

GLOBALISED CAMPAIGN WELFARE SOCIETY (A NATIONALISED NGO FOR WOMEN SAFETY)

Sexual Harassment: The Law

Sexual harassment has been recognised as most intimidating, most violating form of violence since long in countries like UK, USA and many countries have not only taken note of how degrading experiences of sexual harassment can be for women as well as employers but have adapted legislative measures to combat sexual harassment.

In India, it has been only six years since sexual harassment was for the first time recognised by The Supreme Court as human rights violation and gender based systemic discrimination that affects women's Right to Life and Livelihood. The Court defined sexual harassment very clearly as well as provided guidelines for employers to redress and prevent sexual harassment at workplace.

While the Apex Court has given mandatory guidelines, known as Vishaka Guidelines, for resolution and prevention of sexual harassment enjoining employers by holding them responsible for providing safe work environment for women, the issue still remains under carpets for most women and employers.

Vishaka guidelines apply to both organized and unorganized work sectors and to all women whether working part time, on contract or in voluntary/honorary capacity. The guidelines are a broad framework which put a lot of emphasis on prevention and within which all appropriate preventive measures can be adapted. One very important preventive measure is to adopt a sexual harassment policy, which expressly prohibits sexual harassment at work place and provides effective grievance procedure, which has provisions clearly laid down for prevention and for training the personnel at all levels of employment.

What Is Sexual Harassment?

According to The Supreme Court definition, sexual harassment is any unwelcome sexually determined behaviour, such as:-

- Physical contact
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other physical, verbal or non-verbal conduct of a sexual nature.

Sexual Harassment takes place if a person:

- subjects another person to an unwelcome act of physical intimacy, like grabbing, brushing, touching, pinching etc.
- makes an unwelcome demand or request (whether directly or by implication) for sexual favours from another person, and further makes it a condition for employment/payment of wages/increment/promotion etc.
- makes an unwelcome remark with sexual connotations, like sexually explicit compliments/cracking loud jokes with sexual connotations/ making sexist remarks etc.
- shows a person any sexually explicit visual material, in the form of pictures/cartoons/pin-ups/calendars/screen savers on computers/any offensive written material/pornographic e-mails, etc.
- engages in any other unwelcome conduct of a sexual nature, which could be verbal, or even non-verbal, like staring to make the other person uncomfortable, making offensive gestures, kissing sounds, etc.

It is sexual harassment if a supervisor requests sexual favours from a junior in return for promotion or other benefits or threatens to sack for non-cooperation. It is also sexual harassment for a boss to make intrusive inquiries into the private lives of employees, or persistently ask them out. It is sexual harassment for a group of workers to joke and snigger amongst themselves about sexual conduct in an attempt to humiliate or embarrass another person.

Quid pro quo and hostile work environment are the two broad types of sexual harassment.

Sexual harassment at workplace is generally classified into two distinct types. 'Quid pro quo', means seeking sexual favours or advances in exchange for work benefits and it occurs when consent to sexually explicit behaviour or speech is made a condition for employment or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions. 'Hostile working environment' is more pervasive form of sexual harassment involving work conditions or behaviour that make the work environment 'hostile' for the woman to be in. Certain sexist remarks, display of pornography or sexist/obscene graffiti, physical

contact/brushing against female employees are some examples of hostile work environment, which are not made conditions for employment.

Unwelcome:

UNWELCOME is the key in defining sexual harassment. It is the impact and effect the behaviour has on the recipient that will define the behaviour as sexual harassment.

What is a workplace? A workplace is any place where working relationships exist, where employer ? employee relations exist.

Sexual Harassment: Prevention and Resolution

Combating Attitudes

Patriarchal attitudes and values are the biggest challenge in implementation of any law concerning women in our society. Combating these attitudes of men and women and the personnel involved /responsible for implementation of laws and systems is most crucial in prevention of unwanted sexual behaviour. Preventing and avoiding sexual harassment involves all levels of employees/persons in any organisation-employees and colleagues, management and bodies like trade unions. Most importantly it requires for the employer to act before a problem occurs.

Steps Employers Can Take to Prevent Sexual Harassment A policy / procedure designed to deal with complaints of sexual harassment should be regarded as only one component of a strategy to deal with the problem. The prime objective should be to change behaviour and attitudes, to seek to ensure the prevention of sexual harassment.

As an employer know the following:

I] First and foremost, acknowledge that it is your legal responsibility to provide safe working environment for women free from sexual harassment and discrimination and that you can be held liable for sexual harassment by employees.

II] Know that sexual harassment can have a devastating effect upon the health, confidence, morale and performance of those affected by it. The anxiety and stress produced by sexual harassment commonly leads to those subjected to it taking time off work due to sickness, being less efficient at work, or leaving their job to seek work elsewhere.

III] Understand the reasons why women remain silent about sexual harassment. An absence of complaints about sexual harassment does not necessarily mean an absence of sexual harassment. It may mean that the recipients of sexual harassment think that there is no point in complaining because:

- nothing will be done about it;
- it will be trivialised;
- the complainant will be subjected to ridicule, or
- they fear reprisals.

IV] Recognise the tangible and intangible expenses and losses organisations experience:

- Costly investigation and litigation
- Negative exposure and publicity
- Embarrassing depositions
- Increased absenteeism
- Lowered employee morale
- Reduced productivity
- Decreased efficiency
- Higher employee turn over
- Erosion of organisation/s brand names, goodwill, and public image
- Negative impact on stock price

The best way to prevent sexual harassment is to adopt a comprehensive sexual harassment policy. The aim is to ensure that sexual harassment does not occur and, where it does occur, to ensure that adequate procedures are readily available to deal with the problem and prevent its recurrence.

SEXUAL HARASSMENT POLICY

I] Adopting Sexual Harassment Policy:

What should be included in an anti-harassment policy? A basic policy should set forth the following:

- an express commitment to eradicate and prevent sexual harassment and express prohibition of sexual harassment;
- a definition of sexual harassment including both quid pro quo and hostile work environment giving examples;
- an explanation of penalties (including termination) the employer will impose for substantiated sexual harassment conduct;
- a detailed outline of the grievance procedure employees should use;
- a clear statement that anyone found guilty of harassment after investigation will be subject to immediate and appropriate disciplinary action
- a clear understanding and strict rules regarding harassment of or by third parties like clients, customers etc.
- additional resource or contact persons available for support and consultation;
- an express commitment to keep all sexual harassment complaints and procedures confidential and time bound;
- provisions for training of employees at all levels.
- an anti retaliation policy providing protection against retaliation to complainants, witnesses, Complaints Committee members and other employees involved in prevention and complaints resolution.

Policies and procedures should be adopted after consultation or negotiation with employee representatives. Experience suggests that strategies to create and maintain a working environment in which the dignity of employees is respected are most likely to be effective where they are jointly agreed. .

II] Communicate Policy

Issue a strong policy from the top authority against sexual harassment taking a "zero tolerance" approach Make sure it gets out to all your employees either through the employee handbook or in memo form or with pay packets or with appointment letter. Have the employees sign it to acknowledge that they received and read the policy. The policy can also be posted in the workplace. If you have employees whose primary language is not English, have your sexual harassment policy translated or communicate to them in their primary language. Discuss the policy with all new employees Ensure that third-party such as suppliers and customers are aware of your sexual harassment policy Review the policy with your employees on a regular basis

III] Enforce Policy Take complaints of sexual harassment seriously and investigate all sexual harassment charges quickly and thoroughly and professionally maintain accurate records of the investigation and the findings make sure employees who bring charges do not face retaliation Ensure confidentiality and time bound response to complaints. Take immediate action when sexual harassment is discovered or suspected Discipline appropriately any employee found to have engaged in sexual harassment Safeguard your employees from third-party work-related sexual harassment

COMPLAINTS CHANNEL

Complaints Channels need to provide different routes that employees can take to file complaints; i.e., contacting the responsible authority for sexual harassment, a supervisor, calling a hotline, complaining through email, etc. Organisations need to focus on the plight of the average individual. A policy is useless unless people use it, and most research indicates that a small fraction of employees ever say or do anything about harassing behaviour.

Informal methods of resolving complaints must be part of the complaints mechanism as 1. The objective is to end the harassing behaviour at the lowest possible (which is the most cost effective, as well) 2. Many complaints can be resolved effectively and positively through informal methods. Informal options act as a buffer or filter, save bad blood, prevent the office environment getting uncomfortable for all, if employees can be advised as to how to handle the situation before it gets out of hands. Platforms to resolve complaints or to stop harassing behaviour

must be provided before the complaints escalate into full-blown, formal complaints. The Supreme Court guidelines impose an obligation on the employer to set up a Complaints Committee to deal with the cases of harassment. Such a committee should: *be headed by a woman *have half its members as women *include a third-party representative from an NGO or any other agency conversant with the issue of sexual harassment (to prevent undue pressure from within the organization with respect to any complaint).

Complaints Committee

Employers need to set up a redress mechanism/complaints committees as per Vishaka guidelines. First Contact Persons from within the Committee or otherwise should be appointed who could try to resolve the complaint informally first before the complaint goes to the formal channels of complaints committee. The organisation needs to put down clearly, certain non-negotiable for the complaints committees for effective resolution of complaints.

Desired Qualities Of The Members Of Complaints Committee:

- **Subjectivity:** A sexual act when unwelcome is sexual harassment; the unwelcome is the woman's subjective reality. The Complaints Committees first job is to believe in this reality. (Unless something on record completely negates her complaint).
- **Empathy:** It is critical that the Complaints Committee empathizes with the complainant and does not judge her by their moral standards. The most important question to be answered in the affirmative that the committee and all functionaries must ask themselves while providing redress to a particular case is 'Do we believe her?'

Selection of the Complaint Committee members is extremely important as in most cases the committee members, if in sub-ordinate position of power at workplace to that of accused, find it very difficult to diligently carry out the responsibilities bestowed on them as heads or members of the Committee, against the superiors.

The Complaints Committee must remember:

- It needs extensive orientation for effective functioning.
- It cannot function like a criminal court.
- The complainant, when she complains, has at staked her personal life and career.
- The impact sexual harassment has on a woman
- It is difficult for a woman to talk about anything sexual. Hence there can be long time interval between the harassment and the actual complaint.
- It needs to handle complaints in a confidential manner and within a time-bound framework
- It needs to submit an annual report on sexual harassment to the appropriate government authority.

Complaints committees: Do's and Don'ts:

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D's

- Formalise and publicise complaint procedures that are easy and non-threatening.
- Provide safety for friends and supporters of the complainant.
- Appoint complaints officers-one man and one woman- to serve as the first point of contact.
- Complaint officers should be members of the committee. One of them should be the outside expert.
- Authorise Complaint Officers to resolve the issue without the committee/s intervention. If unresolved to the complainant/s satisfaction, the complaint should go to the committee.
- Use a cheerful, comfortable, airy room for meeting the complainant.
- Ensure that your body language communicates complete attention to the complainant and the accused.
- Treat the complainant with respect.
- Discard pre-determined notions of how a victim or accused should look or behave. Beware of stereotypes.
- All sexual crimes are committed in private, so that there may not be any eyewitnesses. This is an important point that the committee would do well to remember at all the times.
- Consult the complainant for punitive action.
- If the management does not accept the recommended action, it should give three valid reasons.
- Help the complainant regain his/her self-respect.

Don'ts

- Do not, under any circumstance, get aggressive.
- Do not insist on a detailed description of harassment. This could increase the complainant/s trauma.
- Do not allow for interruptions when talking to the complainant and/or accused.
- Do not try and determine the impact of the harassment on the complainant. Let the complainant determine it. Help the complainant, if necessary.
- Do not discuss the complaint among the presence of the complainant or the accused.
- Remember, this is a human rights issue, therefore, (a) do not give too much weightage to intention, focus on the impact, and (b) 'proof beyond reasonable doubt' is not required, a strong probability is sufficient.

Other things the Complaints Committee need to do

- Encourage the woman to note details of each incident of harassment and monitor any changes in work patterns or attitude on the part of the alleged harasser so as to avoid as far as possible attempts at victimisation or accusations of poor work performance, etc.
- Make discreet enquiries as to whether other workers have experienced similar problems and if so, ask them details of any harassment, which has occurred.
- If the problem should involve transfer of one of the people involved, try to ensure that the harasser- rather than the victim- is the person required to move. (Adopted from 'Sexual harassment is no joke?' by SIPTU, a trade union in Germany)
- Always document the results of any sexual harassment complaint or investigation. Not only document the results, but also document any corrective action that you asked the employee or supervisor to take. Follow up on any corrective action so you can document if the employee fails to take advantage of your company's policies/procedures or any corrective action that your company takes to prevent the sexual harassment from occurring again in the future.
- Inform all employees that it is their obligation to report sexual harassment that they either experience or witness.

TRAINING

Take your employees with you. Educate them about the issue and promote a healthy discussion of the policy.

Sexual Harassment Awareness Training

The setting up of a complaints committee and an anti-sexual harassment policy lays a strong foundation for a sexual harassment free workplace. However, effective training programmes are essential to sensitise/train all their staff members, men and women, to recognise sexual harassment, deal with it when it occurs and prevent it. The training programme is the best way to ensure proper understanding and implementation of your policy. It is the best forum to communicate to employees what behaviour is acceptable and what is not, in a non-threatening atmosphere of mutual learning. Training for the members of the Complaints Committee and others who are going to be instrumental in implementing the policy, is very essential. Their training should include a component of gender sensitization, along with the procedures for taking complaints, and for enquiry, etc.

Conduct yearly meetings with your supervisors to review the sexual harassment policy, and to make sure that they understand that an employee does not need to suffer negative consequences in order to make a complaint of sexual harassment. Inform the supervisors that even mild to moderate sexual jokes or statements can create an atmosphere of hostility that will make some employees uncomfortable, and could lead to the creation of a hostile work environment.

Sexual harassment training for all employees should address perceptions and understanding of sexual harassment, impact of sexual harassment on individuals and workplace, understanding the policy and complaints mechanism. The training for Complaints Committee should address, in addition to these, the procedures of investigation, skills necessary for enquiries, documenting the procedures.

SENSING MECHANISMS:

Setting up a mechanism does not mean that there is sexual harassment in your workplace. Prevention is always better than cure, and being pro-active always helps. Along with performance, change in employees' behaviour patterns also deserves employer's close scrutiny.

Conducting Surveys - Conducting time-to-time surveys is helpful to identify and prevent factors/situation leading to incidence of sexual harassment. The survey can be done anonymously and should be distributed with a copy of the company's sexual harassment policy. The survey can simply ask the employees (male and female) if they have experienced any form of sexual harassment during the past year. The survey also helps to show that the organisation is actively engaged in preventing and correcting sexual harassment.

COMMITMENT FROM TOP:

Commitment is shown through enforcement and action by the responsible authorities. Even the most comprehensive sexual harassment policies and procedures are bound to fail if a company does not enforce them quickly, consistently, and aggressively. To be effective, organisations must take sexual harassment seriously. They need to make certain that personnel responsible for enforcement conduct prompt, thorough, and documented investigations of all complaints, even those that appear trivial. Organisations should take action that is reasonably calculated to end the harassment. Such action must be directed toward the harasser, and may include verbal warnings, written warnings, job transfers, suspension of employment, and, if necessary, termination.¹²⁴

Employers should also keep tabs on their supervisors. This can be accomplished by means of monthly meetings with higher management, unscheduled spot checks, or periodic sexual harassment training sessions with the implementing authorities.

PRACTICES CONSISTENT WITH POLICIES:

Organisations must place just as much emphasis on reporting responsibilities and mechanisms as on the policy itself.

Setting a precedence - Even if the accused is a senior executive/ a partner/any other person who is an asset to the company, and brings in a lot of business, it is essential that he be punished if found guilty, as this sends out a strong message that the company will not tolerate any harassment by anyone. .

What Steps Can Employees Take To Prevent Sexual Harassment?

Most women themselves fail to recognise sexual harassment and treat it as trivial and routine. Such has been the internal coping mechanism. Ignoring offensive behaviour or denying its existence are the most common ways women deal with sexual harassment.

In *Back Off! How To Confront and Stop Sexual Harassment and Harassers*, Martha Langelan recommends taking these steps:

Dealing with the Harasser upfront:

- Do the unexpected: Name the behaviour. Whatever he's just done, say it, and be specific.
- Hold the harasser accountable for his actions. Don't make excuses for him; don't pretend it didn't really happen. Take charge of the encounter and let people know what he did. Privacy protects harassers, but visibility undermines them.
- Make honest, direct statements. Speak the truth (no threats, no insults, no obscenities, no appeasing verbal fluff and padding). Be serious, straightforward, and blunt.
- Demand that the harassment stop.
- Make it clear that all women have the right to be free from sexual harassment. Objecting to harassment is a matter of principle.
- Stick to your own agenda. Don't respond to the harasser's excuses or diversionary tactics.
- His behaviour is the issue. Say what you have to say, and repeat it if he persists.
- Reinforce your statements with strong, self-respecting body language: eye contact, head up, shoulders back, a strong, serious stance. Don't smile. Timid, submissive body language will undermine your message.
- Respond at the appropriate level. Use a combined verbal and physical response to physical harassment.
- End the interaction on your own terms, with a strong closing statement: 'You heard me. Stop harassing women'.

Other steps employees can take:

Speaking out: Speaking about sexual harassment is an effective tool in combating it. While speaking about it, the problem becomes visible, it is acknowledged that it exists, and this in turn leads one to take effective measures against it. Speaking about sexual harassment also gives an opportunity to clarify by this about it. It helps in changing attitudes of people towards this issue. Speaking about it creates an enabling environment for the victim to speak out. It mobilises public opinion against it. It makes it difficult for a potential harasser to commit the crime. It equips people with information as to what is to be done in such a case.

Speak up at the time: Be sure to say "NO" clearly, firmly and without smiling as that is the best way to let the harasser know that his behaviour is offensive. Objecting to the behaviour when it occurs helps if you decide to file charges later.

Keep records: Keep track of what happens in a journal or diary and keep any letters or notes or other documents you receive. Write down the dates, times, places, and an account of what happened. Write down the names of any witnesses. Write a letter. People have successfully stopped sexual harassment by writing a letter detailing the behaviour that is offensive and asking the person who is harassing them to stop the behaviour. The letter should be polite, unemotional, and detailed. Such a letter seems to be more powerful than a verbal request. The recipient of the letter seldom writes back; the person usually just stops the behaviour.

Set your own boundaries: Say "NO" emphatically and clearly when you are asked to go places, do things, respond to questions, or engage in situations that make you uncomfortable. Do not worry about offending the other person or hurting his or her ego. Take care of yourself first.

Be aware of situations and people who may harm you: Don't ignore other's warnings about particular people or social settings. Acknowledge their concern for you and for themselves.

Trust your own instincts about possible danger: In an uncomfortable situation, be direct and honest, and remove yourself from the situation immediately. Regardless of your previous behaviour or signals you may have given earlier, you have the absolute right to halt any sexual exchange at any time. Accept this right and act on it.

Tell someone: Being quiet or stoic about sexual harassment lets it continue. Talk to other co-workers; you may not be the only one harassed by this person. Do not blame yourself and do not delay.

Create a Witness to the behaviour: Inform a trusted colleague and try to insure that s/he is an eye or ear witness to a situation where you are being sexually harassed. This will be useful later if you chose to file a formal complaint. Send a copy of sexual harassment policy / rules to the harasser. If your workplace already has an anti sexual harassment policy or the conduct rules of your institution prohibit sexual harassment, send a copy of the institution policy/conduct rules to the harasser with the appropriate sections underlined.

Talk to a union: If you are a member of a labour union, talk to your union representative.

Get a medical check-up: If you have been raped or physically assaulted, go for a medical check-up. Obtain a medical report. This is important, should you decide to pursue a legal case.

Report sexual harassment to the appropriate person in the organization: Explore the different avenues available to you and file a formal complaint if necessary. If your organisation does not have a policy, ensure that your employer formulates an anti-sexual harassment policy and carries out all the connected tasks.

Documenting Harassment

Documenting the harassment is important for use as evidence in a case or complaint. You should: Photograph or keep copies of any offensive material at the workplace. Keep a journal with detailed information on instances of sexual harassment. Note the dates, conversation, frequency of offensive encounters, etc. Obtain copies of your work records (including performance evaluations) and keep these copies at home

Other documents that you should have: A company policy and procedure manual is very important to have. The company's documented policies on sexual harassment, discrimination, performance appraisals, termination, affirmative action plans can be very important to show their stated policies versus their actions. Company newspapers, annual reports, pictures of its top executives, posters, company credo, company surveys are important to show the environment and its hostility towards women.

Take all letters of commendation, awards, thanks you and anything at all that will corroborate your positive job performance. Pay special attention to documents that your superiors have provided lauding you and your work. If possible, ask your clients, staff, and peers for letters of commendation.

Every document that you use during trial must be authenticated by a witness. Keep this in mind during your depositions when the defence asks you where you obtained a document. If you are not clear about where you got the document, and who can authenticate it, you will not be able to use it during your trial.

What can you do as a colleague?

- Do not disbelieve a woman when she shares about harassment. Remember sexual harassment is 'unwelcome' behaviour. Do not trivialise the matter.
- Remember that it is difficult to speak about sexual harassment. Hence if a colleague is talking about it, she will require a lot of encouragement and support.
- Read the Vishaka judgement carefully and know your rights.
- Spread the word - let your colleagues know about the issue, its prevalence and the judgement.
- Support a harassed colleague - remember it could be you tomorrow.
- Encourage the recipient to approach the offending person directly or use other informal resolution methods.
- Offer to accompany the recipient to the offending person, the Complaints Committee to file a formal complaint.
- Take responsibility to see that sexual harassment is stopped and there is no reprisal.
- Approach your employer and push for a redress mechanism / sexual harassment policy, if you do not have one in place already.
- If you do have a mechanism in place, ensure that it complies with the Supreme Court guidelines.
- Contact a non-government organisation working on the issue to organise an awareness/training programme at your workplace/ to help create a policy for your workplace.

It is important that you:

- be professional at all times.
- set a positive example.
- consider your attitudes.
- avoid making assumptions.
- think before making personal comments.
- don't go along with the crowd.
- be supportive of people who wish to talk about being sexually harassed and
- direct them to the appropriate persons / authorities.

As an employee: If your behaviour offends an employee, stop that behaviour. Ask yourself:

- Could your behaviour offend or hurt people at your workplace?
- Could your behaviour be interpreted by another as sexual harassment?
- Would you like your behaviour to be discussed by others?
- Would you like your friend, partner, child or sibling to be treated in the same manner?

What steps can Trade Unions take to prevent sexual harassment:

There are a number of measures that unions can take to combat sexual harassment. The goal is to make union members sensitive to the problem and to create a climate to discourage sexual harassment and, if it occurs, a climate where victims will feel comfortable turning to the union for assistance. Trade Unions in unorganised sector can play a definite and vital role in helping set up complaints mechanism and instituting systems/channels that could provide forum for recipients of sexual harassment in unorganised sector to complain.

If you are a member of a trade union:-

- If the sexual harassment victim comes to you for help, try to informally resolve the complaint by talking to the harasser. If that is ineffective, help the victim to file a complaint with the appropriate authority.
- Educate the members about the issue.
- Include training on handling sexual harassment grievances for office bearers/seniors who are likely to get involved in complaint resolution
- Determine the extent of the problem in the workplace. A survey of the members may be useful.
- Work with employers to conduct jointly conducted training programs.

- When sexual harassment does occur, offer support.
- Try to stop any harassment you observe, whether or not the victim has complained. If this is unsuccessful, do not do or say anything that could be interpreted as condoning the harasser's behaviour.
- Disclose information only to the extent necessary to protect the confidentiality of all who are involved.
- Put management on notice about what is going on. Regardless of who is harassing, management is responsible for providing a harassment-free work environment.
- Be sure that the employer has an anti-sexual harassment policy that is prominently posted or otherwise effectively communicated to all employees.

The issue of sexual harassment needs understanding, assessment, sensitivity and commitment from all quarters but mostly from the senior managerial authority as their commitment and action can achieve the aim of prevention and effective resolution of sexual harassment at workplace and a gender friendly, discrimination free workplace.

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