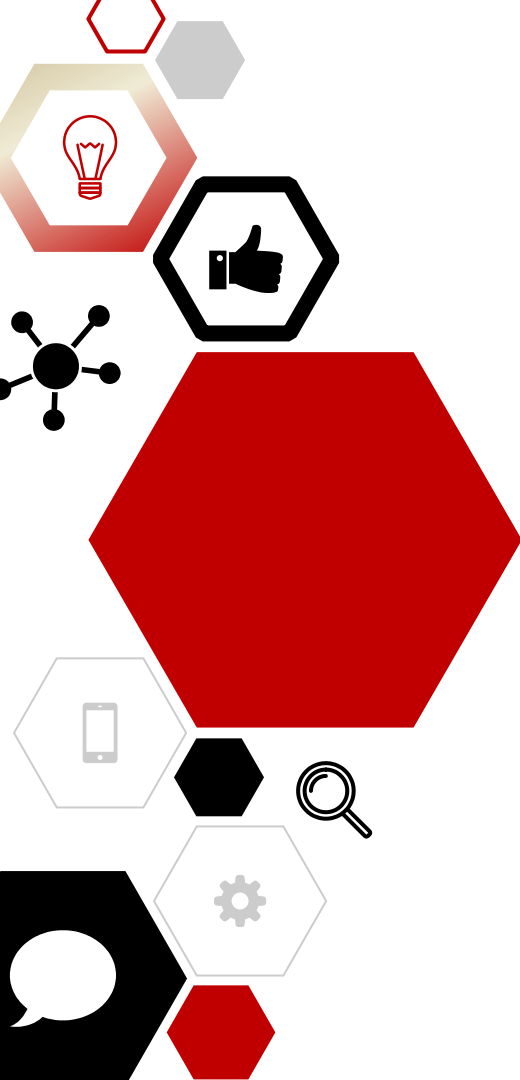


06 February 2020

Workshop on Prohibition, Prevention and Redressal of Sexual Harassment at Workplace

By: -Thinking Legal





Disclaimer

This Presentation is intended to provide general overview of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the rules thereunder. The Information contained herein does not constitute legal advice. To deal with the specific situations, please consult your appropriate advisor. The answers to the situations in the presentation contain our views; the Internal Complaints Committee, and the Court may have a different view on it.





Structure of the Presentation

Phase I

- Introduction
- Vishaka Guidelines of 1997

Phase II

- Definitions under POSH Act
- Sexual Harassment
- Workplace

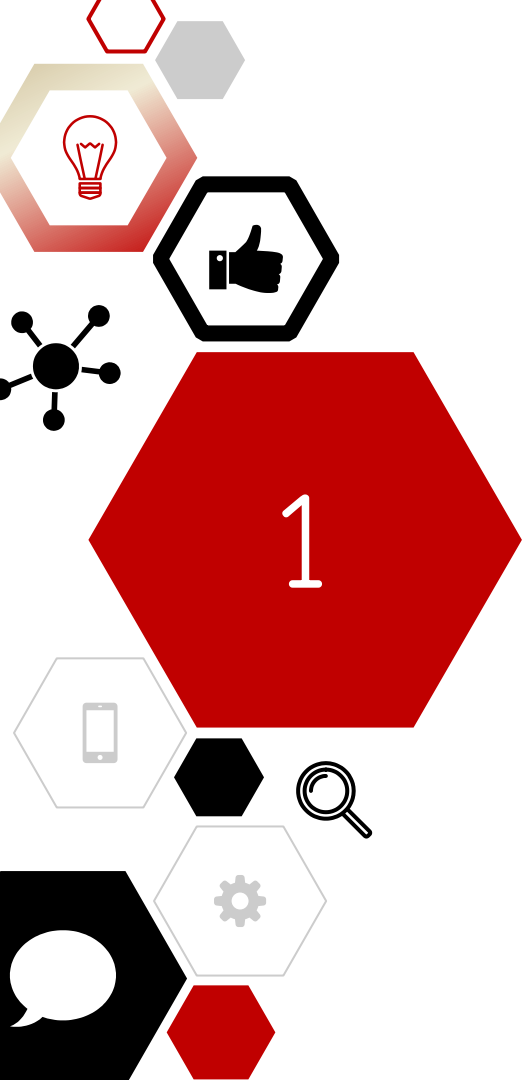
Phase III

- Key Obligations of Employer
- Procedure for complaint and redressal under IPC
- Procedure for complaint and redressal under POSH Act

Phase IV

- 10 ways to know your office is safe





Introduction

Vishaka v. State of Rajasthan (“**Vishaka Guidelines**”), decided by Supreme Court on 13th August 1997 [AIR 1997 SC 3011].

Facts in Brief

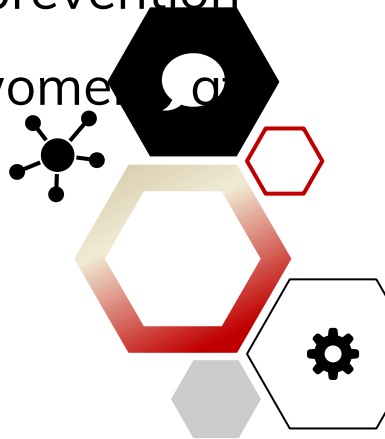
- A Rajasthan Government female employee was brutally gang raped at her workplace.
- A writ petition seeking redressal for sexual harassment at workplace was filed in the Supreme Court of India.
- The Supreme Court used the opportunity to address the lacunae in law which left women workers in the country without any remedy when sexually harassed at workplace.





The Vishaka Guidelines

The Court acknowledged that sexual harassment at workplace violates fundamental right of women to choose any trade, profession or business of their choice. It laid down “**Vishaka Guidelines**” for prohibition, prevention and redressal of sexual harassment of women at workplace.

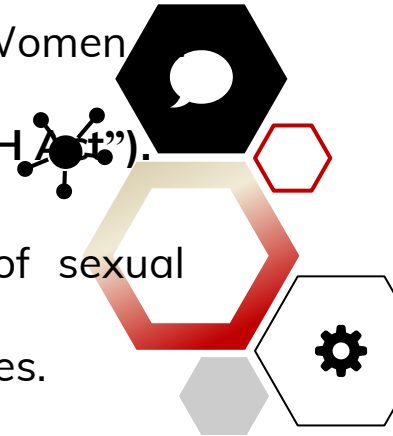


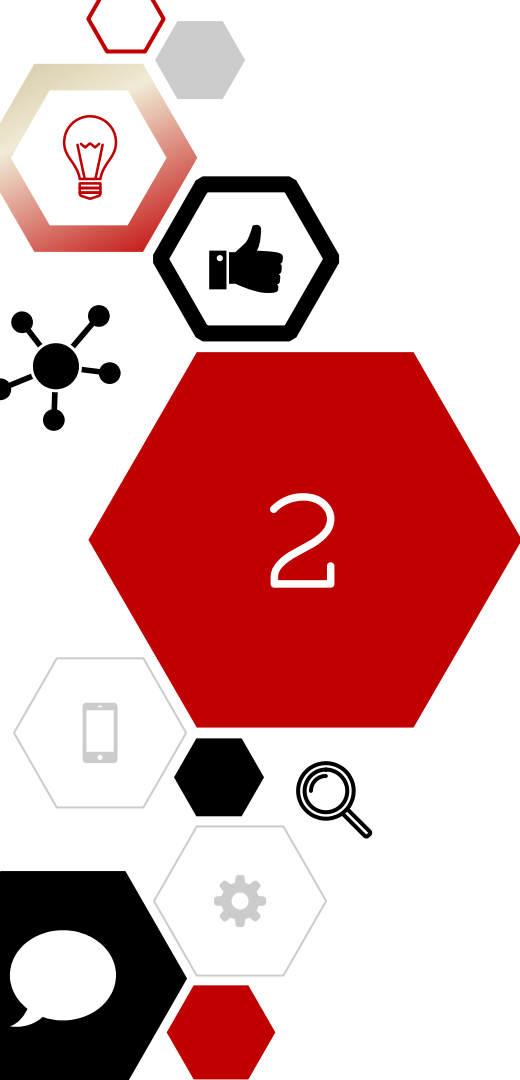
The Vishaka Guidelines

- ◇ Provides for constitution of complaints committee.
- ◇ Provides for mechanism for filing the complaint.
- ◇ Provides for duties of an employer and other related persons. and other related aspects of sexual harassment.

◇ These guidelines were replaced by The Sexual Harassment of Women Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”).

◇ The POSH Act, 2013 has incorporated the same definition of sexual harassment and the procedure as laid down in the Vishaka Guidelines.





Understanding the Law

The Sexual Harassment of Women at Workplace (**Prevention, Prohibition and Redressal**) Act, 2013 (“POSH Act”) read with Indian Penal Code (“IPC”).

The POSH Act

The POSH Act has been enacted with the objective:

- of preventing and protecting women against workplace sexual harassment.
- to ensure effective redressal of complaints of sexual harassment.

It clearly states that no woman shall be subjected to *'sexual harassment at any workplace'*.





Key Definitions under POSH



Sexual Harassment

If any of the following elements is present in relation any act or behaviour of '**sexual harassment**', it may amount to sexual harassment at workplace:

- ◇ An implied or explicit promise of preferential treatment in the employment;
- ◇ An implied or explicit threat of detrimental treatment in the employment;
- ◇ An implied or explicit threat about present or future employment status;
- ◇ Interference with work or creating an intimidating or hostile environment;
- ◇ Humiliating treatment, likely to affect health or safety.



Act of Sexual Harassment

'**Sexual Harassment**' would be any one or more of the following **unwelcome** acts or behaviour, **directly or by implication**:

- ◇ Physical contact and advances;
- ◇ A demand or request for sexual favours;
- ◇ Making sexually coloured remarks;
- ◇ Showing pornography;
- ◇ Unwelcome physical, verbal or non-verbal conduct of sexual nature;




Situation-1

- Ms. B, a junior colleague, was asked to organize an event for the training of the employees.
- Mr. A, as the team leader submitted his report of the training programme blaming Ms. B's incompetency for the failure of the event.
- Ms. B felt really embarrassed and filed a complaint for Sexual Harassment against Mr. A alleging that the report was only to harass her.

Question: Will the use of such harsh language be constituted as sexual harassment because it is directed towards a junior female colleague?



Workplace

- 
- ◆ Includes any Private Organization such as your organization and
 - ◆ Any other place visited arising out of or during the course of employment.

A workplace could be any place where a working or professional relationship exists. Some of the basic examples of a professional relationship are:

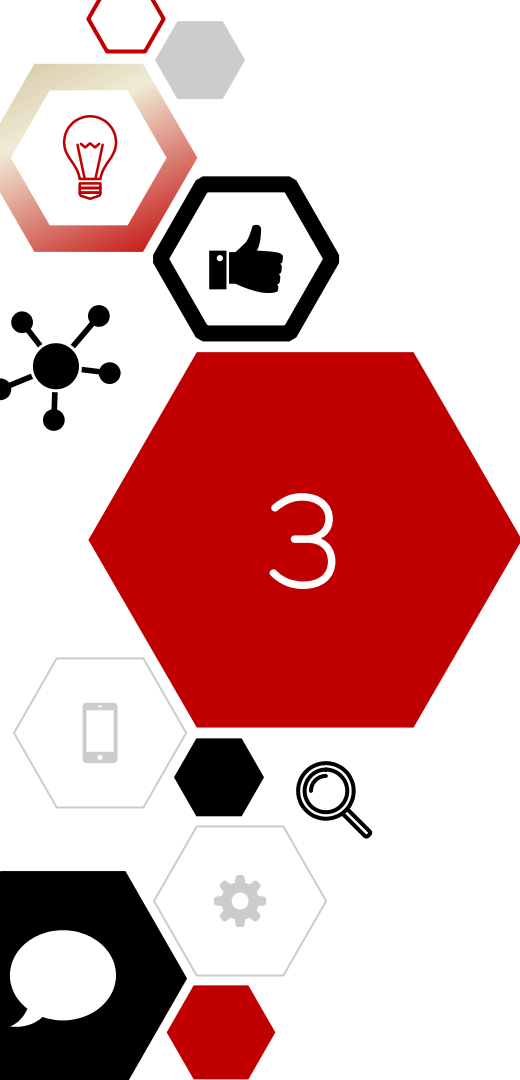
- colleagues-peers,
- employee-employer,
- team leader-team members.

Situation -2

- Ms. B is a new employee in the organization. She shared her contact information with her colleagues.
- Mr. A , who was a member of Ms. B's team and they kept trying to initiate conversation with Ms. B over social networking applications and texts after office hours.
- Mr. A also started cracking obscene jokes and memes to Ms. B.
- Ms. B filed a complaint of sexual harassment against Mr. A.

Question: Does the conduct of Mr. A amount to sexual harassment at workplace?





Obligations of Employer and Redressal Mechanism

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

Key Obligations of an Employer

The Act provides certain key obligation on the employer:

- Promote a **gender sensitivity at workplace**.
- Remove the factors creating a hostile working environment.
- Provide a **safe working environment**.
- Formulate and widely disseminate an **internal policy** for prohibition, prevention and redressal of sexual harassment at workplace.
- **Display conspicuously** at the workplace, the penal consequences of indulging in acts that may constitutive sexual harassment.
- **Declare the names and contact details** of all the members of the Internal Committee.



Key Obligations of an Employer



- Organize workshop and awareness programmes.
- **Provide assistance** to the woman if she so chooses to file a complaint.
- Treat sexual harassment as a misconduct under the service rules and initiate action for misconduct.
- Monitor the **timely submission of reports** by the Internal Committee.
- Publish the statistics of the complaints under the POSH Act in the Annual Report of the Company.

Key Obligations of an Employer

An extract from the 2017-2018 Annual Report of Tata Steel

15. Disclosure as per The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

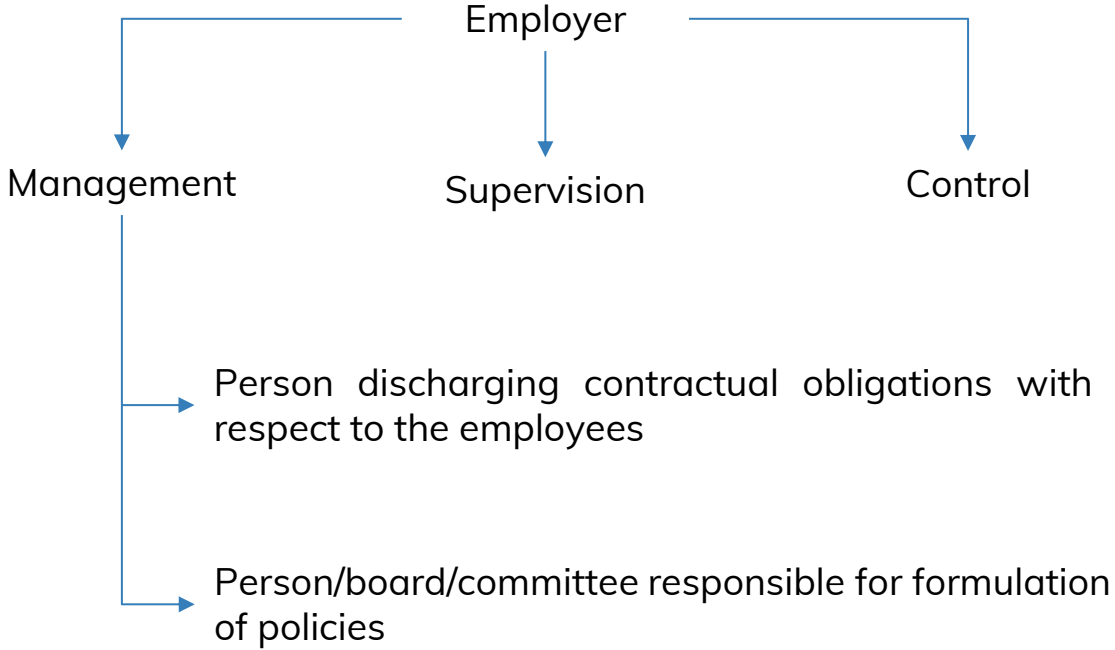
The Company has zero tolerance towards sexual harassment at the workplace and has adopted a policy on prevention, prohibition and redressal of sexual harassment at workplace in line with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the Rules thereunder.

During the year, the Company received 24 complaints of sexual harassment, out of which 16 complaints have been resolved by taking appropriate actions. The remaining 8 complaints are under investigation.





Employer



Consequences under POSH Act

The punishment prescribed in the POSH act are as follows:

- ◆ Punishment prescribed under the service rules of the organization.
- ◆ Punishment like withholding of promotion, increments, etc. The committee can also decide to terminate the employment.
- ◆ Punishment could also be deduction of compensation payable to the aggrieved woman from the wages of the respondent.
- ◆ In case if the false or malicious complaint is filed, the Committee can take disciplinary action against them.





Indian Penal Code



Indian Penal Code

Outraging the modesty of woman [354]:

- An Assault or use of criminal force to any woman.
- Intending to outrage or knowing it to be likely to outrage the modesty.

Punishable with an imprisonment for a term extending to **five years** and shall also be liable for **fine**.

Sexual Harassment by Man [354A]: Sexual Harassment is defined as:

- Physical contact and advances;
- Demand or request for sexual favours;
- Showing pornography against the will of a woman;
- Making sexually coloured remarks.

Punishable with a punishment of an rigorous imprisonment for a term of **three years** and shall also be liable for **fine**.



Indian Penal Code

Stalking [354D]:

- Following a woman and contacting or attempting to contact such woman despite a clear indication of disinterest, or
- Monitors the use by a woman of internet, email or any other form of electronic communication.
- Such actions or behaviour shall be punishable with an imprisonment for a term upto **three years** and shall also be liable for **fine**.

Insulting the modesty of a woman [509]:

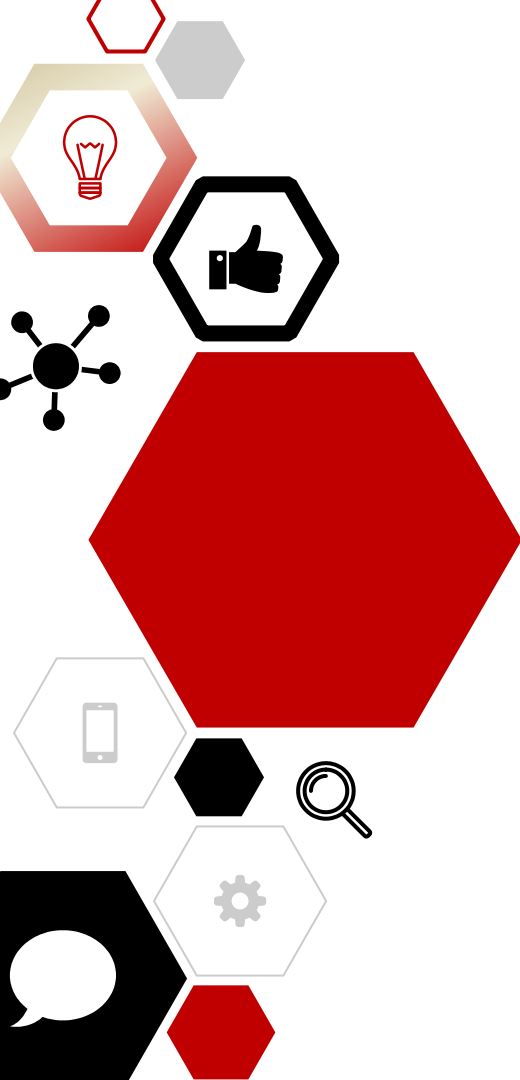
- Any action including sounds, gestures, exhibiting any object with an intent to insult her modesty.
- Such action or behaviour is a punishable offence with a simple imprisonment upto **three years** and shall also be liable for **fine**.



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Situation- 3

- Ms. B, a govt. officer and wife of another govt. officer, Mr. C arrived at a dinner party thrown by a colleague. Mr. A, another senior govt. officer was also present in the party.
- Mr. A, after getting drunk came very close to Ms. B and asked her to sit with her as he wanted to talk about something. Mr. A kept pulling her closer to him. She returned to her seat after seeing the behaviour.
- After a while, Mr. A came back to her and asked her to come with him. When Ms. B refused Mr. A slapped her posterior.
- **Question:** Does conduct of Mr. A amount to sexual harassment?



Procedure for Complaint and Redressal

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

Complaint

Who can file: The aggrieved woman may make the complaint in writing to the concerned committee within the period of three months.

In case the aggrieved woman is not able to make the complaint herself due to **physical incapacity**, any of following may file a complaint:

- Her relative or friend;
- Her co-worker;
- An office of the National Commission for Women or State Women's Commissions;
- Any person who has knowledge of the incident, with the written consent of the aggrieved woman;



Complaint

In case the aggrieved woman is not able to make the complaint herself due to **mental incapacity**, any of following may file a complaint:

- Her relative or friend;
- A special educator;
- A qualified psychiatrist or psychologist;
- The guardian or authority under whose care she is receiving treatment or care;
- Any person who has knowledge of the incident jointly with any of the above.

In case the aggrieved woman is not able to make the complaint herself due to **any other reasons**, a complaint may be filed by any person who has knowledge of the incident, with her written consent.



Situation- 4



- During the training, Mr A, Ms. B and Ms. C started talking and Mr. A helped Ms. B and Ms. C in getting a job in his office.
- Mr. A asked Ms. B out for dinner a few times and she agreed. However, due to increase in work load, Ms. B refused to go to dinner with Mr. A.
- At this Mr. A insisted that Ms. B go out for dinner with him as she 'owed it to him'. Ms. B then told Mr. A that from then on their relationship was to be strictly professional.
- However, Mr. A kept calling her and sending her emails. Therefore, she started taking time off from work to avoid him.
- On seeing this, Ms. C filed a complaint of sexual harassment against Mr. A stating that Mr. A is creating a hostile environment for Ms. B.



Question 1: Is Ms. C allowed to file a complaint on behalf of Ms. B who is the aggrieved woman in the case?

Question 2: Does the conduct of Mr. A amount to Sexual Harassment?

Confidentiality

The Act prohibits any dissemination of any information in :

- Contents of the complaint
- The identity and address of the complainant, respondent, witness.
- Any information relating to the inquiry proceedings, recommendations of the Committee and the Action taken by the management to the public, press or media in any manner.

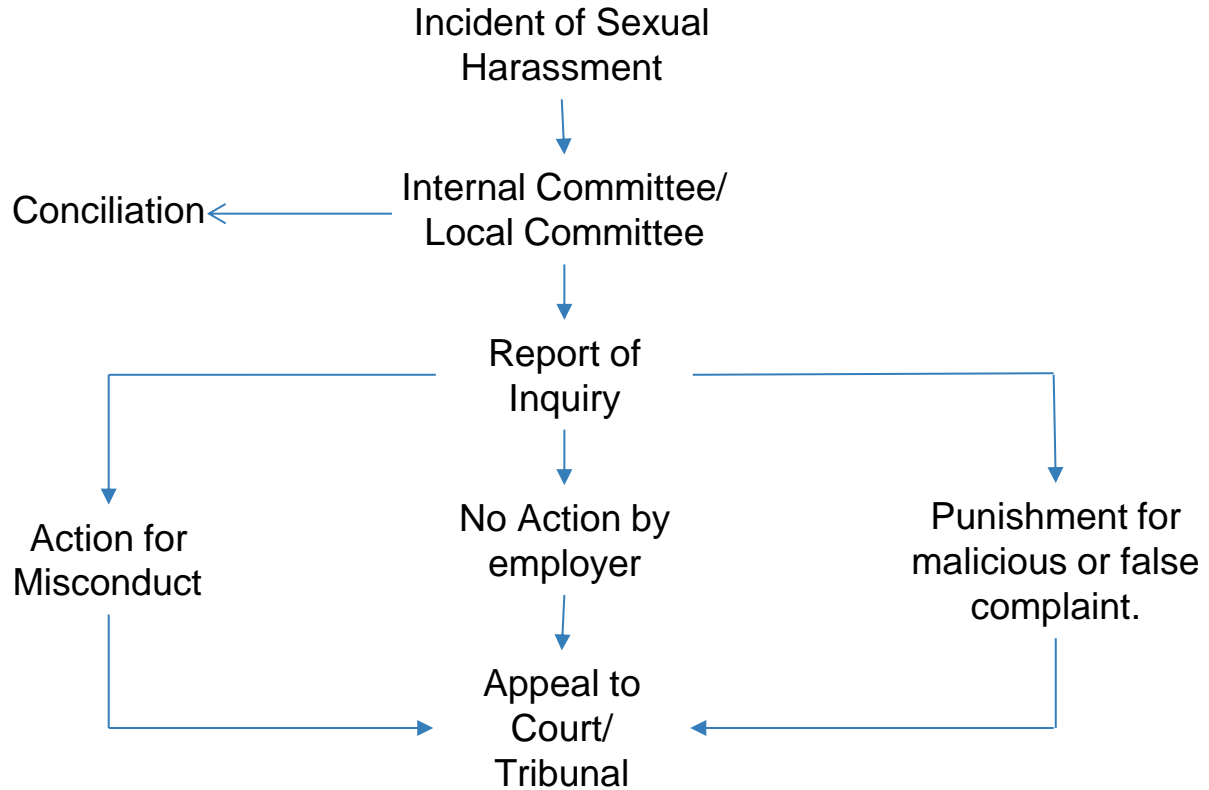


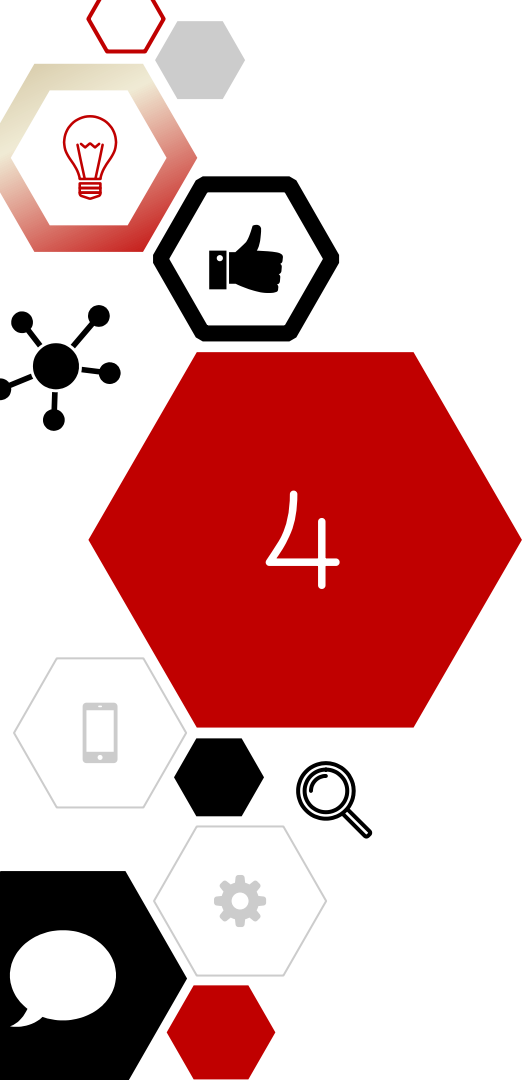
Internal Committee

- Every Employer is required to set up an 'Internal Committee' at **each office or branch**, of an organization which are employing 10 or more employees.
- The presiding officer shall be a woman employed at a senior level at the workplace, while a minimum of 3 members including the presiding officer are to be present for conducting the inquiry.
- Not less than two members- committed to cause of women, involved in social work and have legal knowledge.
- One member- from NGO or committed to cause of women or familiar with the sexual harassment issues.



The Procedure





The Policy

The Prevention of Sexual Harassment Policy

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10 ways to know your office is safe: –

- Has anti sexual harassment policy.
- The policy is easily accessible and periodically updated.
- Sexual harassment is a misconduct under service rules.
- A functional redressal committee for redressal of complaint is in place.
- The Presiding Officer of the Internal Complaint Committee is a senior female employee.
- At least half the committee members are women. Men and other genders are also represented on the committee.

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10 ways to know your office is safe: –

- There is third party representative on the committee.
- Adequate information on internal committee members, its role and redressal procedures is displayed prominently.
- All complaints are accepted in writing and if someone is unable to do so, the committee members help them write.
- Conducts regular workshops and trainings to raise awareness against sexual harassment at workplace.



Thanks!

Any questions?

You can reach us at:

- ◇ admin@thinkinglegal.in
- ◇ +91-11-40193960

