



PARTNERS FOR LAW IN DEVELOPMENT

Frequently Asked Questions

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

Q. Who can file a complaint for sexual harassment?

- A. The Act stipulates that any woman, who is an employee and has suffered sexual harassment at a workplace can file a complaint. 'Employee' has been very widely defined in the law to include regular, temporary, ad hoc and daily wage workers, hired directly or through an agent, women working on a voluntary basis, or without remuneration, including probationers, trainees or apprentices.

Q. What kind of 'workplaces' does the law cover?

- A. The law covers all workplaces, both in the organized and the unorganized sector. For instance, it includes government and private offices, hospitals, universities, sports facilities, construction sites and also residential homes to protect domestic workers. The law even extends protection to women outside the office premises, while she is discharging her duties in the course of employment.

Q. Is the responsibility of the employer limited to establishing an Internal Committee (IC)?

- A. Besides setting up the IC, the employer also has the following obligations:

Within the organization-

To provide a safe working environment and treat sexual harassment as a misconduct under the service rules and initiate action for the same;

To display at any conspicuous place in the workplace, the penal consequences of sexual harassments and organise workshops

and awareness programmes for sensitising the employees with the provisions of the Act and orientation programmes for the members of the IC.

Include in its annual report the number of cases of sexual harassment filed along with details of their disposal.

In relation to the IC-

- Take action on the recommendation of the IC
- Provide necessary facilities to the IC for dealing with the complaint and conducting an inquiry and also assist in securing the attendance of respondent and witnesses before the IC
- Make available information necessary to the IC for conducting inquiry, etc.

In relation to the aggrieved woman-

- Provide assistance to the aggrieved woman to file a complaint in relation to the offence under the Indian Penal Code
- Where the perpetrator is not an employee, employer should ask for action in the workplace at which the incident of sexual harassment took place.

Q. How is the IC constituted?

- A. The IC should consist of a minimum of four members, at least half of whom are women, and should have the following composition:
- Presiding Officer who must be a senior-level woman employee from within the organization

- At least two employees, preferably those who are committed to the cause of women or who have experience in social work or legal knowledge
- One external member from an NGO or association committed to the cause of women or a person familiar with issues related to sexual harassment.

Q. Can one IC serve all the units and branch offices of a workplace?

- A. The law requires a separate IC to be constituted for every unit where 10 or more persons are employed.

Q. What is the role of the external member in an IC?

- A. The role of the external member is extremely important, to bring values of gender justice and sensitivity to the IC and the proceedings. He/she also ensures that the IC functions independently from the employer and other pressures within the organization.

Q. What are the functions of the IC?

- A. The functions of the IC can be grouped into the following:
- **Conduct inquiry proceedings:** Ascertain the veracity of the complaint made by the aggrieved woman, initiate an inquiry and submit a report within ninety days.
 - **Grant interim relief:** On the request of the aggrieved woman, the IC may recommend to the employer to grant her interim relief, such as transfer her or the respondent to another place of work, grant her leave of upto 3 months in addition to what she is entitled, restrain respondent from reporting on work performance of the aggrieved woman, etc.

- ***Recommend penalties:*** If the IC finds that the respondent has committed sexual harassment, it must recommend penalties/course of action to the employer.
- ***Conciliate:*** Upon the request of the aggrieved woman, the IC can take steps to settle the matter between the aggrieved woman and the respondent. If a settlement is arrived at, the IC has to record the same and forward it to the employer or District Officer for necessary action, and give copies of the settlement to the aggrieved woman and the respondent. It is important to note that monetary compensation cannot be made the basis of conciliation.
- ***Preparation and submission of Annual Report:*** The IC is required to submit an Annual Report to the employer detailing its functioning through the year which includes information on the number of complaints of sexual harassment received, number of complaints disposed of and the nature of action taken by the employer, number of cases pending beyond 90 days. It must also include information on activities undertaken towards prevention and prohibition, such as workshops and awareness programmes.

Q. What is the procedure for submitting the Annual Report by the employer?

- A. The employer must include information on the number of complaints of sexual harassment filed, and details about their disposal in the Annual Report of the organization. This report is different from the Annual Report submitted by the IC.

Q. If the IC finds that the respondent has committed sexual harassment, is it mandatory to terminate or suspend his services?

A. The penalty recommended by the IC and imposed by the employer should comply with the necessary service rules, and be proportionate to the injury caused. Penalties in the nature of apology, fines, payment of compensation, transfer should also be considered.

Q. If the aggrieved woman files a complaint after period of 90 days from the last incident, what should the IC do?

A. The IC should examine the reasons and circumstances that prevented the woman from filing a complaint within the period of 90 days. On being convinced of the reasons, it can extend the period of filing complaint beyond 90 days, recording its reasons in writing.

Q. What does the duty of maintaining confidentiality entail?

A. The IC, employer, and any other person in charge of handling complaints of sexual harassment at the workplace, must not disclose the identity and addresses of the complainant/aggrieved woman, witnesses and respondents to the public, press and media. They must also not disclose any information relating to conciliation and inquiry proceedings, recommendations by the IC, or the action taken by the employer.

After disposal of the complaint, information regarding redress provided may be disseminated without disclosing

the identity, or details revealing the identity of the complainant.

Q. If the aggrieved woman files an FIR with the police, does the IC still have to proceed with the inquiry?

- A. Inquiries by the IC are parallel proceedings that are conducted independent of criminal and civil remedies the aggrieved woman may pursue in court. The objective of the IC inquiry is to ensure that the woman has a safe working environment free from sexual harassment. Only the IC and the employer are empowered to provide this, by way of remedies such as transfers, paid leave, medical treatment etc.

Q. Can the aggrieved woman or respondent appeal against the decision of the IC?

- A. The aggrieved woman, or respondent, can appeal against the recommendations made by the IC or the non-implementation of such recommendations. In such cases, the appeal lies with the Appellate Authority notified under the Industrial Employment (Standing Orders) Act, 1946 or under the service rules as applicable to the concerned respondent.

Q. What is a ‘false complaint’?

- A. A false complaint is one where the aggrieved woman intentionally produces false or misleading documents, information etc. and maliciously makes false allegations against the respondent. It does not refer to allegations that the aggrieved woman is unable to successfully prove.

Where the IC is of the view that a complaint may be false and malicious in nature, it cannot take action. It can only recommend to the employer to initiate separate proceedings where the respondent has to prove that the complaint was a false one. The IC cannot pass strictures against the aggrieved woman in the inquiry proceedings related to sexual harassment, while dismissing the complaint.

Q. What changes should the employer make in the service rules to bring them in compliance with the Act?

- A In order to comply with provisions of the Act, the employer should ensure that the service rules, standing orders or the employment contract treat sexual harassment as ‘misconduct’. Consequences for misconduct such as deduction of wages, or termination of employment, and other measures mentioned in the Employment Rules, should also be specified. These changes are important in order to avoid dual proceedings within the same organization for the same complaint.

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