

SEXUAL HARASSMENT OF WOMEN AT WORK
PLACE (PREVENTION, PROHIBITION AND
REDRESSAL) ACT 2013.

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Indian Law on Sexual Harassment

The
Constitution of
India

1997:
Vishaka vs.
State of
Rajasthan

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

The Indian
Penal Code,
1860 +
Criminal Law
Amendments

International Obligation

Convention on the Elimination of all Forms of Discrimination against women (CEADAW).

(India ratified it on 24 June 1993)

The logo features the number '30' in a large, stylized purple font. The zero is formed by a female symbol (a circle with a vertical line and a horizontal crossbar). To the right of the '30' is the word 'YEARS' in a green, sans-serif font.

United Nations **Convention** on the Elimination
of All Forms of Discrimination against **WOMEN**

Guarantee !!

- (1) Art 14 & 15 (Equality and non-discrimination).
- (2) Art 21- Right to life & dignity.
- (3) Art 19- Right to practice profession and carry on any occupation.
- (4) Right to safe environment from sexual harassment.



Amendment to the Indian Penal Code Provision

Section 354 A: Sexual harassment and punishment for sexual harassment

Offence:

- physical contact and advances involving unwelcome and explicit sexual overtures; or
- a demand or request for sexual favours; or
- showing pornography against the will of a woman; or
- making sexually coloured remarks

Punishment: Commission of an offence under (i), (ii) or (iii) punishable with rigorous imprisonment for a term of up to 3 years and/or fine; commission of offence under (iv) punishable with imprisonment for a term up to one year and/or fine

Nature of offence: Cognizable

Extent

Whole of India

[Section 1 (2)]

Came in force on 9 December, 2013 by way of
Notification.



Objects and Reasons

- SHW is a violation of women's right to equality, life and liberty.
- Article 14 and 15 prohibit discrimination
- Article 19 (1) (g) F.R. to practice any profession.
- Article 21 Right to Life and Personal Liberty.
- Article 11 of CEDAW requires state to take all appropriate measures to eliminate discrimination against women in the field of employment.
- More women joining the workforce in organized and organized Sector.

- S.C. in the case of Vishaka vs. State of Rajasthan (1997) 7 SCC 323, reaffirmed that sexual harassment at workplace is a form of discrimination against women.
- To provide for safe, secure and enabling environment to every women, free from all forms of sexual harassment by fixing responsibility on employee and DM,DC of every district. statutory redressal mechanism.

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

- Object: Prevention + Protection + Redressal

Aggrieved Women

- (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;

Appropriate Government

Section 2 (b)

(i) in relation to a workplace which is established, owned, controlled or wholly or **substantially financed by funds provided directly or indirectly-**

(A) by the Central Government or the Union territory administration, the **Central Government**;

(B) by the State Government, the **State Government**;

(ii) **in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government**;

Domestic Worker

Section 2 (e)

“Domestic Worker” means 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.

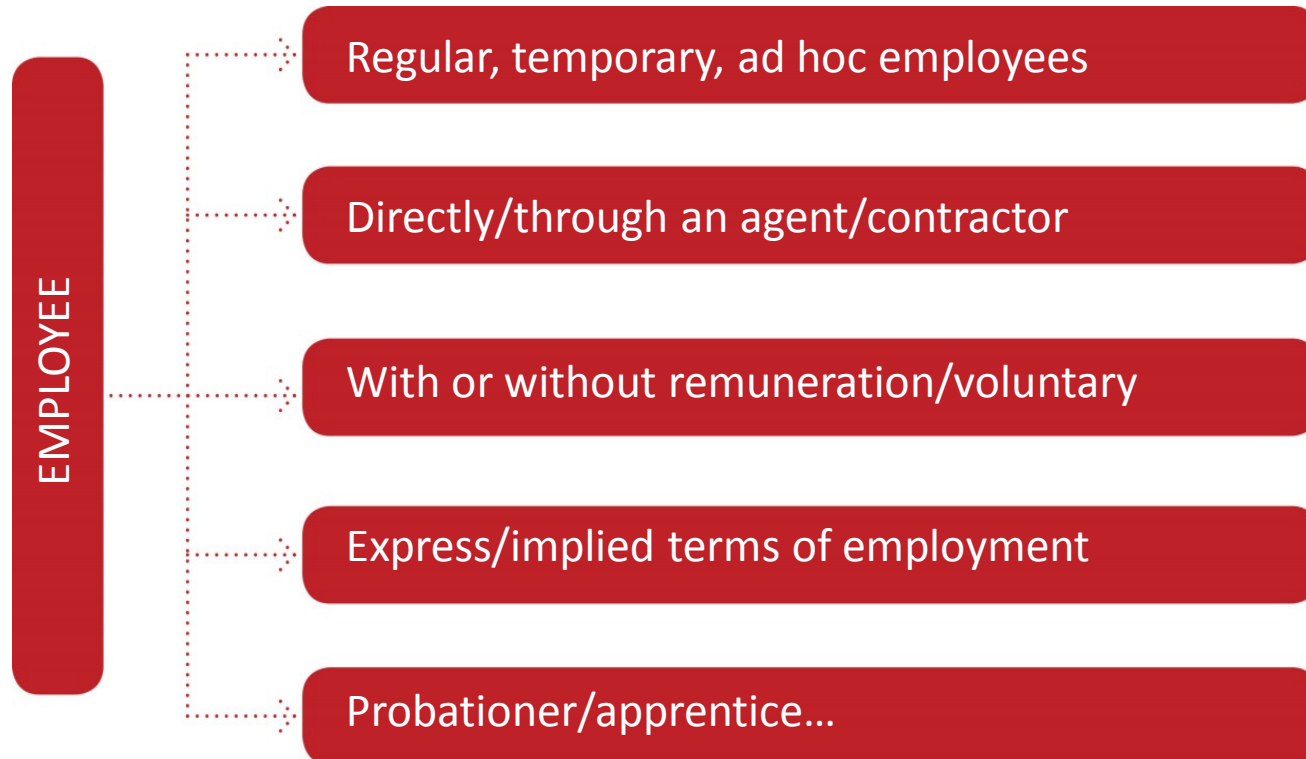


Employee

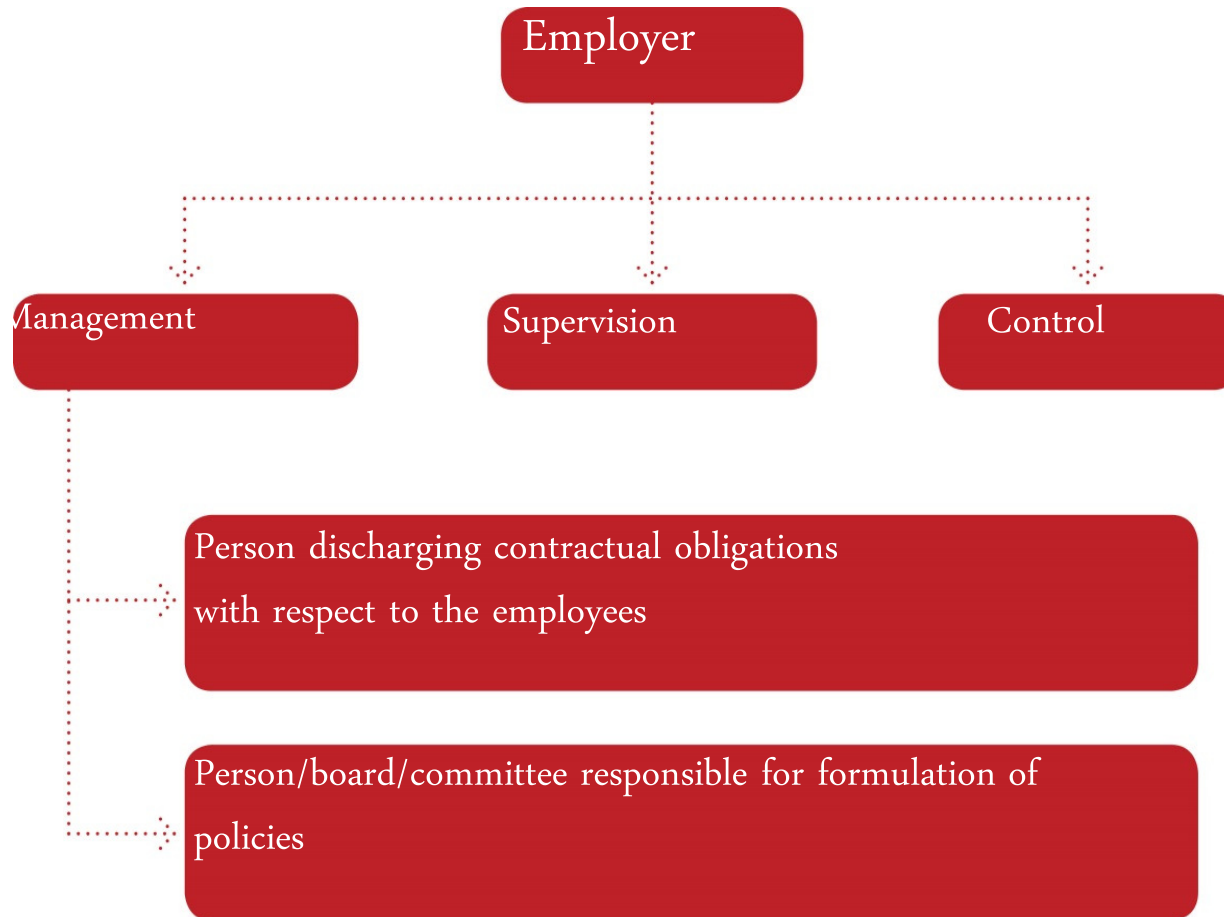
Section 2 (f)

“Employee” means a person employed at a workplace for any work on regular, temporary *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, 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 includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

Who is an “Employee”?



Who is the “Employer”?



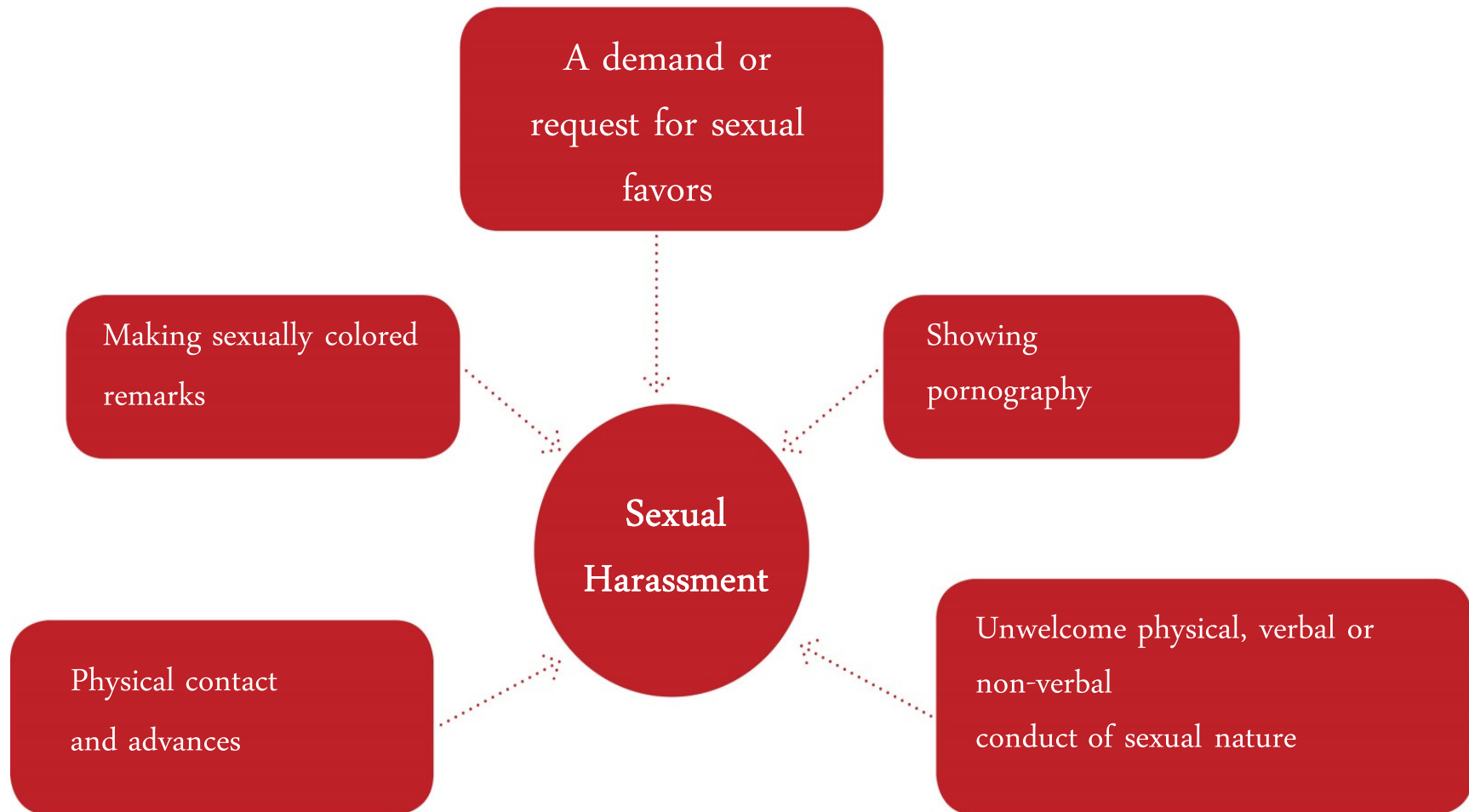
Sexual Harassment

Section 2 (n)

“Sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether **directly or by implication**) namely:-

- (i) **physical contact and advances**; or
- (ii) **a demand or request for sexual favours**; or
- (iii) **making sexually coloured remarks**; or
- (iv) **showing pornography**; or
- (v) **any other unwelcome** physical, verbal or non-verbal conduct of sexual nature;

“Sexual Harassment under the Law”



This is Sexual Harassment

- Sexual advances.
- Sexual propositions.
- Sexual innuendos.



Work Place

Section 2 (o)

- (i) **Any department, organization, 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 organization or a private venture,** undertaking enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

contd.....

The “workplace”



The extended “workplace”

...

Any place visited by
the employee

- arising out of;
- or during course of;

employment,

including transportation provided by
employer.

Work Place

Section 2 (o)

(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;**

Unorganised Sector

Section 2 (p)

“unorganised sector” in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, **the number of such workers is less than ten.**

Prevention of SHW

Section 3(1)

No woman shall be subjected to sexual harassment at any workplace.



Circumstances Indicating Sexual Harassment

Section 3 (2)

- (i) Implied or explicit promise of preferential treatment in her employment; or
- (ii) Implied or explicit threat of detrimental treatment in her employment; or
- (iii) Implied or explicit threat about her present or future employment status; or
- (iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) Humiliating treatment likely to affect her health or safety.

Unwanted Touching is Sexual Harassment

- Kissing.
- Hugging.
- Grabbing.
- Impeding or blocking movement.
- Assault.



“An ounce of prevention is worth a pound of cure.” - Benjamin Franklin

- Employers are required to take all reasonable steps to prevent harassment from occurring, such as:
 - Having a harassment policy.
 - Training employees on sexual harassment.

Internal Complaint Committee (ICC)

Section 4(1)

- Every employer to constitute an ICC.
- The ICC to be constituted **at every administrative unit or offices if the offices are located at different places.**



Composition of ICC

Section 4(2)

The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) **a Presiding Officer who shall be a woman employed at a senior level at workplace** from amongst the employees:

Provided that in case a senior level woman employee is not available, the **Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to sub-section(1).**

Composition of ICC

- (b) 2 or more members from amongst employees, preferably having experience in social work or have legal knowledge.



Internal Complaints Committee



Composition of ICC

- (c) **one member from amongst non-governmental organisations or associations** committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

ICC

1. President (woman)
2. 2 or more employee
3. 1 member from NGO

one-half of the total members of the ICC shall be women.

Terms & Conditions of ICC

- Tenure 3 years
- Members of NGO/ Association to be paid fees/ allowances by the employer (See 7(4))
- Rs. 200 per day for holding the proceedings of ICC + TA (AC 3 Tier rail fair or AC Bus and auto rikshaw or taxi or actual expenditure, whichever is less)
(Rule 3, SHW Rules 2013)
- Employer has to pay Fee/TA (Rule 3)

Disqualification for the Presiding Officer/ members of ICC

(a) **contravenes the provisions of section 16**; i.e. publish or making known contents of complaints identity of complainant, respondent and witnesses and enquiry proceedings; or

(b) **has been convicted** for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) **he has been found guilty in any disciplinary proceedings** or a disciplinary proceeding is pending against him; or

(d) **has so abused his position** as to render his continuance in office prejudicial to the public interest.

District Officer (D.O.)

- Government to notify D.O.
- DM/ADM to be nominated as District Officers (Sec. 5)
- The District Officer to constitute the **LCC to receive complaint.**
 - (I) **against the employer.**
 - (II) **for those institution where number of employees in less than 10.**

(Sec. 6 (1))

Nodal Officer

- For those institutions where number of employees is less than 10.
- The District Officer to designate one nodal officer for every block, tehsil in rural area and ward in cities to receive complaint and forward them to the LCC within 7 days.

(Sec. 6 (2))

Composition of LCC

- D.O. to constitute it

(Sec. 7 (1))



Composition of LCC

(a) **a Chairperson** to be nominated from amongst the eminent women in the **field of social work** and committed to the cause of women;

(b) **one member to be nominated** from amongst the **women working in block, taluka or tehsil or ward** or municipality in the district;

(c) **two members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organizations** or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed;

contd....

Composition of LCC

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge.

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member ex officio.

Terms & Conditions of LCC

- Tenure - 3 years
(Section 7 (2))
- Except paid servants, others would be paid fee/allowance.
(Section 7 (3))
- Fee - 250 per proceeding for chairman
- Rs. 200 for members.
- TA - As in case of ICC members
(Rule 5 of SHW Rules 2013)
- D.O to pay the Fee & TA

Disqualification from the LCC

Sec. 7 (3)

- (a) **Contravenes the provisions of section 16**; or
- (b) **has been convicted for an offence** or an inquiry into an offence under any law for the time being in force is pending against him; or
- (c) **has been found guilty in any disciplinary proceedings** or a disciplinary proceedings is pending against him; or
- (d) **has so abused his position as to render** his continuance in office prejudicial to the public interest.

Funding (Sec. 8)

- For fee/allowance payment
- **Central govt. may give funds to state governments.**
- **State govt. to constitute an agency and the central grant may be transferred to this agency.**
- **Agency to pay required funds to the D.O.**
- **The funds to be audited by AG.**

Complaint of sexual harassment

Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident,
and in case of a series of incidents, within a period of three months from the date of last incident.



- **ICC/LAA to render assistance** to woman for making/writing complaint.
- **ICC/LCC may extend the time limit not exceeding 3 months by recording reasons.**
- In case of physical or mental disability, **legal heirs or other persons prescribed** can make complaint.

(Section 9)

Conciliation

(Section 10)

- Before initiating enquiry the ICC/LSS at the **request of aggrieved women** take step to settle the **matter through conciliation**.
- **But no monetary settlement.**
- **If settlement is reached no further enquiry.**
- Copies to be given to both the parties and the employer.
- **If settlement conditions are not followed, further enquiry can be conducted.**

Inquiry into complaint

(Sec. 11)

- **If no conciliation**
- The ICC/LAA may
 - **enquire as per the provisions of the service rules.**
 - **if no service rules, then action as may be prescribed.**
 - **for domestic workers, the LCC may forward the complaint to police within 7 days for registration of case, if prima facie case is made out.**
 - **Enquiry to be completed within 90 days**
(Sec. 11 (4)).

Inquiry into complaint

(Sec. 11)

- **If conciliation failed/ not honoured**
- The ICC/LAA may
 - Enquire as per provisions or
 - Complainant may be forwarded to police for necessary action.

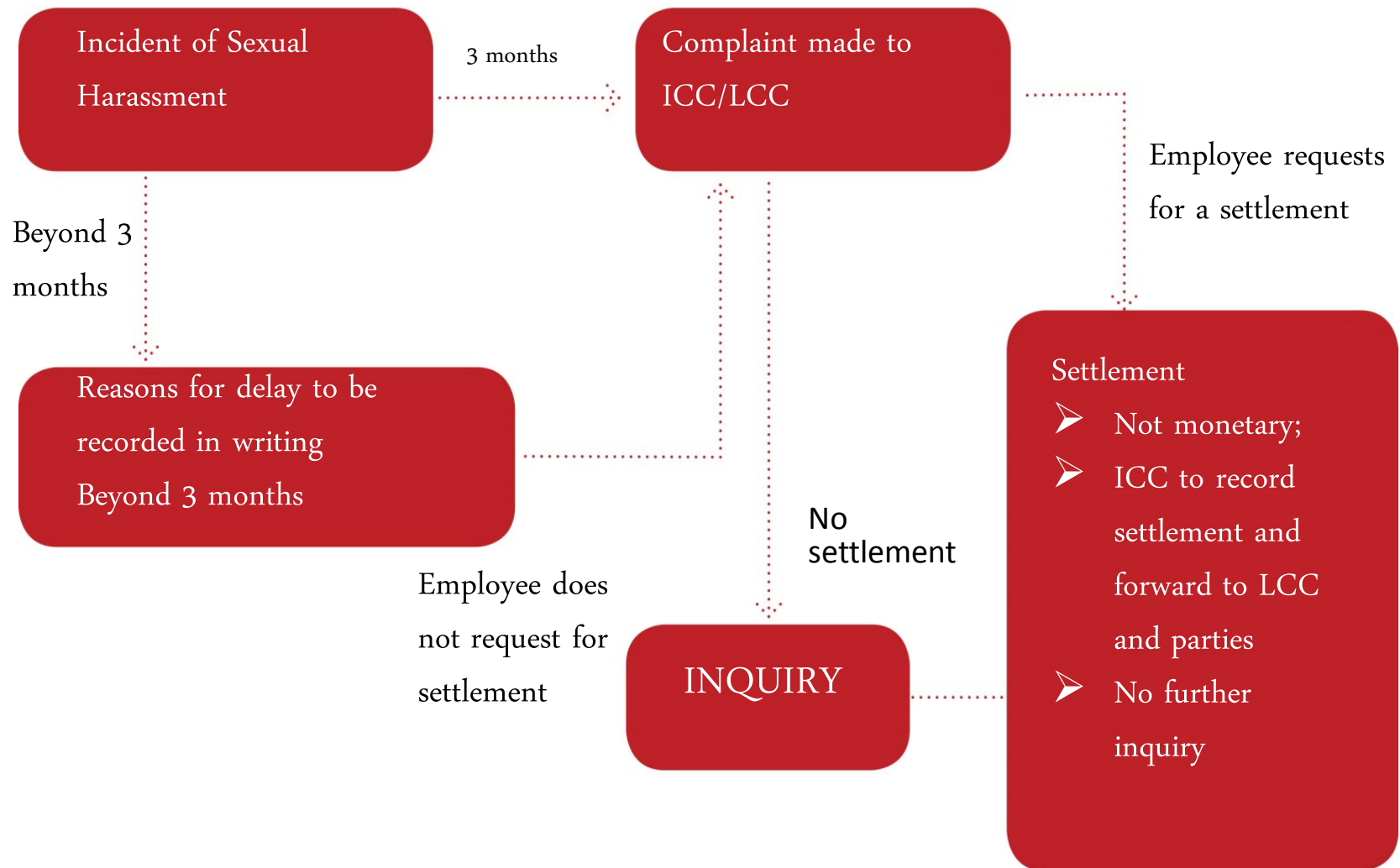


Power of ICC/LCC

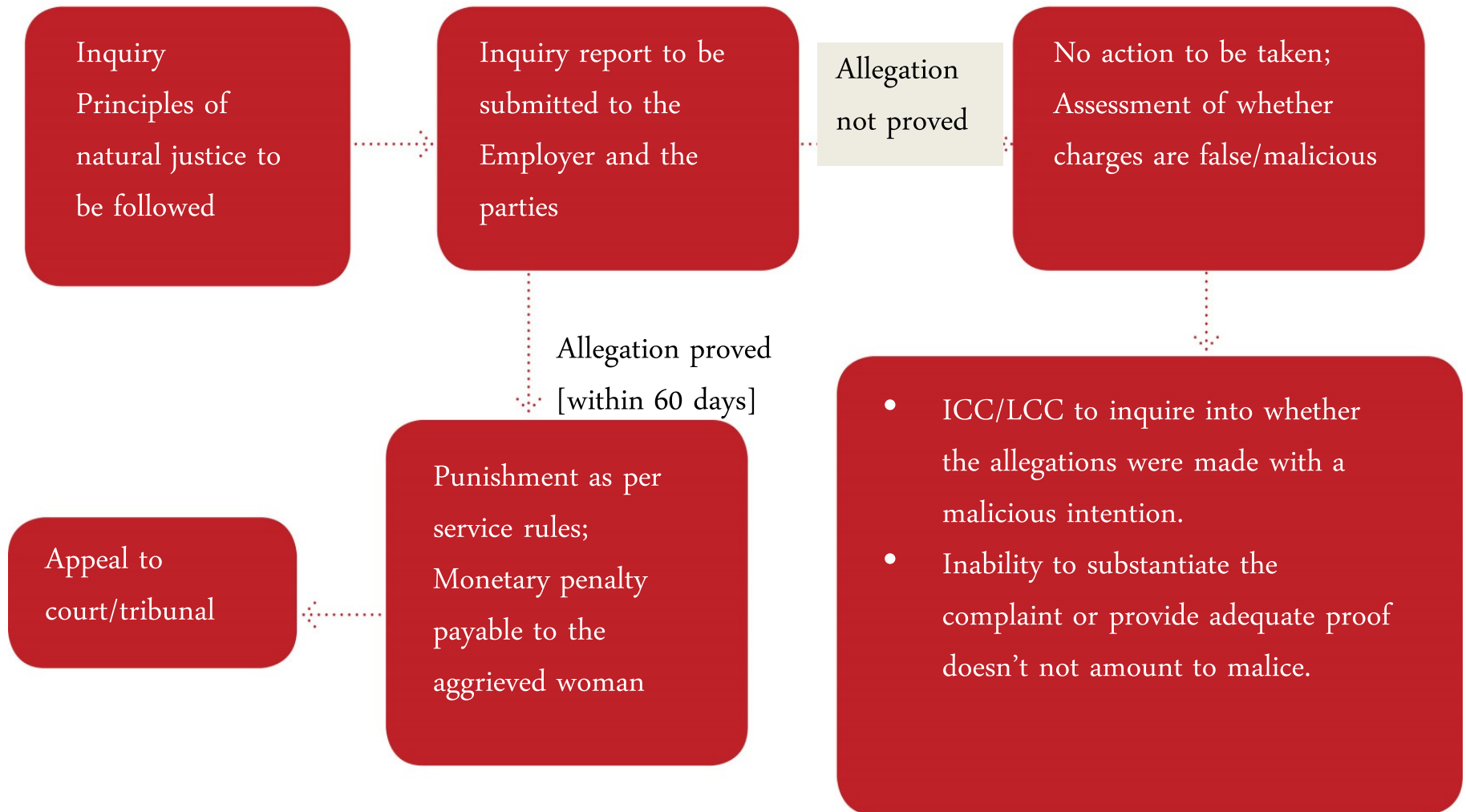
During conduct of enquiry- that of **Civil Court** for summoning, production of documents etc.



Grievance Redressal Process



Grievance Redressal Process



Manner of Enquiry

(Rule 7, SHW 2013)

- Complainant to submit 6 copies of complaint with documents and list of witnesses.
- ICC/LCC to send one copy to the respondent within 7 days.
- Respondent to file reply, documents and list of witnesses within 10 days.
- Principle of natural justice to be followed.
- Ex-parte proceedings if the complainant/Respondent fails to turn up on 3 consecutive hearings.

Manner of Enquiry

(Rule 7, SHW 2013)

- Before Ex-parte decision, 15 days notice in advice to be given.
- No lawyer allowed in proceedings at any stage before the ICC/LCC.
- 3 members, one of them to be the Chairperson, is the *Quorum* for meeting.



Action during pendency of Inquiry

(Sec. 12)

The ICC/LCC may recommend

(1) transfer of aggrieved woman or respondent

or

(2) grant leave to aggrieved woman up to 3 months.

(3) grant such other relief to the aggrieved woman as may be prescribed.

(4) Leave shall be in addition to the entitlements as per service rules.

(5) Employer to comply with the recommendations and send compliance report to ICC/LCC.

Other Relief during pendency of enquiry

(Rule 8 of SHW Rules 2013)

At written request of the complainant, ICC/LCC may recommend-

- (a) Restrain the respondent from reporting on work performance/writing ACR of the complainant and assign it to some other officer.
- (b) Restrain the respondent from supervision of academic activities of complainant in academic institutes.

Enquiry Report

(Sec. 13)

- To be sent to employer **within 10 days** of its completion.
- **Report to be given to the parties** concerned.
- The committee, if complaint is found true, may **recommend** to the employer-
 - (1) **Department action** as per service rules or as may be prescribed if no service rules.
 - (2) **Deduction from pay and the amount to be paid to the aggrieved woman** or her legal heirs.
 - (3) If the employer is not in a position to make deduction from pay or the defaulter refuse to pay, it can be recovered from the defaulter **as arrears of land revenue by the DO.**
- The employer to **take action within 60 days of** receipt of the report.

Manner of Taking Action (Rule 9)

ICC/LCC may recommend to employer:-

- Departmental Action as per departmental rules
- If no departmental rules then-
 1. Written apology
 2. Warning
 3. Reprimand or censure
 4. Withholding promotion
 5. Withholding of pay rise or increment
 6. Termination of service
 7. Undergoing counselling session
 8. Community service.



Punishment for false complaint

(Sec. 14)

The ICC/LCC may recommend.

- **Department action** as per service rules.
- Malicious intent to be proved behind the false complaint before recommending action.
- **Departmental action** can also be recommended against those who give **false evidence** during enquiry.
- **If no departmental rules exists then, action as per Rule 9.**

Compensation to aggrieved woman

(Sec. 15)

For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub section (3) of section 13, the Internal Committee or the Committee or the Local Committee, as the case may be, shall have regard to-

- (a) **the medical trauma, pain, suffering, and emotional distress** caused to the aggrieved woman;
- (b) the **loss in the career opportunity** due to the incident of sexual harassment;
- (c) **medical expenses** incurred by the victim on physical or psychiatric treatment;
- (d) the **income and financial status of the respondent**;
- (e) **feasibility of such payment in lump sum or in installments.**

Prohibition of publication or making known contents of complaint and inquiry proceedings

(Sec. 16)

- **Complaint, Inquiry Proceedings & addresses of complainant, respondent and witnesses shall not be published** communicated or made known to public, press and media in any manner.
- **Department action as per service rules** for the defaulters disobeying this direction (Section 17).
- **If no service rules exists, Rs. 5000/- shall be recovered** from such person by the employer (Rule 12).

Appeal against the recommended of the ICC/LCC

(Sec. 18)

A person aggrieved from the recommendations of the ICC/LCC or from non-implementations of the recommendations may prefer **appeal to the court or tribunal in accordance with the provisions of the service rules or as per provisions of any other law.**

- **Appeal within 90 days of recommendations.**
- **If no rules exists,** then, to a appellate authority notified under **clause (a) of section 2 of the Industrial Employment (Standing order) Act 1946.**

Duties of Employer

(Sec. 19)

(a) **provide a safe working environment** at the workplace which shall include safety from the person coming 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 Internal Committee under sub section (1) of section 4.

(c) **organise workshops and awareness programmes** at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed.

contd.....

Duties of Employer

(Sec. 19)

(d) provide necessary facilities to the Internal Committee or the Local Committee as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;

contd.....

Duties of Employer

(Sec. 19)

(h) **cause to initiate action, under the Indian Penal Code or any other law for the time being in force**, against the perpetrator if the offender is an employee and if the woman so desires;

(i) **treat sexual harassment as a misconduct** under the service rules and initiate action for such misconduct;

(j) **monitor the timely submission of reports** by the Internal Committee.

Duties of D.O.

(Sec. 20)

(a) monitor the timely submission of reports furnished by the LCC;

(b) take such measures as may be necessary for engaging non-governmental organizations for creation of awareness on sexual harassment and the rights of the women.



Miscellaneous

- (I) ICC/LCC to submit annual report to D.O. & employer.
- (II) D.O. to send the annual report to state government.
- (III) Employer to include the information in annual report.
- (IV) Appropriate Govt. to monitor implementation of the Act.
- (V) Appropriate Govt. to give publicity to the Act.
- (VI) Appropriate Govt. may call information & inspect record of the employer/D.O.

Penalty for Non compliance of the provisions of the Act (Sec. 26)

- **Non compliance** of section 4,13,14 and 22 or other provisions(ICC, Action on Enquiry, False comp., Annual Report, Contravention of Law & Rules)
- fine up to Rs. 50,000/-
- second time or subsequent non-compliance- twice the fine imposed on first conviction.
- Cancellation of license/registration etc.
- If more punishment is provided for the offence in any other law, court may award that.

Cognizance of offence by courts

(1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a **complaint made by the aggrieved woman or any person authorized by the Internal Committee or Local Committee in this behalf.**

(2) No court inferior to that of a **Metropolitan Magistrate or a Judicial Magistrate of the first class** shall try any offence punishable under this Act.

(3) Every offence under this Act shall be **non-cognizable.**

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Section 28 **Act in addition to any other laws.**

Sec. 29 **Power of appropriate govt to make rules.**

- Central Government to make rules.

How to Deal with Sexual Harassment? EMPLOYEES

1. Tell the harasser that the conduct is unwelcome, offensive, and must stop immediately.
2. Demonstrate that the conduct is unwelcome by walking away, avoiding interaction and using facial expression and body language.
3. Report behavior to immediate supervisor, human resources officer, or appropriate member of management.



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Power to remove difficulty- Central Govt by issuing notification up to 2 years from the commencement of this act.

Criticism

- 1) States have not amended the Service Rules for including SHW as misconduct and also giving status of DE to the report of the ICC. Hence **duplication of proceedings in ICC and regular DE.**
- 2) If the **accused is not an employee**, then, no action under the Act is possible.
- 3) No action **after retirement** is possible as no punishment can be inflicted.
- 4) **Conduct outside workplace.**

- No protection for male employees
- No reference to protection from ‘victimization’
- Constitution of ICC for different offices
- External representation within ICC
- Timelines may be unrealistic
- Deterrence due to employer action for false or malicious complaints
- Ability to deduct from harasser’s salary
- Absence of monetary liability on the part of the employer
- No protection from other forms of harassment

Thank You!

