



Prevention of Sexual Harassment of Women at Workplace (PoSH)

SANKHLA CORPORATE SERVICES PVT. LTD.

How Common is Sexual Harassment at Workplace?

- 25.3% in Rural Areas;
- 14.7% in Urban Areas
- 1 out of 5 do report it;
- 80% thinks outcome is poor;
- 52% Women experience Sexual Harassment at Workplace;
- 25% touched without invitation;
- 20% experienced sexual advances;
- 16% said that the situation worsened after they reported;

What is Sexual Harassment?

- ANY UNWELCOME ACT or behavior
- SEXUAL in nature
- A SUBJECTIVE experience
- IMPACT not the Intent
- that matters



Sexual Harassment includes

- Stalking
- Physical contact
- Abusive Sounds
- Making sexually colored remarks
- Showing pornography or the likes;
- Demand or request for sexual favours;
- Using sexually abusive language or signs in the presence of woman employee;
- Physical confinement or touches against the will and likely to intrude upon one's privacy;
- vulgar/indecent jokes, phone calls, text messages, e-mails,

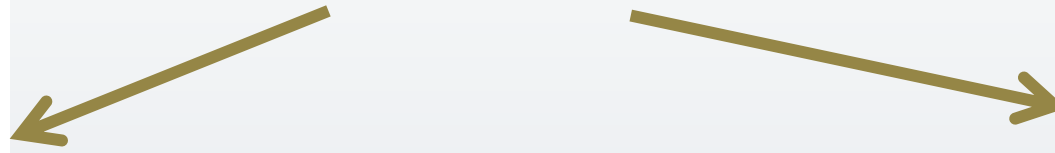
Sexual Harassment includes

- Implied or explicit promise of PREFERENTIAL TREATMENT in her employment; or
- Implied or explicit THREATENING TREATMENT in her employment; or
- Implied or explicit THREAT ABOUT PRESENT AND FUTURE EMPLOYMENT STATUS; or
- HOSTILE WORK ENVIRONMENT
- Interference with her work
- Humiliating treatment likely to affect her health or safety.





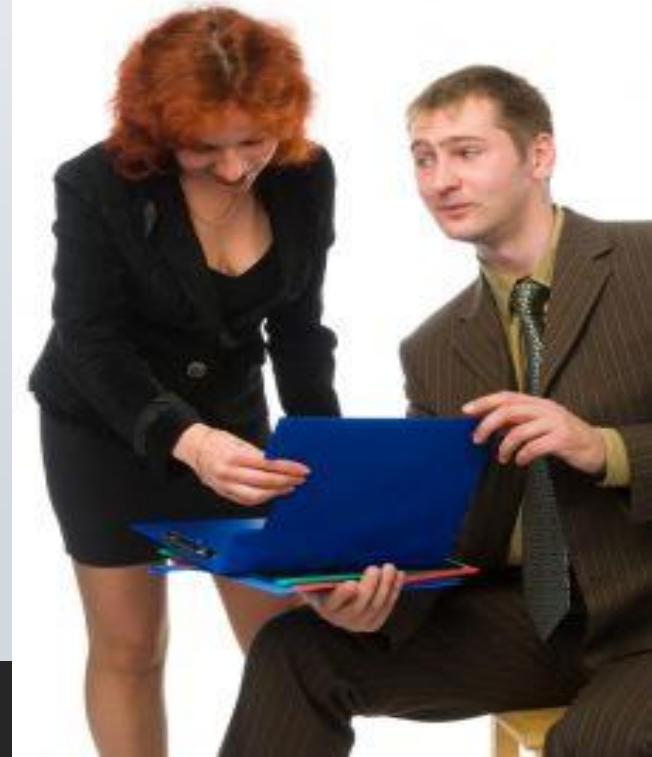
Physical Touch



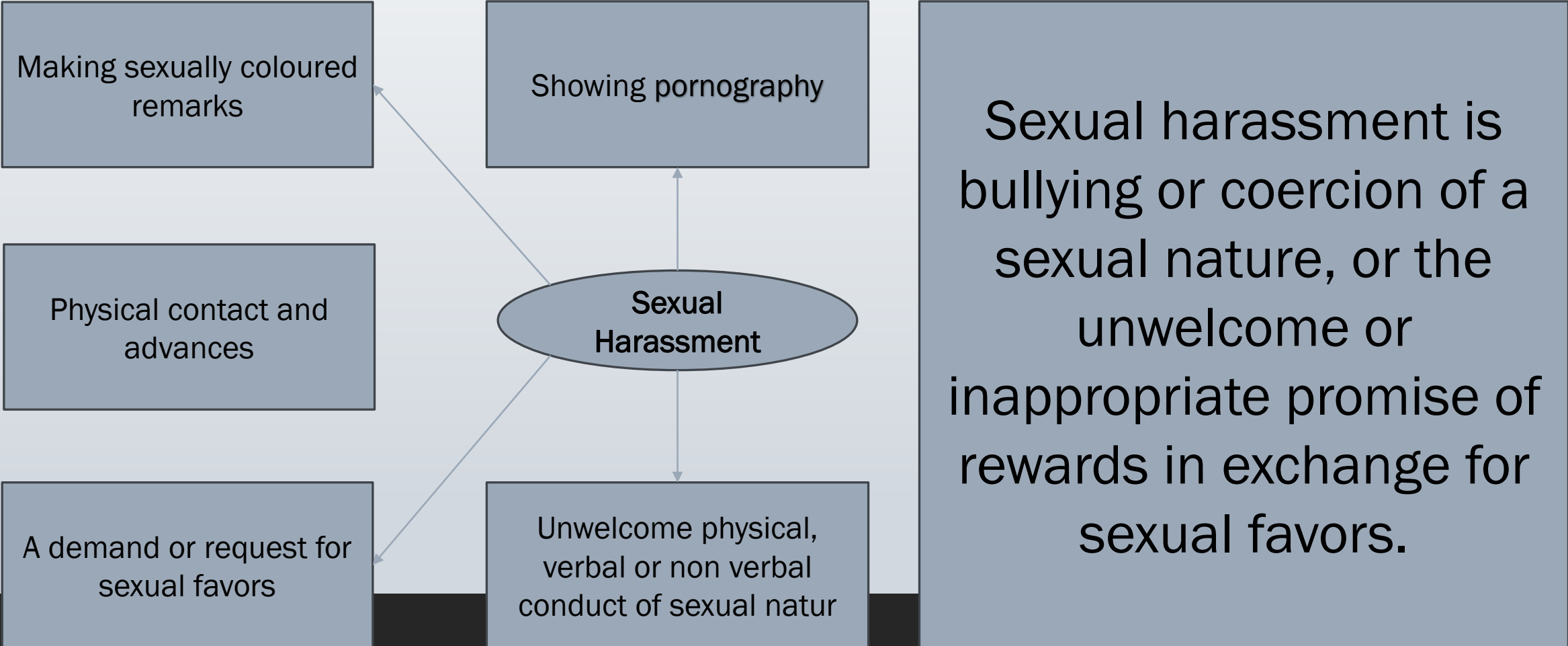
Creating Hurdles



Any unwelcome
act

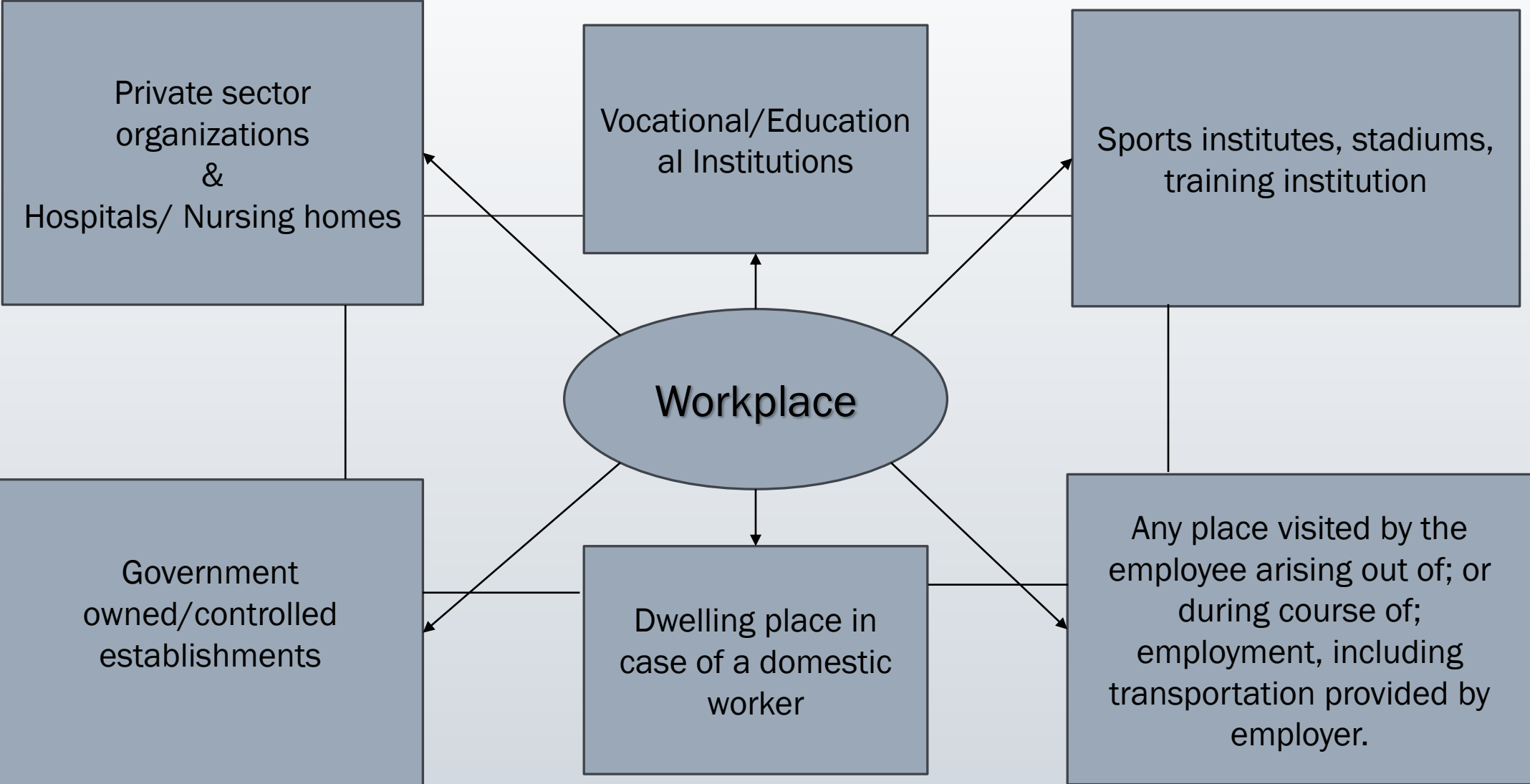


The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 201



What is at stake?

- Brand value – Negative Publicity;
- Decreased Morale and decreased efficiency of employees;
- Loss of money for non-compliance of provisions of law – *Madras High Court awarded Rs. 1.68 Crores in damages to an employee for Non-Constitution of ICC.*



Indian Law on Sexual Harassment

- The Constitution of India The Constitution of India The Sexual Harassment of Women at Workplace
- The Sexual Harassment of Women at Workplace The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 Vishaka Vs. State of Rajasthan
- Vishaka Vs. State of Rajasthan
- The Indian Penal Code, 1860



**The objective of these laws is Prevention
+ Protection + Redressal**

Laws Governing Sexual Harassment

- The Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 and Rules made thereunder.
- Indian Penal Code (Section 209, 354, 376 and 509), 1860; and
- Industrial Employment (Standing Orders) Act, 1946

The Indian Penal Code Provision

- Section 509 - Word, gesture or act intended to insult the modesty of a woman
- Offence:
 - utterance of any word,
 - making any sound or gesture
 - exhibiting any object
- With an intention to intrude upon the privacy of such woman such woman
 - Punishment: Simple imprisonment up to 3 years + fine
 - Nature of offence: Cognizable
- Amendment to the Indian Penal Code Provision
 - Section 354 A: Sexual harassment and punishment for sexual harassment

Sexual harassment is a violation of the constitutionally ensure fundamental rights:

- Articles 14 and 15: Right to equality
- Article 21: Right to life - to live with dignity
- Article 19(1)(g) - Right to practice any profession/trade/occupation/business, i.e., a right to a safe environment free from harassment

Employees Responsibility

- Understand
- Observe
- Examine
- Confront
- Resolve
- Support



Impacts of sexual harassment at work

- Causes emotional distress
- Lowers job satisfaction
- Lowers Capability to perform to their potential
- Lowers morale
- Increases absenteeism
- Increases workers exit from the teams
- Inhibits growth and creativity

ICC are mandatory

The employee who had a fundamental right to a workplace free of sexual harassment, had complained about sexual harassment. According to the Court, had the organisation complied with the Vishaka Guidelines and set up such a Complaints Committee, the preventative benefit would have been three-fold:

- A) Ensured a place where women employees could seek redress;
- B) Sent a clear message to the workplace that such complaints would be enquired into by a specially designated committee with external expertise; into by a specially designated committee with external expertise;

Prevented a series of litigation that followed.

Hence, the Madras High Court awarded Rs. 1.68 crores in damages to an employee for the non-constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).

Ms. G v. ISG Novasoft Technologies Ltd. Madras High Court (Crl.R.C.No.370 of 2014 order dated 02.09. 2014. Original Petition No.463 of 201

Who is Employee?

A person employed by Company for any work and includes:-

- Employed on regular, temporary, ad hoc or daily wage basis;
- Either directly or through an agent, with or without the knowledge of the principal employer ;
- Whether for remuneration or not or working on a voluntary basis or otherwise;
- Whether the terms of employment are express or implied ; and Contractor, coworker, a contract worker, probationer, apprentice or called by any other such name .

What is Workplace?

Workplace includes:-

- All premises including Corporate Office, head office, branch offices and all other premises, locations, establishments, institutions, units, sites controlled directly or indirectly but he Company and/or where from business of the Company is conducted;
- All other premises where employees of the Company visit arising out of or during the course of their employment including official events; and
- Includes the transportation and accommodation, if any, provided by the Company for employees arising out of or during the course of employment for commutation or residence purposes.

How to prevent?

Following are the responsibilities of the employer under the Act:-

Constitution of Internal Complaint Committee (ICC) to handle the complaints of sexual harassment;

Display on the notice board of the premises giving full details of members of ICC;

Display at conspicuous places at workplace, penalties & consequences of sexual harassment ;

Providing training to sensitize the employees on the issues and implications of sexual harassment at workplace and organizing orientation programme(s) for members of ICC.

Internal Complaint Committee

- Every Employer needs to constitute ICC as per the provisions of the Act to take care of following matters:-
- To conduct enquiry into the complaints of sexual harassment;
- To make recommendations to the Board of Directors of your Company in the matters of sexual harassment after conclusion of enquiry;
- To file annual report as per the provisions of the Act

What are the remedies?



Any aggrieved woman employee may file a complaint with ICC for Redressal of her grievances.

It is the responsibility of ICC to send notice to Respondents (against whom a complaint of sexual harassment has been made) within 7 (seven) working days.

The Respondent shall file his reply to the complaint along with supporting documents.

Procedure of filing Complaint

Any aggrieved woman may make a complaint **in writing** with any member of ICC at the **prescribed contact details**,

preferable **within a period of 3 months** of the date of incident of sexual harassment or in case of series of incidents, with in a period of 3 months from the date of last incident.

- The Complainant shall file **minimum six copies** of the complaint.

The complaint shall consists of name of the Respondent(s), date and details of incident of sexual harassment, name and details of witness, if any, along with the supporting documents.

Who is eligible to file a complaint?

- Aggrieved woman herself;
- Where the Aggrieved Woman is unable to make a Complaint on account of her physical or mental incapacity , a Complaint may be filed by any prescribed person, on her behalf;
- Where the Aggrieved Woman for any other reason is unable to make a Complaint, a Complaint may be filed by a person who has knowledge of the incident, with her written consent;
- Where the Aggrieved Woman is dead, a Complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir(s).

Procedure of Enquiry

CONCILIATION –

The ICC may, before initiating an inquiry, at the request of the Aggrieved Woman, take steps to settle the matter between her and the Respondent.

No monetary settlement shall be made as a basis of conciliation.

The settlement terms shall be recorded in writing and forwarded to the Board of Directors of the Company. Copies of the same shall be provided to the Aggrieved Woman and the Respondent.

Where a settlement has been arrived at, no further inquiry shall be conducted by the ICC.

Procedure of Enquiry

ENQUIRY–

In case, conciliation is not possible, ICC shall investigate the complaint and provide its report, as promptly as possible, but not later than 90 working days from the date of the Complaint.

The ICC shall follow principles of natural justice in all its proceedings.

Complete confidentiality shall be maintained, unless required by law.

A copy of the Complaint as recorded by ICC shall be given to the Respondent as well as the Complainant.

The Respondent shall submit his response to the Complaint as well as to indicate whether the Respondent wishes the ICC to examine any witnesses or furnish any evidence.

The Complainant shall also indicate in writing whether the Complainant wishes the ICC to examine any witnesses or furnish any additional evidence.

Procedure of Enquiry

Upon receipt of the responses from the Respondent and the Complainant, the ICC shall conduct a hearing, where both the Complainant and the Respondent shall be heard in person.

ICC shall be empowered to call upon such of the Employees who may have been witness to the incident(s) of Sexual Harassment and/or connected in any manner thereto.

All Employees shall extend their fullest co-operation to ICC.

Upon completion of the hearing, the ICC shall prepare its complete report, setting out its recommendations on the disciplinary action(s) to be taken against the Respondent or Complainant (as the case may be).

Punishment for Sexual Harassment

To take action for sexual harassment as an act of misconduct in accordance with the rules/regulations of the Company governing 'conduct and discipline' as applicable to the Respondent; **and/or**

To deduct such amounts from the salary or wages of the Respondent as may be considered appropriate to be paid to the Complainant as per the Policy of the Company.

Section 354, 354 A, 354B, 354 C, 354 D and 509 of Indian Penal Code, 1860 provides for punishment for offences of outraging the modesty of woman, sexual harassment, disrobe, voyeurism, stalking and insulting the modesty of woman respectively and the punishment ranges between rigorous imprisonment from 1 to 3 years AND fine or both.

Punishment for Malicious Compliant or False Evidence

If an Employee is found to have raised a malicious or false Complaint or given any false evidence, such complainant or such person making evidence may also be subject to :-

Appropriate disciplinary action, which may include termination of employment, engagement or relationship with the Company, as the case may be.

Thanking You



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