman of her emails or internet or any other electronic means of communication or tries to communicate with her despite of her clear indication of disinterest. Such act of stalking is punishable with imprisonment for a term of 5 years that may extend to seven years for a matter of second conviction and shall also be liable for fine.

Section 370 & Section 370 A: These sections has altered to the extent of widening it including the definition of trafficking of person and provided for punishment of trafficking.

Section 375: The definition of rape has been extended by modifying section 375 of IPC. A man is said to commit the offence of rape if he penetrates or inserts or manipulates any part of the body of the woman so as to cause Penetration into the urethra, vagina or any part of the body of the women or applies his mouth to vagina, asthmas, anus of a women or compels her to do so with him or any other person under following circumstances: -

- Against her will
- Without her consent.
- With her consent derived by fear or death or hurt.
- With her consent when she believes that the man to be her husband and he is not so.
- With her consent, got while she was intoxicated or due to unsoundness of mind, she is unable to understand the nature of the act.
- With or without her consent when under 18 years of age.
- When she is unable to communicate her consent.

Section 509: This section deals with punishment in regard to any act, gesture or act intended to insult the modesty of a woman which is now extended to three years and fine in lieu of one year after amendment.

This amendment inserted to this criminal law perspective has brought drastic changes in penal provisions which have proven to be most useful in regard to women's liberty, equality and dignity. It has extended many provisions and included widened provision for punishment and fine for those committing offences against women willfully considering women as weaker section will tolerate such crimes in silence. Now, with stringent provisions and strict penalties the government to its legislative extent has fulfilled constitutional norms of safeguarding and protecting women and also stood by international obligations.

5.5 THE NATIONAL COMMISSION FOR WOMEN ACT, 1990:

This Act is a legislative effort done by Indian Parliament forwarding a step towards successful implementation of women's right to live a dignified life with priority and prosperity. This Act extends to whole of India and gives legislative prescriptions to maintain sensitivity, equality and social justice towards women intact. This Act has provided for establishment of a National Commission which will work as a statutory authority to redress the matters of sexual harassment committed against woman at workplace.

The function of the commission as per the Act is provided under section 10 as-

- 1) The commission shall perform all or any of the following functions namely-
 - a. Investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws;
 - b. Present to the central government, annually and at such other times as the commission may take report of working on the safeguards;

- c. Make in such report's recommendations for the effective implementation of those safeguards for improving the conditions of women by the union or any state;
- d. Review the existing provisions of the constitution and other laws affecting women and recommend amendments thereto so to suggest remedial legislative measures to meet any lacunae, inadequacies or short comings in such legislations;
- e. Take up any cases of violation of any provision of the constitution and of other laws relating to women with the appropriate authorities.
- f. look into complaints and take Suo-moto notice of matters relating to-
 - i) Deprivation of women's rights;
 - ii) Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development.
 - iii) Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women and take up to issues arising out of such matters with appropriate authorities.
- g. Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal;
- h. Undertake promotional and educational research to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement.
- i. Participate and advise on the planning process of socio-economic development of women;

- j. Evaluate the progress of the development of women under union and the states.
- k. Inspect any women's institution or other place of custody where women are kept as prisoners if required.
- l. Fund litigation involving issues affecting a large body of women.
- m. Make reports to the government on any matter pertaining to women;
- n. Any other matter referred by central government.⁹²

This Act is concerned with advising the central government, on all policy matters related to women that affects them. They have covered multiple subjects for their campaigns that include exploitation of women for labor. India as a welfare state, always strives for women improvement and empowerment which is the consistent endeavor of National Women's Commission. The main attention of NCW is to prevent and protect women from all types of violence and harassment giving them relief of justice and equality. It is perceived that every woman has the right to work in a violence free environment and taking this idea forwarding the commission has took up the task of laying down of a preventive mechanism and redressal forum for women. This commission has adopted zero tolerance of sexual harassment to have strict enforcement agenda in all organizations and to provide a standard pattern of behavior for men to adhere strictly.

5.6 DISCUSSION:

Chapter V deals with legal provisions for prevention and Prohibition of sexual harassment at workplace. The constitution of India has provided for equality of status and opportunity which shall be enjoyed by every individual without any discrimination of gender. The national commitments and international deliberations always attempted to design dignity and respect for female gender. The workplace safety is one kind of fundamental right that needs to be cherished to entertain the efforts towards economic

⁹² National Commission for women Act, 1990

independence. The Sexual Harassment at workplace (Prevention, Prohibition and Redressal) Act, 2013 is a public-spirited legislation that protects the work culture, environment and participation of women at workplace.

The modern society has called for engaging both male and female genders in all sector of work but the traditional outlook restricts proper functioning, sustainable involvement on the part of the women giving importance to male dominance and power. In India, the Vishaka Judgment has paved its way for a long deliberate legislation on sexual harassment at workplace confirming itself to principles of CEDAW. The Act is drafted to ensure safety of every women worker engaged in any workplace of private and public nature. The researcher has found that this Act is a weapon on the hands of working women to protect her from all kinds of gender biases in the workplace thereby to improve participation of women at work.

This Act has been thoroughly discussed by Author Ritu Gupta in the contribution Sexual Harassment at workplace. Every provision has been elaborated keeping the view of gender equality and gender justice in mind.

This Act has emphasized in redefining the term Sexual harassment that includes unwanted physical advances, physical contact, touching, unwelcome remarks and demands of sexual favors violating the dignity and modesty of woman. It has been included as arbitrary barrier to sexual equality. Under this Act the responsibility of maintaining a safe working environment is vested on the employer making it to allow awareness workshops, display of information relating to penal provisions under this Act, provide constitution of internal committee, provide necessary assistance to the victim and to initiate action against the perpetrator.

The recent incident of Nirbhaya Gang Rape case has drawn the attention of the legislators to amend the existing provision of law to share strong hands towards curbing this crime. The criminal Law Amendment Act, 2013 is a deliberate attempt in this regard. It has introduced many important changes to the existing provisions relating to rape, stalking, voyeurism etc.

The Act has provided for establishment of an active internal Committee to respond towards the causation of this crime. Table 13, shows that 71.5% of literate women engaged in public sector has the awareness on complaint mechanism under this Act. They actually know the pros and cons of the complaint process. Table 15 shows that in 49% of public organizations there is existence of active Internal Committee to scrutinize and deal with the matters relating to sexual disturbance, violence and harassment in the office premises.