

# Sensitization Program Sexual Harassment of Women at Workplace

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## Prevention, Prohibition and Redressal (PPR-Act 2013)

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# Scope Of Session- General

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- Historical Developments
- Legislative Journey
- Main features of The Act
- Case Laws on the Subject
- Surveys & Literature

# Scope Of Session- Substantial

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- Complaint Mechanism Process
- ICC-Composition–Powers & Functions
- Duties and Responsibilities of Employer
- Rights of Aggrieved Women
- POCSO in Brief

# Contours of SHW

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- Subject -- EXTREMELY SENSITIVE
- Experience -- EXTREMELY PAINFUL
- Bodily Integrity -- CORE HUMAN RIGHT
- Media News --SICKENING TO READ
- Prevention --SOCIETAL RESAPONSIBILITY

# Historical Developments

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# Historical Development

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- Sexual Harassment Age old menace
- Farley Evidence Before NY HRC 1975
- CEDAW - INTERNATIONAL 1979
- Baii Lancho Saad Movement GOA 1985
- Forum against Oppression of WOMEN 1985
- Bhanwri devi Case RAJSTHAN 1992
- Vishakha Guidelines –Supreme Court 1997

# Baii Lancho Saad Identifies Target Groups

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- Nurses
- Air Hostesses
- Ph D students
- Telephone Operators
- Receptionists
- Private Secretaries
- Students
- School Teachers

# Features of Vishakha Guidelines

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- SHW recognized as HR violation
- Constitutional Provisions Referred
- International Convention Referred
- Complaint Mechanism Outlined
- Duties of Employer – Specified



# Hon'ble Supreme Court- Vishakha Case

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- SHW violates---
- Fundamental Rights
- Right to Equality- Art.-14 & 15
- Employment Equality – Art.- 16
- Freedom of Profession- Art. -19
- Freedom of Life & Liberty- Art-21
- CEDAW provisions

# SHW Defined

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- It includes unwelcome sexual behavior of direct or implied nature such as:
  - Physical contact & advances
  - Request for sexual favors
  - Sexually colored remarks
  - Showing pornography &
  - unwelcome physical, verbal or non-verbal sexual conduct
- If the complainant , as evident from facts, had welcomed the respondent's conduct being questioned, the incident cannot be considered sexual harassment

# Legislative Journey

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- Post Vishakha Litigation
- Reveals non implementation
- Survey by CII-UNDP-Reuter-SFTI
- Direction for early Legislation
- Study by UGC-K.U.
- Need for SUI Generis Legislation

# Drafting Process

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- Govt. drafts Legislation
- Suggestions & Criticism
- NCW offers Redrafting
- Majlis assisted NCW
- Shakshi- Samhita inputs
- Govt. accepts draft

# Timeline of the Law

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- Lok Sabha passed the bill, on 3rd Sep 2012
- Rajya Saha passed it on 26th February 2013
- The bill got President's assent hurriedly on 22 April 2013 – on the day Justice JS Verma died
- The Statutory Rules promulgated on 9 December 2013
- The act and rules, as per government notification, came into force on 9th Dec 2013

# The Statutes on Prevention of Sexual Harassment

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- The Vishaka Guidelines 1997 of the Supreme Court
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules 2013
- POCSO 2013

# Improved Features In New Act

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- **Penal Provisions for**
  - Violation of act by employer
  - Malicious Complaint
  - Disclosure of Information
- **Complaint Mechanism**
  - Interim Relief
  - Compensation
  - Conciliation
- **A domestic worker can approach the LCC**

# 'Workplace' means

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- Organizations, departments, institutions, office, branch unit etc. in the public/private sector, both organized and unorganized,
- Hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex,
- NGOs, trusts, cooperatives, societies , service providers &
- Any place visited by the employee in the course of employment including transportation



# 'Employer' means

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- The head or
- The person responsible for formulation & administration of policies of the workplace
- The person discharging contractual obligations with respect to his/her employees and
- For a domestic worker, the person who benefits from that employment

# Sexual harassment : Some Examples

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- Staring, leering, obscene gestures, howling, making kissing sound, smacking lips
- Showing sexually obscene /suggestive signs, objects or pictures
- Indecent comments, dirty jokes, making suggestive sounds, comments on woman's dress or body
- Using power positions to request for favours or threats on loss of job
- Touching, patting, caressing, kissing, brushing against another's body

# Sexual harassment :Examples/ Continued...

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- Blocking, following and cornering
- Raping, using force and assaulting physically
- Referring as honey, sweet etc. or using innuendoes
- Turing work discussion into sexual objects
- Telling sexual jokes or stories
- Asking about sexual fantasies, telling lies about one's sexual life
- Looking a person up and down/staring, making expressions like winking, licking lips
- Touching a person's clothing, hanging around a person

# Amendment to Criminal Laws

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- SHW recognized as Criminal Offence
- Sections 354 A, 354 B, 354 C, 354 D – Added
- SHW made cognizable offence
- Imprisonment and Fines prescribed

# Sexual Harassment-Section 354 A

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- A man commits sexual harassment if he indulges in the following:
  - Physical contact and advances involving unwelcome and explicit sexual overtures
  - Demand or request for sexual favors; or
  - Showing pornography against the will of a woman; or
  - Making sexually colored remarks
- The jail term for such men would be at least 3 years or fine or both.

# Relevant POCSO Provisions

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Abetment of  
Offence

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Attempt to  
Offence

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Reporting of  
Offence

• 19

False  
Complaint

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# Employers Duty

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# Primary Action

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- Frame a Anti Sexual Harassment Policy
- Exhibit Prominently Penal Provisions
- Incorporation of Provisions in service rules
- Constitute Internal Complaint Committee



# Facilitate Complaint Committee

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- Provide Infrastructure
- Ensure Attendance of Respondent
- Provide access to Records
- Witness to attend Enquiry

# Action on Committee Report

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- Provide Interim Relief
- Action Against Offender
- Case against Malicious Complaint
- Fine on Disclosing Person

# Initiatives

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- Organize awareness Programs
- Conduct training Programs
- Monitor Progress
- Assist in filing IPC case

# Complaint Mechanism

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# Kinds of committees to be Set up

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- An Internal Complaints Committee (ICC), at least a 5 member committee, at all workplaces employing 10 or more workers
- A Local Complaints Committee (LCC). A five-member committee at the district level for handling complaints from workplaces employing less than 10 workers
- When the complaint is against the employer, it will be handled by LCC

# Internal Complaints Committee (ICC) : Structure

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- Presiding Officer must be a senior woman officer employed at the workplace /organization
- Not less than two members from persons with experience in social work/law and committed to women's cause
- One member who knows about issues of sexual harassment from NGOs working on Women's causes
- Half of the members of ICC should be women

# Local Complaints Committee (LCC) : Structure

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- Chair Person : A woman in social work committed to the cause of women
- One member from women working in block, taluk, ward or municipality in the district
- Two persons committed to the cause of women who have either 5 years experience in social work or knowledge in labour, service, civil or criminal law for 7 years. Either of the two should be a woman as well as either belong to an SC/ST /OBC/minority community notified by GoI
- District Social Welfare Officer : Convenor
- Half of the members of ICC should be women

# Powers of Committee

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- Power of Civil Court
  - Issue Summons
  - Examine Witness
  - Scrutinize Evidence
- Extension of filing time.
- Interim Relief
- Conciliation
- Compensation
- Action on Proven Charge
- Malicious Complaint
- False witness
- Filing criminal case



# On Preparing a Complaint

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- Complaint to be incident specific
- General allegations such as the officer harassed me –Vague
- Exact Details, Dates, Witnesses & Documents- Important
- The Malicious complainant can be sued for false submission
- Prayer for interim Relief
- The employer need not have to accept her suggestion, but her input would be helpful
- Prayer for Compensation
- Prayer for action against respondent

# Procedures for Filing a Complaint

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- A complaint shall include 6 copies with supporting documents
- The complaint committee should send one copy to the respondent within 7 working days to get a reply
- The respondent has to file his reply within 10 working days
- The complaint committee has to inquire into the complaint, with principles of natural justice

# Principle of Natural justice

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- Nemo Judex in causa Sua
- Audi Alteram Partem
- Freedom from Bias & Arbitrariness
- Speaking order

# Time Limit for Filing a Complaint

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- A complaint of sexual harassment needs to be filed within 3 months
- The period may extend to another 3 months, in grave circumstances that prevented her from filing the complaint in time

# Provision for Conciliation

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- The ICC/LCC can take steps to settle the matter between the aggrieved woman & the respondent,
- This option will be used only at the request of the woman
- Monetary settlement shall not be the basis of conciliation
- If the settlement is not reached, the complainant can go back to the Committee & initiate an inquiry
- Violation of compromise terms--Harrasment

# If Prima facie Criminal Case Exist

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- Certain instances of SHW constitute Criminal Offence
- At complainant's instance Police to be approached
- Crime chargeable under IPC 509, 294, 354 in general
- Crime chargeable under IPC 354 A to 354 D

# Period of Inquiry & Action

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- The Committee to complete the inquiry in 90 days
- Committee report to go to Employer or the District Officer within 10 days.
- Follow up action on the report within 60 days
- If allegation is not proved the committee to send a report stating that no action is required.

# Interim Action During Inquiry

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- The aggrieved or the respondent can be transferred to avoid face to face contact
- Grant leave to the aggrieved up to 3 months
- Other reliefs to the aggrieved as prescribed in the rules
- Rules prescribed change of supervisor etc.
- The employer should implement the above recommendation and inform the committee about it



# Ex-Parte Decision

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- The complaints committee can terminate the inquiry proceedings or give an ex-parte decision,
- if the complainant or the respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings
- Ex-parte or termination order will not be passed without giving the complainant/respondent a 15-day notice in writing

# Committee --Recommend Actions

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- Against the respondent as per the rules in force
- It may be a deduction of an appropriate sum from the respondent's salary or asking him to pay the sum
- If the amount is not paid, it can be recovered as an arrear of land revenue
- The committee can recommend for restraining the respondent from supervision of complainant's work

# When Rules on Punishment not Framed

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- The complaint committee can recommend an appropriate punishment
- Such a punishment can be a
  - written apology,
  - a warning,
  - a reprimand or censure,
  - withholding of promotion
  - withholding of increments,
  - termination of service,
  - subjecting to counseling or
  - forcing to do community service.

# On Arriving at the Amount of Compensation

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- The complaints committee should consider the following factors:
  - the trauma, pain or distress caused
  - The loss of career opportunity due to the incident
  - Medical expenses incurred
  - Income of the respondent
  - Feasibility of such payment in lumpsum etc.

# Dealing with a False/Malicious Complaint

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- The complainant can be penalized as per the Rules
- An enquiry to be conducted prior to establishing malicious intent
- Mere inability to prove a complaint will not attract penalty

# Prohibits Disclosure of Identity

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- Prohibits disclosure of the identity & address of the aggrieved woman, respondent and the witness
- Anyone who discloses the name or identity of the aggrieved woman or witnesses will be liable to pay a penalty of Rs 5,000
- But information regarding the justice secured to any victim, without disclosing the identity, can be publicized
- Information under RTI exempted

# HIGH PROFILE CASES

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# High Profile Cases

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- Justice A.k. Ganguly
  - KPS Gill IPS
  - Kerela Social justice Minister
  - DGP Rathore
  - Bidyut Chakraborty
  - D. S. Rana
  - Tarun Tejpal
- Judiciary  
Police  
Politics  
Sports  
Professor  
School Teacher  
Media



# Lead Case Laws

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- Medha Kotwal Vs. M.S. University Baroda
- Ropan Bajaj Vs KPS Gill
- Manisha Sharma VS RAJ Kumar (DRM)
- A.K. Verma Vs Apparel Export Promotion Council
- Shanti Lata Patnaik Vs. Management & Transporter
- Tarun Tej Pal-Tehlka case
- A.k. Mandal
- Ruchika Vs Rathore
- Bidyut Chakarborty Vs Delhi Univ.
- S. K Ray Vs Ramjas College

# Law Point Decided

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- ICC substitute of Enquiry Report- Medha Kotwal
- Official Transport part of workplace- Shantilata Patnaik
- Quid Pro Quo Alisha
- Denial of opportunity Bidyut Chakraborty
- Unwelcome Contact Manisha Sharma
- Revengeful termination Vinni Joshi

# FLOOR OPEN

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**QUERRIES & DISCUSSION**  
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