

I. Objective

The occurrence of sexual harassment in the workplace, any reference to sexism, gender stereotyping or gender based discrimination and need for healthy, safe environment for all workers including women has been taken note of and the Hon'ble Supreme Court has laid down guidelines for its prevention and deterrence in 1997. Whereas the sexual harassment results in violation of fundamental rights of a women to equality under Article 14 and 15 of the Constitution of India ("Constitution") and right to life and live with dignity under Article 21 of the Constitution and her right to practice any profession or to carry on any occupation, trade or business which includes right to safe working environment. The protection against sexual harassment and right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination Against Women ("Convention"), which has been ratified on 25th June, 1993 by the Government of India. Based on the guidelines framed by the Hon'ble Supreme court of India in Vishaka versus State of Rajasthan and the statute ratified vide Convention, the Government of India, Ministry of Law and Justice has constituted the "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act") and made it effective from December 09, 2013.

In deference to the aforesaid guidelines, DPU is committed to providing and promoting a safe, healthy and congenial atmosphere irrespective of gender, caste, creed or social class of the employees. DPU in its endeavour to provide a safe and healthy work environment for all its employees has developed a policy to ensure zero tolerance towards verbal, physical, psychological conduct of a sexual nature by any employee or stakeholder that directly or indirectly harasses, disrupts or interferes with another's work performance or creates an intimidating, offensive or hostile environment such that each employee can realize his / her maximum potential.

This policy is meant to sensitize the employees about their fundamental right to have safe and healthy environment at their workplace and what conduct constitutes sexual harassment, the ways and means which we are adopting to prevent occurrence of any such event, and in the chance of an occurrence, to enable a fair mechanism for dealing with such conduct DPU has constituted an **Internal Complaint Committee ("ICC")** of DPU Infrastructure be referred to as the "Committee".

II. Scope

The Prevention of Sexual Harassment Policy is applicable: -

- a) To all consultants and employees of DPU Infrastructure Finance Limited and DPU Equipment Finance Limited, which as per section 2 (f) of the Act, means any person who has been employed as regular, temporary, ad hoc or on daily wages basis either directly / through an agent / contractor (with/ without the knowledge of the principal employer, with or without remuneration / voluntary under express / implied terms of employment and shall include contract worker / probationer / apprentice / Executive Trainees / Management Trainees, etc. hereinafter defined as “Employees /Consultants”
- b) To employers, which as per section 2 (f) of the Act, shall mean any person authorized / designated to be the employer within the means of the Act by DPU.
- c) On office premises and all areas which can be termed as notional extension of employer’s premises. It also includes 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. The incident is covered during / after office hours.
- d) All the visitors & vendors associated with us & visiting any premises of the company, or whose premises our employees visit during the course of business. The ICC is required to enquire all Complaint made under the provisions of the Act and as per this Policy / guideline in just and fair manner and submit their report to the respective Employer (s), as the case may be. It is pertinent to mention that the Employer only has the right to punish any accused hereunder and ICC is an advisory body to meet the ends of justice. Any act of sexual behavior is included if such an act is perceived to be detrimental to a healthy and congenial work environment. This act is only applicable when both or either the alleged harasser i.e the Respondent (defined hereinafter) & a Person who has been subject to Sexual Harassment i.e the Complainant (defined hereinafter) are employees / consultants of the company. In the event any employee experiences any act of sexual harassment at any place other than its workplace and / or extended workplace, the Employer is obligated to provide all the assistance, support and help to the said employee for redressal of his / her Complaint.

III. Guidelines

It is mandatory on all employees / consultants to follow this policy and the guidelines formulated herein. Sexual Harassment at the work place will be deemed to be a violation/breach of terms of employment, and a criminal offence in addition to violation of gender equality guaranteed under the constitution.

IV. Definition of Sexual Harassment

For the purpose of this Policy, Sexual Harassment shall include:

1. Any form of verbal or physical behaviour which is unsolicited and unwelcome and interferes with an individual's work performance by creating an intimidating/insecure working environment.
Unwelcome sexually determined behaviour (whether directly or by implication) in any form, such as:
 - a) Physical contacts and advances;
 - b) A demand or a request for sexual favours;
 - c) Sexually coloured remarks;
 - d) Showing pornography;
 - e) Any other unwelcome physical, verbal/non-verbal conduct of sexual nature.
2. Where any of these acts is committed in circumstances where the Complainant has a reasonable apprehension that in relation to the Complainant's employment or work whether drawing salary, or honorarium or voluntary, whether in public or private enterprise such conducts can be humiliating and may constitute a health and safety problem. This list is illustrative and not exhaustive and applicable irrespective of gender.

3. Definitions for reference:

Complainant: can be a Person who has been subject to Sexual Harassment and / or any Person reporting an incident of Sexual Harassment. A third party can also be a Complainant, however, a written Complaint from the Person who has been subject to Sexual Harassment is mandatory to be filed with the ICC as the case may be.

Respondent: The person who is alleged / reported to have committed an act of Sexual Harassment.

V. Preventive Measures

1. Each of the Committees will meet regularly. Minutes of the Meeting (“MoM”) of the same will be prepared and submitted on quarterly basis / as decided by the Committee to the Employer. The quorum for the meeting of the Committee would constitute of at least three members present in person or at least fifty percent of the total members of Committee whichever is higher.
2. At the end of every calendar Year an annual report containing all the details like number of Complaints filed, the stage of each Complaint and number of Complaints redressed will be prepared and furnished by the respective Employer, should be reported in their annual report.
3. Sensitization programmes / workshops would be organized, meetings would be convened for all employees as well as special meetings to be conducted with only the women employees by the ICC on a regular basis in order to do the following:
 - a) To sensitize employees about their right to have safe and healthy work environment
 - b) To spread awareness about same either by way of publication, advertisement or by convening meetings
 - c) To discuss with women employees on general issues involving challenges faced by them at work place, if any and workshops on various aspects of the Act
 - d) Increase awareness amongst employees and overcome the hesitation and discomfort in discussing issues involving Sexual Harassment at work place by convening meetings so that employees can come up in open and share their views and ideas;
 - e) The Committee would also assist Complainants if required to file a Complaint
4. Introduce a system to record names of employees who have to stay late (beyond 8PM) in office with reasons. Security on duty need to visit the work places every half an hour post 8 PM.
5. Maintain records of all sexual harassment cases and findings
6. Display penal provisions of sexual harassment

VI. Reporting of Sexual Harassment Complaints

Any aggrieved person who feels / presumes that he / she has been subject to sexual harassment by a person, including a supervisor, manager, employee of other organisation or vendor by way of any action or words should immediately report or complain the incident to the ICC as set forth below as the case may be or to any member of ICC within three months from the date of occurrence of the said incident and in case of a series of incidents within a period of three months from the date of the last incident. Delay in reporting makes it more difficult to establish the facts of a case and may contribute to the repetition of offensive behavior. If a Complaint cannot be made in writing, any member of the ICC as the case may be shall render all reasonable assistance to the aggrieved person for making the Complaint in writing.

VII. Confidentiality

The company will do everything consistent with enforcement of this policy and with the law to protect the privacy of the individuals involved and to ensure that the Complainant and the Respondent are treated fairly. Information about individual Complaints and their disposition is considered confidential and will be shared only on a “need to know” basis. However, the ICC members and / or Employer shall not be held responsible under present confidentiality clause in the event the Complaint is filed by a third party and / or material facts with regard to Complaint are already known to other persons / individuals.

Further, once the Complaint is redressed by the ICC, as the case may be the Employee should share the information with all employees with regard to the filing, redressal and disposal of the Complaint in a fair and timely manner without disclosing name of the Complainant and Respondent.

VIII. Assurance against Retaliation

This policy seeks to encourage all employees to express freely, responsibly, and in an orderly way opinions and feelings about any problem or Complaint of sexual harassment. Retaliation against persons who report or provide information about sexual harassment or behaviour that might constitute sexual harassment is also strictly prohibited. Any act of reprisal, including internal interference, coercion, and restraint, by an employee, violates this policy and will result in appropriate disciplinary actions. Such disciplinary action will be proposed by the Committee as per the provisions of the Act and as per this Policy / guideline and on the recommendation of the respective Committee the Employer, as the case may be would ensure implementation of same.

IX. Complaint Reporting Channel

Internal Complaints Committee (“ICC”)

Composition: As per the Scheduled hereunder:

1. A Complaint should be made in writing.
2. Each member of the Committee will hold office for not more than three years.
3. ICC Committee is mandatorily required to involve an external member (a senior member of an NGO or other body who is familiar with the issues of sexual harassment) during the enquiry of Complaint(s) and formalization of the Report in connection therewith. Provided one-half of the total member so nominated shall be women.
4. In the ICC not less than two members from amongst employees preferably committed to cause of women or who have had experience in social work or have legal knowledge.

X. Complaint Mechanism

1. A Person who has been subject to Sexual Harassment may make in writing a Complaint of sexual harassment at workplace to the Committee within a period of three months from the date of incidence and in case of series of incidences within a period of three months from the date of last incidence. Provided that where such Complaint cannot be made in writing, the presiding Chairperson or any member of the ICC or the chairperson shall render all reasonable assistance to the Complainant for making the Complaint in writing.
2. If the Committee is satisfied that the circumstances were such that prevented the Complainant from filling the Complaint within said period they can extend the time limit not exceeding three months.
3. The Complainant is required to send the written Complaint to the ICC either by way of copies of the letter detailing Complaint. The Complainant may also email the Complaint to a Committee member. The Complaint may be made in the format provided in Schedule B, herein or in such manner containing all the information as provided in Schedule B.

4. It is pertinent to mention that the written Complaint is mandatorily required to be filed by the Complainant with full name and details for seeking any action under this Policy and / or the Act. Any anonymous Complaint shall not be entertained.
5. Where the Complainant is unable to file the Complaint of their own, their legal heirs or parents, spouse, children or sibling can file the Complaint.
6. A third party can also be a Complainant however, a written Complaint from the Person who has been subject to Sexual Harassment is mandatory to be filed with the ICC as the case may be.
7. Both written / emailed Complaint must provide the details of the incident together with the name/s of the Respondent/s and the Complainant/s as available.

Conciliation and Settlement

Before initiating an inquiry, the ICC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1))

XI. Enquiry Procedure

1. A timely enquiry of Complaints of sexual harassment is of utmost importance. Normally, the enquiry shall be concluded and acted upon at the earliest from the date of the Complaint being made in writing.
2. The ICC, as the case may be will conduct an enquiry and provide an opportunity to the Complainant as well as the Respondent to represent their case and explanations/ reasoning thereto.
3. In the event any Complaint is received, the following procedure shall be followed by the ICC:
 - a) An enquiry is initiated through the members of ICC, as the case may be as advised by the Chairperson at the earliest after receiving the Complaint in writing / email.

- b) The enquiry seeking detailed information / explanation/ reasoning will be conducted with the Complainant as well as Respondent independently by the ICC.
- c) The enquiry proceedings convened by ICC should always be minuted and / or video recorded and same to be saved and maintained for records by the ICC as the case may be. The proceedings of the enquiry (while the witness makes his/ her submission) should be recorded on camera.
- d) On submission of report the ICC shall consider the report at the earliest and, on being satisfied for the need, may order full enquiry into the Complaint.
- e) It is important to mention herein that the ICC on receipt of any Complaint from the Complainant should upfront seek his / her expectation from the ICC with regard to Complaint and the ICC should also brief the Complainant about the option of conciliation available to him / her with the Respondent, if so desired by the Complainant. However, once the enquiry is initiated the option of conciliation cease to exist.
- f) The ICC will study the findings and shall then proceed to deal with the Complaint in accordance with the Policy and the Act and redress the Complaint within ninety (90) days from the date of receipt of the Complaint and accordingly submit its detailed finding and advise in connection with the Complaint to the respective Employer, as the case may be.
- g) However, the ICC may close the enquiry and / or is not required to initiate same in the event the Complainant fails to appear before the ICC and / or fails to revert to the query(s) raised by the ICC for three consecutive events. The ICC shall record the reasons for closure of the Complaint accordingly. Further, in the event the Respondent deliberately avoids his / her appearance before the ICC, the employer or any person so appointed by the employer should direct / instruct the Respondent to appear before the ICC.
- h) Thereafter, the ICC will present the decision including handover of all the collected material i.e. the duly signed statement of the Complainant, Respondent, witnesses, involved parties and material objects if any along with recommendation to the HR head of respective business.
- i) In the event that there are no eyewitnesses, the ICC may have to resolve a sexual harassment claim based on the credibility of the

parties. Circumstantial evidence also would play important role during the decision making process by the Committee.

- j) The employer may seek clarification from the ICC on the recommendation and will implement the same.
- k) The final decision shall be communicated to the Complainant and the Respondent.
- l) An enquiry in connection with any Complaint may be initiated / continued irrespective of the fact that police proceeding has also been initiated in connection with the said Complaint.

XII. Procedure of Submission

The enquiry Committee / Member/s of the Committee should be prepared to deal with the Complainant's embarrassment and anger by patiently, but firmly, explaining the detail and documentation that are needed for an accurate enquiry.

1. The Complainant should be interviewed first, to ensure that all important details and witnesses are identified promptly and if any material object is provided the same should be received, numbered and preserved.
2. It is important for the ICC to be objective and non-judgmental and allow the Respondent to respond to each allegation. The ICC should inform the Respondent of the type of disciplinary action that may be taken if the Complaints are found to be true.
3. Both parties should be told to avoid contact with one another, and ways to minimize contact should be implemented.
4. In the event the Complainant has filed a Complaint against his / her reporting manager or any person placed high on hierarchy then during the course of enquiry the Complainant may:
 - a) Either seek a transfer;
 - OR
 - b) Take leave from employment for a maximum period of 3 months.
5. The Complainant should report any further incidents of harassment or retaliation during the continuance of enquiry.

6. Witnesses should be told as little as possible about the details of the Complaint in order to maintain confidentiality under the Policy.

XIII. Criminal Proceedings

1. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the respective Employer (as the case may be) based on the findings and advice of the ICC may initiate appropriate action in accordance with law by making a Complaint with the appropriate authorities. Detailed list of penal section involving sexual harassment is provided in Schedule C, herein.
2. The ICC would provide assistance to the aggrieved if they chose to file Complaint under the Indian Penal Code.
3. The ICC would ensure that Complainants or witnesses are not victimized or discriminated against while dealing with Complaints of sexual harassment.

XIV. Mala Fide Complaints

1. If the enquiry reveals that the Complaint is unjustified or Complainant had raised the concern with ulterior motives, Employer or any person duly authorized by the Employer will counsel the Complainant and recommend suitable action to prevent recurrence.
2. However, the Employer or any person duly authorized by the Employer will ensure that the Complainant is not victimized.
3. Requisite penal actions, as mentioned in Schedule C may be invoked against Mala Fide Complainant.

XV. Professional Consequences of Violation of the Policy

1. Any employee, supervisor or manager who is found to have violated the harassment policy (whether sexually harassing another employee of opposite sex or the same sex or if any person falsely accuses another person of sexual harassment) shall be subject to appropriate disciplinary action.
2. In the event any criminal proceedings are initiated the matter may be referred to Group Head Legal or such other person as may be authorized by the Employer.

3. The organization shall not tolerate any form of retaliation against employees for bringing bonafide Complaints or providing information about harassment.
4. However, as per the findings of the enquiry of a Complaint it is found out that the Complaint was false or was made with a mala fide intent, the Complainant may be subject to disciplinary actions, up to and including termination.
5. If any act of sexual harassment occurs as a result of an act or omission by any third party or outsider, the respective Employer will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

XVI. Conclusion

At DPU, we endeavor to provide conducive and healthy work environment where the relationship amongst the employees as well as with the Employer are cordial and supporting in all aspects, so that each employee shall have an enriching experience. The objective of this policy is to ensure our employees that DPU is determined to provide them excellent, comfortable, safe and healthy work environment, so that they can come out with their best in all facets.

*** Notwithstanding anything contained in this Policy, the Schedules herein shall be an integral part of this Policy.**

CODE OF CONDUCT FOR WORK PLACE*

Sexual harassment is a serious criminal offense which can destroy human dignity and freedom. In an effort to promote the well being of all woman employees at the work place the following code of conduct has been prescribed :-

1. It shall be duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.
2. Sexual harassment will include such unwelcome sexually determined behaviour by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as :-
 - (i) Eve-teasing
 - (ii) Unsavoury remarks
 - (iii) Jokes causing or likely to cause awkwardness or embarrassment
 - (iv) Innuendos and taunts
 - (v) Gender based insults or sexist remarks
 - (vi) Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls) and the like
 - (vii) Touching or brusing against any part of the body and the like
 - (viii) Displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings.
 - (ix) Forcible physical touch or molestation
 - (x) Physical confinement against one's will and any other act likely to violate one privacy

and includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to person belonging to the other sex, only on the ground of sex.

* in accordance with the Supreme Court Judgement on " Sexual Harassment of Women at Workplace in Vishaka & other Vs. State of Rajasthan & others (AIR 1997 SC 3011)

Explanation :- Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

1. It can be humiliating and may constitute a health and safety problem, or
2. It is discriminatory, as for instance, when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or study, including or promotion or advancement or when it creates a hostile environment, or
3. It would result in adverse consequences if she does not consent to the conduct or raises any objection, it shall be deemed to be sexual harassment.

3. **Eve-Teasing :-**

Eve-teasing will include any person willfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner in the work place. It will also include any word, gesture or act intended to insult the modesty of a woman by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such women or intrudes upon the privacy of a woman employee.

4. Sexual harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her in a manner which prevents or impairs the employee's full utilisation of employment benefits or opportunities . It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment.
5. It shall be the duty of the employer to prevent or deter the committing of any act of sexual harassment at the work place.
6. All employers should take appropriate steps to prevent sexual harassment of any nature. Express prohibition of sexual harassment should be notified at the

work place and also published for the general information of the employees and evaluated in an appropriate manner periodically.

7. Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards women at the work place and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment in that organisation.
8. Women employees should not be treated as sex objects.
9. No male employee shall outrage or insult the modesty of a female employee at the work place.
10. No male employee shall make any type of sexual advances to woman colleagues or woman subordinates.
11. The head of the organisation shall constitute a Complaints Committee as specified in the Judgement of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members should be women. Further to prevent the possibility of any undue pressure or influence from senior levels such Complaints Committee should involve a third party either a non-government organisation or other body who is familiar with the issue of sexual harassment.
12. **Conducting enquiry by the Complaints Committee :-**
 - (i) Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
 - (ii) The complaint shall contain all the material and relevant details concerning the alleged sexual harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee.
 - (iii) If the complainant feels that she cannot disclose her identity for any particular reason the complainant shall address the complaint to the head of the organisation and hand over the same in person or in a sealed cover. Upon receipt of such complaint the head of the organisation shall

retain the original complaint with himself and send to the Complaints Committee a gist of the complaint containing all material and relevant details other than the name of the complainant and other details which might disclose the identity of the complainant.

13. The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.
14. The Complaints Committee shall after examination of the complaint submit its recommendations to the head of the organisation recommending the penalty to be imposed.
15. The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.
16. The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

17. **Disciplinary Action :**

Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

18. **Worker's Initiative :**

Employees should be allowed to raise issues of sexual harassment at worker's meeting and in other appropriate fora and it should be affirmatively discussed in periodical employer-employee meetings.

19. **Third Party harassment :**

Where sexual harassment occurs as a result of an act or omission by any third party or outsider the employer and the persons incharge shall take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

The sexual harassment of women at workplace (prevention, prohibition and redressal) Act, 2013

Preamble and background

Object behind the act: "No woman shall be subjected to sexual harassment at any workplace" (clause 3.1)

Introduction:

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Background and provisions

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in *Vishaka v. State of Rajasthan* (1997). Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. *Vishaka v. State of Rajasthan* established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to **Rs.50,000/-**.

Major Features

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.
- While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.^[16]
- The Committee is required to complete the inquiry within a time period of **90 days**. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within **60 days**.

- Every employer is required to constitute an **Internal Complaints Committee** at each office or branch with 10 or more employees. The District Officer is required to constitute a **Local Complaints Committee** at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000/-. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business.

Penal Code:

Main article:

Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.

For the False complaint: The burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted.

Briefing:

- Sexual harassment in workplace is a serious irritating factor that renders women's involvement in works unsafe and affects right to work with dignity.
- It is unwelcome verbal, visual or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment. Generally sexual harassment is a sexually oriented conduct that may endanger the victim's job, negatively affect the victim's job performance or undermine the victim's personal dignity.
- It may manifest itself physically or psychologically. Its milder and subtle forms may imply verbal innuendo, inappropriate affectionate gestures or propositions for dates and sexual favours. However it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.
- To fit in the concept of sexual harassment the relevant conduct must be unwelcome. That is unwelcome to the recipient of that conduct. Conduct is not sexual harassment if it is welcome. So in order to determine if the conduct was welcome or unwelcome, Courts

would naturally look to the complainant's reaction at the time the incident occurred and assess whether the complainant expressly, or by his or her behaviour demonstrated that the conduct was unwelcome.

- If the evidence shows that the complainant welcomed the conduct the complaint of sexual harassment would fail. For this reason, it is important to communicate (verbally, in writing, or by your own actions) to the harasser that the conduct makes you uncomfortable and that you want it to stop.

Background :

Supreme Court guidelines on sexual harassment- A quick recap

The Supreme Court in *Vishaka v. State of Rajasthan* for the first time recognized, acknowledged and explicitly defined sexual harassment as an – unwelcome sexual gesture or behaviour aimed or having a tendency to outrage the modesty of woman directly or indirectly.

Defining sexual harassment as an act aimed towards gender based discrimination that affects women's right to life and livelihood, the Supreme Court developed broad based guidelines for employers. These mandatory guidelines known as Vishaka guidelines are aimed towards resolution and prevention of sexual harassment. These guidelines bring in its purview all employers in organized and unorganized sectors by holding them responsible for providing safe work environment for women.

The Vishaka guidelines apply to all women whether students, working part time or full time, on contract or in voluntary/honorary capacity. Expressly prohibiting sexual harassment at work place these legally binding guidelines put a lot of emphasis on appropriate preventive and curative measures. (The guidelines include the following as acts of sexual harassment: Physical contact and advances, Showing pornography, a demand or request for sexual favours, Any other unwelcome physical, verbal/non-verbal – such as whistling, obscene jokes, comments about physical appearances, threats, innuendos, gender based derogatory remarks, etc.)

Some of the important guidelines are:

- The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps:
- Employers must form a Complaints Committee.
- Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings.
- Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules.
- Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers.
- Provision of appropriate work conditions in respect of- work, leisure, health, hygiene to further ensure that there is no hostile environment towards women.
- No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

- Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer.

Thus the Vishaka guidelines stipulated that all organisations would form a complaints committee to look into any such allegation. It would be headed by a woman employee and not less than half of its members would be women. All complaints of sexual harassment by any woman employee would be directed to this committee. The committee would advise the victim on further course of action and recommend to the management the course of action against the person accused of harassment.

However in *Medha Kotwal Lele v Union of India* coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.

The Court stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. The Court held that a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines.

Salient features of the Act:

- The Act has in fact sought to widen the scope of the guidelines issued by the Supreme Court by bringing within its ambit (amongst other things) a “domestic worker” (Sec 2e) defined to mean a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer.
- The Act has defined “sexual harassment” (Sec. 2n) to include any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely: (i) physical contact and advances; (ii) a demand or request for sexual favours; (iii) making sexually coloured remarks; (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Further, the following may also amount to sexual harassment: (i) implied or explicit promise of preferential treatment; (ii) implied or explicit threat of detrimental treatment; (iii) implied or explicit threat about present or future employment status; (iv) interference with work or creating an

intimidating or offensive or hostile work environment; or (v) humiliating treatment likely to affect health or safety.

- The term ‘employee’ (Sec. 2f) includes regular, temporary, ad hoc, daily wage employees and persons who are working on a voluntary basis i.e. without remuneration. The term also includes contract workers, probationers, and trainees. The Act defines “aggrieved woman” (Sec. 2a) to mean: (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent; (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.
- As per the Act workplace (Sec.2o) includes:
 - (i) any department, organisation, 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;
 - (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
 - (iii) hospitals or nursing homes;
 - (iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
 - (v) 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;
 - (vi) a dwelling place or a house.
- **Complaint mechanisms under the 2013 Act**
 - ❖ The Act contemplates the constitution of Internal Complaints Committee (“ICC”) (Sec. 4) at the work place
 - ❖ Every workplace employing 10 or more employees is required to constitute an ICC.
 - ❖ The ICC is required to consist of at least four members, and its presiding officer is required to be a woman employed at a senior level. Provisions have been made in case no senior woman employee is available, to nominate a woman presiding officer from another office, administrative unit, workplace, or organisation.
 - ❖ Further, one half of the members must be women..

➤ **Steps involved in the Complaint Process –Empowerment?**

❖ **Step I**

A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. The time limit may be extended for a further period of 3 months if, on account of certain circumstances, the woman was prevented from filing the complaint. If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs may do so.

❖ **Step II**

Upon receipt of the complaint, the ICC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or in their absence, in accordance with rules framed under the Act.

❖ **Step III**

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if in the opinion of the ICC a prima facie case exists, the ICC is required to forward the complaint to the police to register a case under the relevant provisions of the Indian Penal Code.

❖ **Step IV**

Where the ICC finds that the allegations against the respondent are proven, it must submit a report to the employer to: (i) take action for sexual harassment as a misconduct in accordance with the provisions of the applicable service rules or where no service rules exist, in accordance with rules framed under the Act; (ii) 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.

❖ **Step V**

The employer must act on these recommendations within 60 days.

❖ **Scope for Conciliation and Settlement**

Before initiating an inquiry, the ICC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1))

❖ In case the ICC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules (Section – 14). However, an inquiry must be also made. Mere inability to substantiate a complaint will not attract action under this provision.

❖ **The Duties of an Employer**

The Act makes it the duty of every employer to:

- a) provide a safe working environment at the workplace which shall include safety from all the persons with whom a woman comes into contact at the workplace;
- b) display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the ICC;
- c) organise workshops and awareness programmes; d) provide necessary facilities to the ICC for dealing with complaints and conducting inquiries;
- e) assist in securing the attendance of the respondent and witnesses before the ICC;
- f) make available such information to the ICC , as it may require;
- g) provide assistance to the woman if she so chooses to file a criminal complaint;
- h) initiate criminal action against the perpetrator;
- i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct; and
- j) monitor the timely submission of reports by the ICC.

❖ **Penalties**

Where the employer fails to comply with the provisions of the Act, he shall be liable to be punished with a fine which may extend to Rs. 50,000. In case of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his licence or withdrawal of his registration.
