

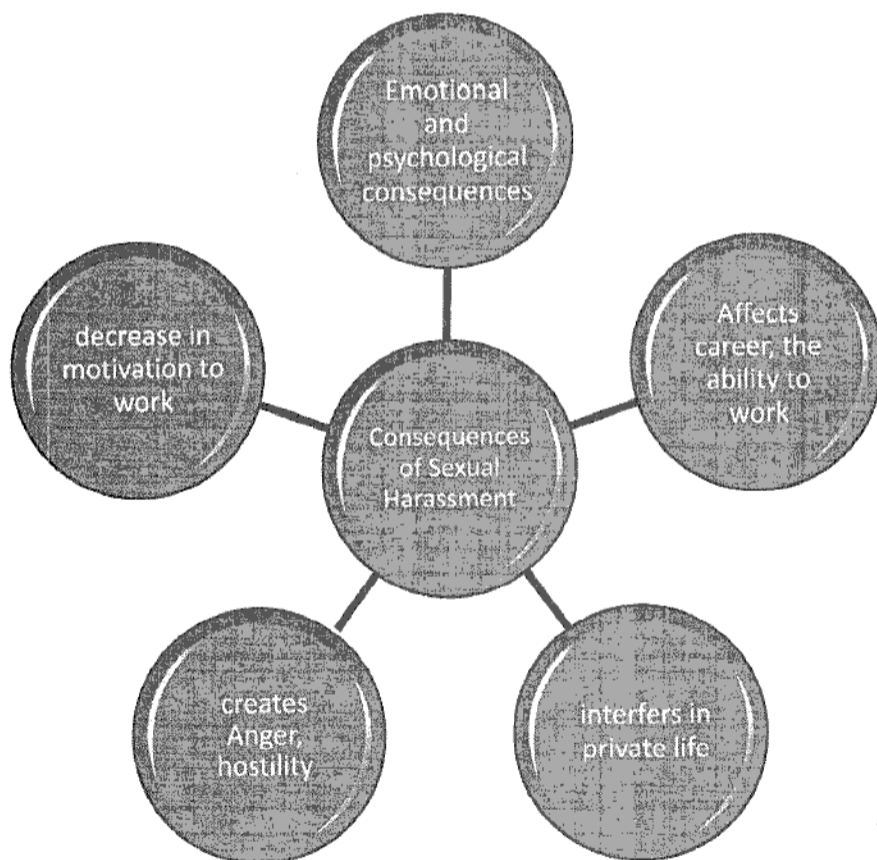
Sexual Harassment at Workplace

(Sexual Harassment of Women at Workplace
(Prevention, Prohibition and Redressal)
Act, 2013 &
Some provisions of Indian Penal Code, 1860)

Introduction:

In the 21st century, we have educated and confident women in India. We have women who are building India; taking it to newer heights of achievements and glory. In every field of work women are shining. However, it is quite unfortunate that women at most of the workplaces are facing sexual harassment which is in substance an attack on their dignity. They do not get an environment which is free from fear and sexual harassment.

The Constitution of India gives us the right to life. The Constitution also bestows upon us the right to equality. Right to life includes the right to live with dignity. Right to practice profession or carry out any trade, commerce and occupation also includes the right to have an environment free from sexual harassment. Sexual harassment of woman at the workplace is an infringement of the constitutional rights of a woman in India. It is a violation of the human rights. It is a form of discrimination. Sexual harassment has consequences. Due to sexual harassment woman suffers. The organization also suffers. The country as a whole suffers.



The Supreme Court of India in the judgement given in August, 1997, in the case of Vishaka and others Vs. State of Rajasthan and others, AIR 1997 SC

3011 interpreted gender equality of women in relation to work, and held that sexual harassment of women at the workplace is clear violation of the rights under Articles 14, 15 and 21 of Constitution. It is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. The Hon'ble Supreme Court of India laid down various guidelines to prevent sexual harassment at workplace, and to be followed by establishments in dealing with complaints about sexual harassment. The court stated that these guidelines were to remain binding until suitable legislation was passed to deal with the issue.

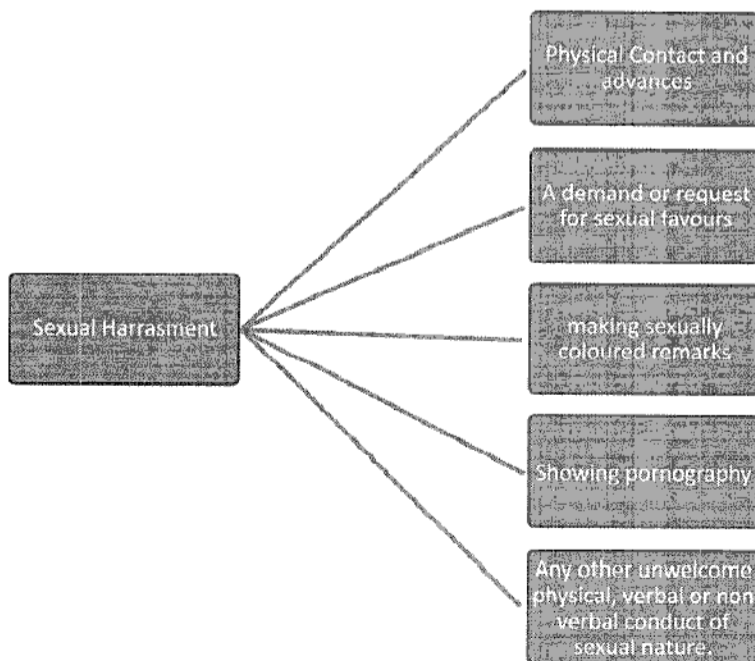
To tackle the menace of sexual harassment at work place, the Indian Parliament has passed the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This Act states in clear words that ' No woman shall be subjected to sexual harassment at any work place.' This Act came into force on 9th December 2013.

Q1 What are the objectives of the Act ?

Ans: Following are the objectives of the Act :

- (a) Protection against sexual harassment of women at workplace.
- (b) Prevention of sexual harassment at workplace.
- (c) Redressal of complaints of sexual harassment; and
- (d) to deal with the matters connected therewith or incidental thereto.

Q2 What is sexual harassment ?



Ans Sexual harassment includes any one or more of the aforesaid unwelcome acts or behaviour. It may be direct or by implication.

Q3 Are there other circumstances which may constitute sexual harassment at workplace?

Ans Sub Section (2) of section 3 of the Act provides that the following circumstances, among other circumstances, may also amount to sexual harassment if such circumstances are connected with or are related to any act or behavior of 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.

Q4 What is workplace ?

Ans "workplace" includes-

- (a) Government Department etc.

Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society is workplace.

- (b) Private Organization, NGO etc.

Any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

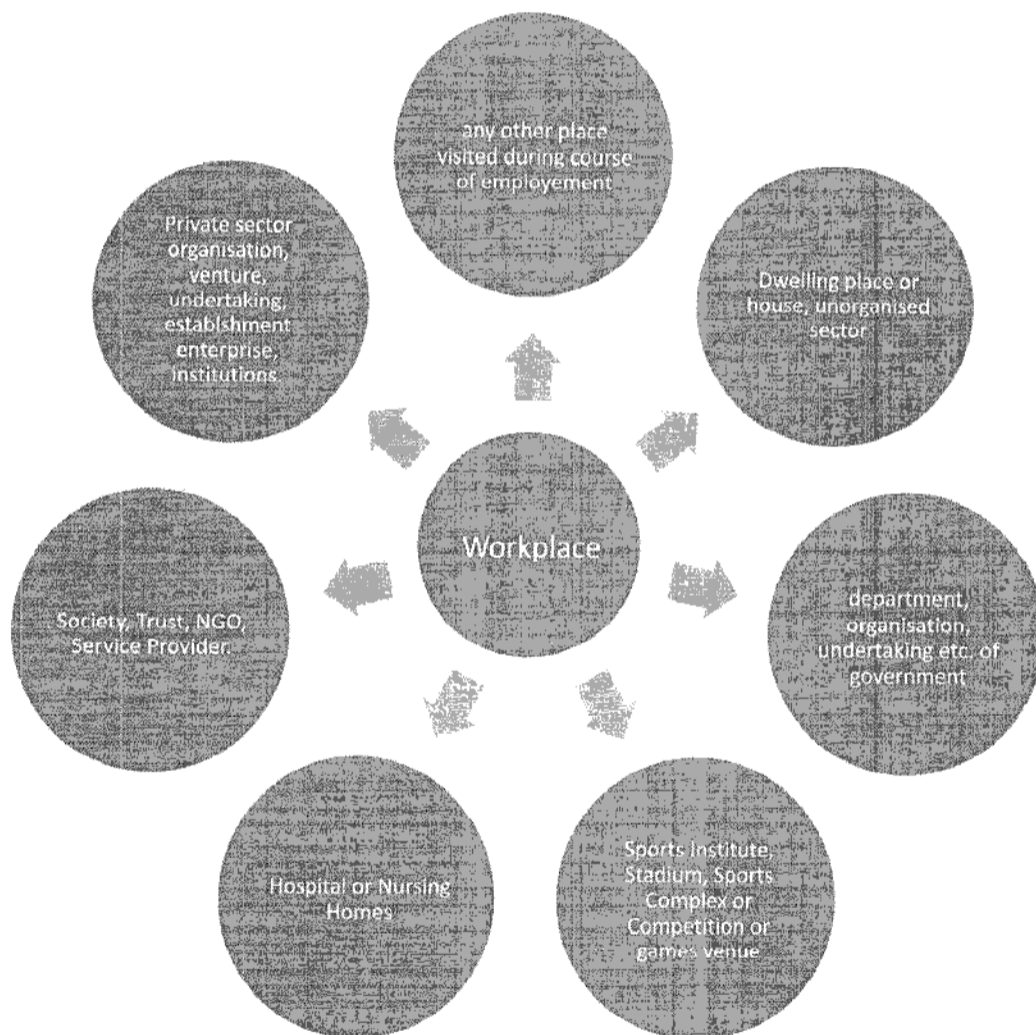
- (c) hospitals or nursing homes;
- (d) any sports institute, stadium, sports complex or competition or games

venue, whether residential or not used for training, sports or other activities relating thereto;

(e) 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;

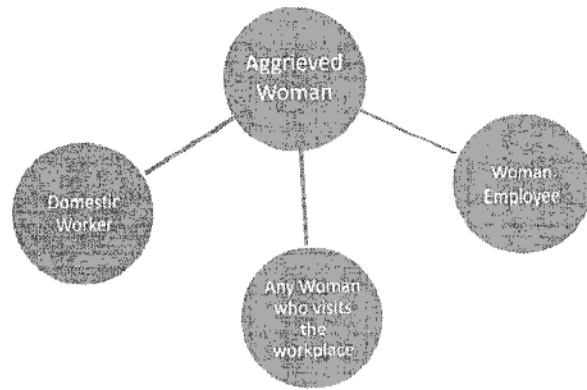
(f) A dwelling place or a house;

(g) “unorganized sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.



Q5 Who are protected under the Act?

Ans This Act provides protection to employee, any woman who visits the workplace and domestic worker. This Act is not gender neutral. It provides protection to woman only.

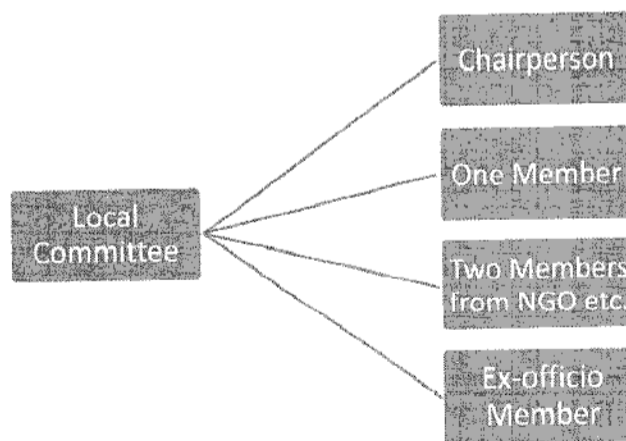


Q6 What are Internal Complaints Committee and Local Complaints Committee?

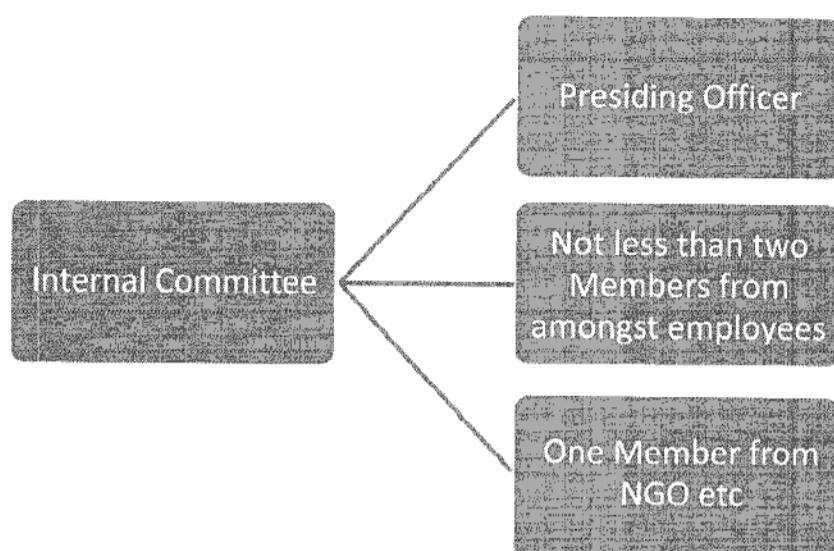
Ans

1. Internal Complaint Committee or the local complaints committee are constituted to deal with the complaints of sexual harassment at workplace.
2. It is the duty of the employer of a workplace where the workers are not less than ten, to constitute by writing a committee to be known as the Internal Complaints Committee.
3. Every District Officer shall constitute in the district concerned, a committee to be known as the Local Complaints Committee.
4. The district officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the Urban area to receive complaints and forward the same to the concerned Local Complaints within a period of seven days.

Composition of Local Complaints Committee



Composition of Internal Complaints Committee



Q7 What is the function of local complaints committee?

Ans To receive and deal with the complaints of sexual harassment from establishments where the internal complaints committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Q 8 What is the jurisdiction of the local complaints committee?

The jurisdiction of the local complaints committee shall extend to the areas of the district where it is constituted.

Q9 Who can make complaint of sexual harassment?

Ans:

1. Any aggrieved woman can make a complaint in person
2. *if aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by*
 - a. her relative or friend; or
 - b. her co-worker; or
 - c. an officer of the National Commission for Woman or State Women's Commission.
 - d. any person who has knowledge of the incident, with the written consent of the aggrieved woman.
3. *if the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by;*

- (a) her relative or friend; or
- (b) a special educator; or
- (c) a qualified Psychiatrist or Psychologist; or
- (d) the guardian or authority under whose care she is receiving treatment or care:
- (e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or a qualified psychiatrist or psychologist or guardian or authority.

4. if the aggrieved woman is dead, a complaint may be filed by legal heir or any person who has knowledge of the incident, with the written consent of her legal heir.

5. A complaint may also be filed, with the written consent of aggrieved woman, by any person who has knowledge of the incident if aggrieved woman for any other reason is unable to make complaint.

Q 10 Is there time limit for filing complaint under the Act?

Ans. Aggrieved woman can file complaint 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.

{Internal Committee or the Local Committee, 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 requisite period}.

Q 11 What is the procedure for filing complaint?

Ans: Following is the procedure for filing complaint:

- (a) Complaint is to be made in writing to the Internal Complaints Committee if so constituted.
- (b) Complaint can be made in writing to the Local Complaints Committee if the Internal Complaints Committee is not constituted or the complaint is against the employer himself.
- (c) If the complaint cannot be made in writing then the Presiding Officer or any member of the Internal Complaints Committee or Chairperson or

Member of the Local Complaints Committee shall render reasonable assistance to the woman for making the complaint in writing.

- (d) At the time of filing the complaint, the complainant shall submit to the Complaints Committee six copies of the complaint along with supporting documents and the names and addresses of the witnesses.

Q 12 Whether the Internal Committee or Local Committee can take steps for settlement ?

Ans: After receiving the complaint, the Internal Committee or the Local Committee, as the case may be, before initiating an inquiry under Section 11 and at the request of the aggrieved woman may take steps to settle the matter between her and respondent through conciliation.

[Note:-No monetary settlement shall be made as a basis of conciliation]

Q13 What is done if the settlement is reached through conciliation?

- Ans (a) If the settlement is reached then the Internal Committee or the Local Committee shall record the settlement so arrived.
- (b) The said settlement shall be forwarded to the employer or the District Officer to take action as specified in the recommendation.
- (c) The copies of the settlement shall be provided to the aggrieved woman and the respondent.

Q 14 Whether further inquiry can be conducted if matter is settled through conciliation?

Ans No further inquiry shall be conducted by the Internal Committee or the Local Committee if a settlement is arrived at under Sector-10 (1) of the Act.

Q 15 What can be done if the respondent fails to comply with the terms of settlement?

Ans. If the aggrieved woman informs the Internal committee or the Local committee, as the case may be, that any term or condition of the settlement has not been complied with by the respondent then 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.

Q16. How the inquiry is to be conducted?

Ans. Where the respondent is an employee then the inquiry is to be conducted

in accordance with the service rules applicable to the respondent. Where such rules do not exist following procedure is prescribed by the Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Rules, 2013.

- a. The Complaint Committee shall send one of the copies of the complaint to the respondent within a period of seven working days.
- b. The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses, within a period not exceeding ten working days from the date of receipt of the documents.
- c. The Complaints committee shall make inquiry into the complaint in accordance with the principles of natural justice.
- d. The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an ex parte decision on the complaint, if the complainant or respondent fails, without sufficient cause to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be.

Q17 Within what time inquiry is to be completed?

Ans. Inquiry is to be completed within a period of ninety days.

Q18. What action can be taken during the pendency of the inquiry?

Ans. On the written request made by the aggrieved woman, the Complaints Committee may recommend following to the employer during the pendency of inquiry:

- a. transfer the aggrieved woman or the respondent to any other workplace; or
- b. grant leave to the aggrieved woman upto a period of three months. Leave granted to the aggrieved woman shall be in addition to the leave she would be otherwise entitled.
- c. restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer
- d. restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

Q19. What is done by the Internal Complaints or the Local Complaints after the conclusion of inquiry?

Ans. a. If the allegations are not proved then committee may recommend to the employer or the District Officer that no action is required to be taken in the matter.

b. if the allegations are proved then following recommendations can be made by the Committee to the employer or the District Officer.
(Section 13)

1. To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules.
2. to deduct 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 of the Act.

Q20. What is the time period within which the employer has to act upon the recommendations?

Ans. The employer or the District Officer, as the case may be, shall act upon the recommendation within sixty days of its receipt by him.

Q21. What can be recommended if the service rules do not exist?

Ans. Where service rules do not exist, and the Complaints Committee arrives at the conclusion that allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

Q22 Is there any provision of appeal ?

Ans

1. If any person is aggrieved from the recommendations made under Section 13, 14 and 17 of the Act then he can file an appeal.
2. If any person is aggrieved by non-implementation of such recommendations then that person may also prefer an appeal.

3. Appeal shall be filed within ninety days from the date of recommendations.

Q 23 Where the appeal can be filed?

Ans: Where the services rules exist appeal can be filed at the tribunal or court in accordance with the provisions of the service rules.

If the services rules do not exist then, without prejudice to the provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal to the appellate authority notified under clause (a) of Section 2 of the Industrial Employment (Standing Order) Act, 1946.

Q 24 Who is domestic worker ?

Ans. Domestic Worker means a woman who is employed to do the household work in any household for remuneration whether in cash or kind. She may be employed either directly or through any agency on a temporary, permanent, part time or full time basis. Domestic worker does not include any member of the family of the employer.

Q25 What is done if the Complaint is made by domestic worker?

Ans On a complaint made by domestic worker, the local committee shall, if prima-facie case exists, forward the complaint to the police for registering the case under Section 509 of IPC or any other provision of the Code where applicable.

Q 26 Whether the publication or making known the contents of complaint and inquiry proceedings is permissible?

Ans. Following cannot be published, communicated or made known to public, press or media in any manner notwithstanding anything contained in the Right to Information Act, 2005:

- (a) The contents of the complaint made under Section 9.
- (b) Identity and address of the aggrieved woman, respondent and witnesses.
- (c) Any information relating to conciliation and inquiry proceedings.
- (d) Recommendations of the Internal Committee or Local Committee.
- (e) The action taken by the employer or the District officer under the provisions of this Act.

(Information regarding the justice secured to any victim of sexual harassment under this Act may be disseminated without disclosing the name, address or other particulars which may lead to the identification of the aggrieved woman and witnesses).

Q.27 What is the penalty for publication or making known the contents of complaint and inquiry proceedings etc?

Ans. If any person entrusted with the duty to handle or deal with the inquiry or any recommendations for action to be taken under the provisions of this Act, acts in violation of Section 16 of the Act then he is liable for penalty in accordance with the provisions of the Service Rules or where no Service Rules exists the employer shall recover a sum of Rs.5000/- as penalty from such person. (Section 17 read with rules)

Q.28 Is there any punishment for false or malicious complaint and false evidence?

Ans. Yes, if after inquiry it is established that the allegation against the respondent was made maliciously or the aggrieved woman or person making the complaint knew it to be false then the Internal Committee or Local Committee, as the case may be, recommend to the employer or the District officer to take action that against the complainant in accordance with the Service Rules or where the Service Rules do not exist it may recommend to the employer or the district officer, as the case may be, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating from service, undergoing a counselling session or carrying out community service.

Similarly, if the aggrieved woman or any other person making the complaint gives false evidence or produces any forged or misleading document the aforesaid action can be taken. (Section 14 read with rules)

Q.29 Who is employer under the Act ?

Employer means:

- (a) **Head of the Department:** Head of the Department in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority.

(The appropriate Government or the local authority, as the case may be, may by an order specify other officer in this behalf)

(b) Person responsible for management, supervision and control:

in any workplace not covered under sub-clause (i) of Section 2(g) of Act, any person responsible for the management, supervision and control of the workplace.

(c) Person discharging contractual obligations

in relation to workplace covered under sub-clauses (i) and (ii) of Section 2 (g) of the Act, the person discharging contractual obligations with respect to his or her employees;

(d) Person employing domestic worker or deriving benefits

in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker.

Q 30 What are the duties of the employer under the Act?

Duties of Employer: Every employer shall -

- a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace.
- b) Display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee under sub-Section (2) of Section 4;
- c) Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- d) Provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- e) Assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- f) Make available such information to the Internal Committee or the Local

Committee, as the case may be, as it may require having regard to the complaint made under sub-section (q) of Section 9;

- g) Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;
- h) Cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place;
- i) Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- j) Monitor the timely submission of reports by the Internal Committee.
- k) Formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;

Some relevant provisions of the Indian Penal Code 1860

(1) Obscene acts and songs at public place

Section 294 of the Indian Penal Code makes following acts punishable

- (a) Doing any obscene act in any public place to the annoyance of others; or
- (b) Singing, reciting or uttering any obscene songs, ballad or words in or near public place to the annoyance of others

Punishment under section 294 IPC

Under section 294 IPC punishment is imprisonment of either description for a term which may extend to three months, or with fine, or with both.

(2) Assault or criminal force to woman with intent to outrage her modesty(354)

The essential ingredients of the offence under Section 354 IPC are as under:

- (i) that the person assaulted must be a woman;
- (ii) that the accused must have assaulted or used criminal force on her; and

- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty.

Intention is not the sole criterion of the offence punishable under Section 354 IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected.

Punishment under section 354 IPC

Imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

(3) Sexual harassment (354-A)

Section 354-A IPC makes sexual harassment punishable.

Sexual harassment is constituted under this section if a man commits any of the following acts-

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Showing pornography against the will of a woman; or
- (iv) Making sexually coloured remarks.

Punishment for sexual harassment under section 354-A IPC

(1) Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) of Section 354 A IPC shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.

(2) Any man who commits the offence specified in clause (iv) of sub-section (1) of Section 354 A IPC shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

(4) Assault or use of criminal force to woman with intent to disrobe (354-B)

Assault or use of criminal force by man to any woman or abetting such act with the intention of disrobing or compelling woman to be naked is punishable under section 354-B

Punishment under section 354 – B IPC

imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

(5) Voyeurism (354-C)

Following is punishable under section 354-C

(1) Watching, or capturing the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed

(2) or dissemination of such image

Punishment under section 354–C IPC

On first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine,

On a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

(6) Stalking(354-D)-

Any man who-

(i) follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman: or

(ii) monitors the use by a woman of the internet, email or any other form of electronic communication,

Commits the offence of stalking

Punishment under section 354 –D IPC

(1) On first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

(2) On a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

(7) Word, gesture or act intended to insult the modesty of a woman(509)

The essential elements of the section 509 of IPC are:

1. Accused with the intention to insult the modesty of any woman utters any word, make any sound or gesture or exhibits any object or intrudes the privacy of woman.
2. Accused intended that words uttered, sound made or gesture shown or object exhibited be seen or heard by the woman.

Punishment for section 509 IPC

Simple imprisonment for a term which may extend to three year and fine.