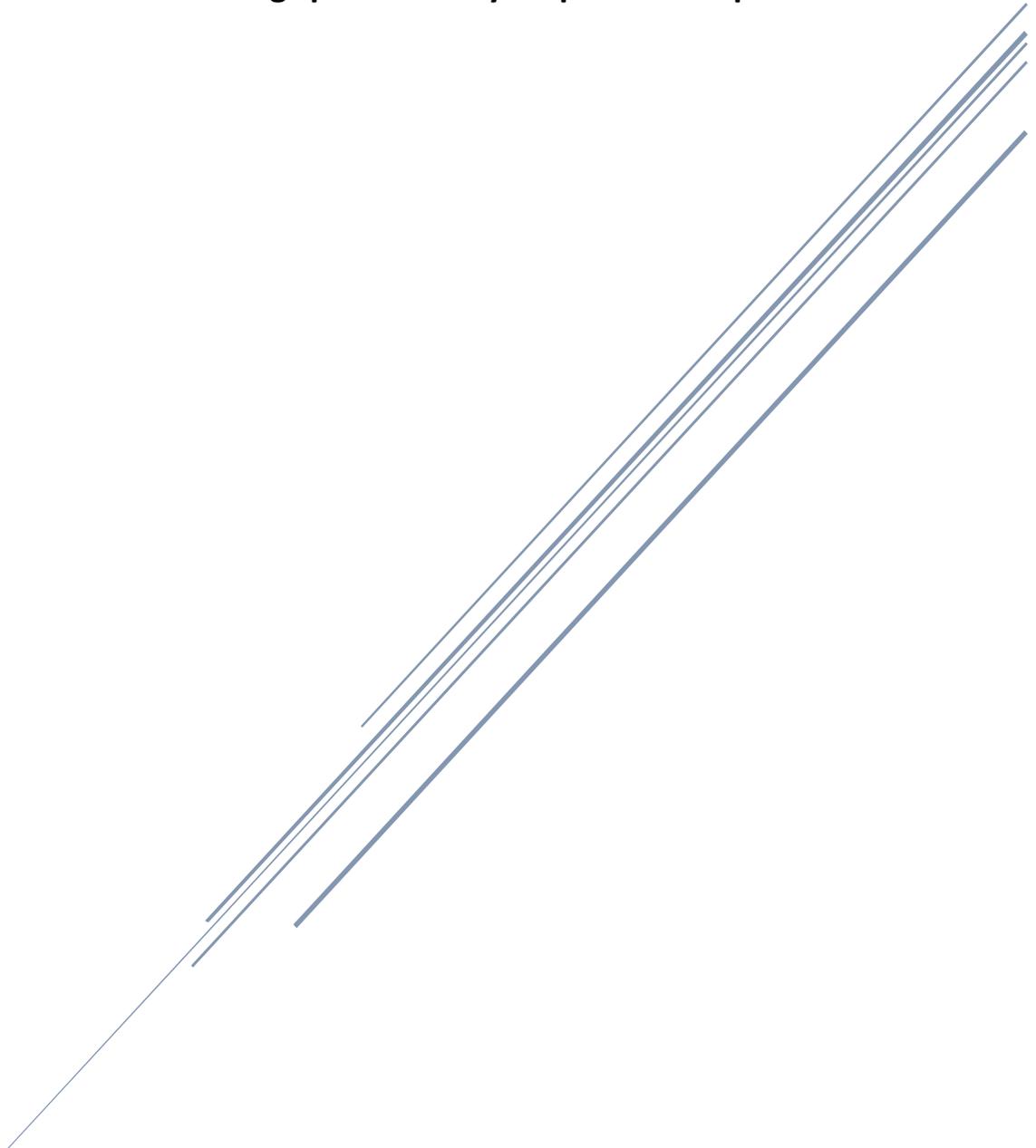




Quick Reference - Workplace Sexual Harassment

WHAT YOU NEED TO KNOW.....WHAT YOU CAN DO

A collection of best blogs published by KelpHR over a period of time



June 2018



SEXUAL HARASSMENT HANDBOOK

BY KELP HR

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equity....”

Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan

As enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution. A safe workplace is therefore a woman’s legal right.

Frequently employees face sexual harassment but many not be aware of their rights and there is something they can do about it. Thus this handbook by Kelp HR is designed for every employee working in all kinds of workplaces/organization/institutions to serves as an introduction in detail of the Act, the key players involved in the complaint mechanism, the monitoring requirement as per the act and the best practices on sexual harassment at the workplace.

This handbook is a compilation of some of most read blogs published over a period of time.

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What is Sexual Harassment Act?

As stated by the act, “An Act to provide protection against Sexual harassment of women at workplace and for Prevention and redressal of complaints of Sexual harassment and for matters connected therewith and incidental thereto.”

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 realisation 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.

What is Vishaka case and Vishaka guidelines?

Vishaka is the Women’s rights group that filed a PIL in Supreme Court of India—the case of Bhandari Devi Vs. the state of Rajasthan in 1997. Bhanwari Devi (from a potter community) who tried to prevent child marriage as part of her duties as a worker of the Women Development Programme was raped by the landlords of the community in order to teach her a lesson . The rape survivor did not get justice from Rajasthan High Court and the rapists were allowed to go free.

Thus resulting in Vishaka guidelines, for dealing with sexual harassment of women at the workplace. The verdict defined sexual harassment, laid down duties of employers in dealing with complaints and stipulated formation of committees to dispose of complaints from victims of harassment.

Prior to this verdict, the person facing sexual harassment at workplace had to lodge a complaint under Section 354 or 509 of the Indian Penal Code .

Why should employers be compliant to the act?



1. Avoid Impact on company's credibility arising out of non-compliance to act.

2. Provides a better and secure Work Culture among employees.

3. Avoid punishment as per Law: Failure to comply with the requirements can lead to an immediate fine of up to INR 50,000 and further consequences for repeated / continued non-compliance.

Upto
50,000
Rupees Fine for
Non-compliance

The infographic features a row of 20 stylized human figures at the bottom, with 10 male and 10 female icons. A large, multi-pointed starburst graphic on the right side contains the text 'Upto 50,000 Rupees Fine for Non-compliance'.

4 Key steps to be compliant with the law

Sexual Harassment Policy creation compliant to the act – detailing the Employee and Employers roles and responsibilities; Complaint and Redressal mechanisms

Internal Complaints Committee setup as per guidelines and should be equipped to handle complaints after thorough investigation and recommend actions to be taken

Employee awareness on the act, Complaints and Redressal mechanisms as detailed in the policy

Statutory reporting of the cases filed and action taken should be reported and filed in the Company's annual report

PoSH Annual report filing Simplified

Annual Report filing is becoming a big discussion point at all our Internal Committee meets as there is a lot of ambiguity among HR leaders, Compliance Officers about how to go about it. I thought of putting it down clearly so employers are clear about their roles in being compliant.

As per Prevention of Sexual Harassment Act, 2013, there are 2 reports to be submitted by the employer:

Report 1: It is the duty of the ICC to submit an annual report, which includes the number of cases filed/disposed of every calendar year to the employer and district office.

Section 21 – Internal Committee to submit annual report:

As per the Act – “(1) The Internal Committee or the Local Committee shall in each calendar year prepare, in such form and when may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received

The Act mandates submission of an Annual Report by the ICC/LCC to the employer/District Officer. The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

1. No. of complaints received;
2. No. of complaints disposed of;
3. No. of cases pending for more than 90 days;
4. No. of workshops/awareness programmes carried out;
5. Nature of action taken by the employer/DO;

The Report of ICC will be forwarded to the DO through the employer.

For a copy of the Annual report template and the district officer list, write to us at info@kelphr.com and we would be glad to help!

Section 22 – Employer to include information in the Annual report

As per the Act – “The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.”

Report 2: The employer has a statutory obligation to ensure this report is included in the annual report of the organization filed to the Registrar of companies.

The latest Director’s Report submitted under the Companies Act has a section to capture the compliance to the PoSH Act, 2013. This report is filed along with the Annual returns to the Registrar of companies. Unfortunately, many Auditors and Directors are not aware of this latest report or end up filling this section as Nil while submitting this. Director’s report as part of the Annual Report /Annual returns Filing is filed to the Registrar of Companies.

The latest Director’s Report for FY 15-16 Submitted under the Companies Act has the below section:

DISCLOSURE UNDER THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

The Company has in place an Anti-Sexual Harassment Policy in line with the requirement of the Sexual Harassment of Women at the Workplace Act 2013. Internal Complaints Committee (ICC) has been set up to redress complaints received regarding sexual harassment. All employees (Permanent, Contractual, Temporary, Trainees) are covered under this policy.

The following is the summary of sexual harassment complaints received and disposed of during the year 2016-2017.

- No. of Complaints received during the year:
- No. of Complaints disposed of during the year:

Section 23 – State Government to track and maintain the data

As per the Act – “The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.”

This data is closely tracked and monitored by all the district officers and is consolidated by the Ministry of WCD.

Penalty for Non-Compliance

An employer can be subjected to a penalty of up to INR 50,000 for

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

Monitoring is a critical yardstick to measure success in terms of compliance with the Act. Additionally, it highlights those areas, in terms of law and practice, which may require improvement and/or additional information and guidance at both the State as well as the workplace levels.

If you are victim, how to deal with Sexual Harassment

In my workshops, this is one of the most common question that people ask me. Not in the crowd but during the breaks or at the end of the session as an offline question, listing some of the common tips as below.

- Make it clear to the harasser that you consider the behaviour as harassment.
- Say a firm 'NO' and tell the person to stop contacting you.
- Stop answering the person's calls, emails, and other messages.
- Delete or mark the number as spam in your phone and social media accounts.
- Inform your friends and family what's going on.
- Don't publicize your location and daily habits.
- Keep records and evidences.
- Talk to the HR, Internal Complaints Committee or Harassment cell at your institution or workplace.
- If you work in an unorganized sector or organisation with less than 10 employees, then reach out to the Local Complaints Committee.

If it is a rape or an assault or any form of criminal act, then a Police complaint needs to be lodged under the Indian Penal Code.

Will I lose my job?

No, you won't. This is the first thought that crosses our mind when we are in a dilemma – whether or not to complain about harassment we encounter at the work. Our country has legislations and rules to combat sexual harassment and it is our duty to foster change in our workplaces by using these instruments of law.

While the law only protects women, companies should take a unified stand to protect all its employees from any form of Sexual Harassment at the workplace. Some of the big MNCs have already taken this plunge.

Why should I complain?

Because harassment is not ok – It's as simple as that!

In the Indian culture, women who stand up for their rights are blatantly conferred on the title of a feminist. It's time to change such deep-rooted misconceptions. As an Indian citizen we have rights and it's time to exercise these duties (as much as it is a right!).

What do you do when you know you have been harassed?

As soon as an incident occurs, note down the time and date at which it happened. CCTV footage could be checked according to that. If you feel someone else saw the incident, talk to them and ask them to stand by you when you approach the Internal Committee (IC).

If a person at your workplace sends vulgar jokes or pornography which makes you uncomfortable, you should first ask him/her to stop in a gentle yet firm manner. A common myth among Indian men is that when a woman says 'No', its actually not so.

Tell the person that when you say 'No', you mean it.

However, if they continue to send inappropriate messages, take the matter to the IC. In this case make sure you don't delete the messages. Any email or message which substantiates harassment is evidence.

Be Cautious.

When you approach the harasser, don't go alone. Ask someone you trust to come along with you and it's better not to get into a threatening mode (after all he/she is your colleague)but make the point clear in a firm manner that if he/she continues such behaviour you will have to approach the IC regarding the matter. Be cautious as to who you reveal the details of the incident to. A little caution never hurts!

Be tactful.

The law doesn't say this, but a prudent man would! Be sure you know the law and the policy of the organization regarding sexual harassment. You should be aware of the procedures followed and steps taken.

A word of caution.

Just because you don't like what a person says or does, it won't amount to harassment. Sexual Harassment should be behaviour that is sexual in nature and unwelcome.

A Victim but not victimized.

Try to have your friends and people who you trust to be with you. Be aware. Awareness is indispensable. It's good to have the support of friends, colleagues, supervisors and mentors. You don't have to tackle the whole world by yourself. We all need each other.

Stand up for you colleagues.

If you notice your colleague being harassed, don't just stand by and watch. If the victim is upset or worried, lend a helping hand and encourage them to report the matter to the IC. Laws and rules are there to protect us but you need to be humane and your encouragement and support would mean a lot to the person going through crisis.

A word to employers

Take a conscious effort to make your employees aware of the law and policies of the organization. If your organization employs contract workers and others

who are not familiar with English language, make communication available in the vernacular language so that they are also assured that they are in a safe working environment.

Try to bring about a change in the attitude towards harassment as a whole. In our culture we tend to hush up such things because it's considered taboo and we just move on without resolving issues. Bring it out in the open. Have posters in your workplace which will remind employees of the policies regarding harassment at the workplace. You could even do case studies twice year or share them more frequently and involve the employees so that they are more aware and can get them thinking.

Conducting surveys is also a very important step. If you have a high number of harassment incidents at your workplace, it means you are not talking about it and if there are absolutely no incidents being reported that is also risky, make sure your employees are aware of what sexual harassment is and whom to approach in such cases. The more you talk about sexual harassment at the workplace, the more understanding the employees will have and when there is more understanding there is empowerment.

Role of Internal Committee at Workplace

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the role of the Internal Committee (IC) is defined as below:

- Shall provide assistance to the victim to make the complaint in writing.
- Complaints need to be filed within 3 months from the last incident occurrence date. IC may extend the time limit by another 3 months.
- Before initiating an inquiry, at the request of the aggrieved woman, IC must take steps to settle the matter through conciliation.
- Shall recommend action during pendency of inquiry like granting leave or transferring either the victim or respondent.
- If IC arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required.
- If IC arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer:
 - To take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed.
 - To deduct, notwithstanding anything in the service rules applicable to the respondent, 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.

What if the witness refuses to speak in an Internal Committee inquiry?

Problem Statement:

As per CCTV evidence and the victim's statements a witness was present when the incident occurred. But the witness feigns ignorance. This witness's testimony is very crucial to the case. As an IC member, is there any action that can be taken?

Witness's Right to silence.

The Constitution of India guarantees every person right against self-incrimination under Article 20 (3): "No person accused of any offence shall be compelled to be a witness against himself". It is well established that the Right to Silence has been granted to the accused by virtue of the pronouncement in the case of Nandini Sathpathy vs P.L.Dani, no one can forcibly extract statements from the accused, who has the right to keep silent, but only in the court of law. It is not clear if the accused can exercise his right to silence during interrogation by public servants. Interrogation techniques like narco-analysis, brain mapping and lie detection nullify the validity and legitimacy of the Right to Silence. But in 2010, the Supreme court found that narco-analysis, brain mapping and lie detector tests violate Article 20(3).

Reasons for witness to turn hostile or stay silent:

At the workplace, the reasons for a witness to turn hostile may be:

- Fear of retaliation.
- Fear of losing their job.
- Threat by the accused.
- Lack of awareness of the policy or process.
- Lack of trust in the committee or management.
- Absence of Witness Protection.
- Prolonged trials.

Hostile Witnesses: Judicial Remedy

For a situation like the Jessica Lal case, where witnesses refused to support the prosecution's case, the committee has suggested the following measures:

1. Holding in-camera proceedings
2. Taking measures to keep identity of witness's secret
3. Ensuring anonymity
4. Making arrangements to ensure their protection
5. Witnesses should be treated like guests of honour
6. They should be adequately compensated for spending money on travel and accommodation
7. Comfort, convenience and dignity of witness/es while giving their statements in the court of law, should be ensured

Unravelling the Intricacies of the Anti-Sexual Harassment Act

In recent years, managing a globally diverse workforce has transformed organizational dynamics to a great extent. One of the key focus areas for Indian companies is keeping the workplace secure for its employees, especially women. A safe workplace is every employee's legal right, and organizations are mandated to give this security.

As a leader of your organization, I am sure you believe in this too. Most leaders believe in running an ethical organization with a strong code of behaviour regarding safety and anti-harassment, including sexual harassment. I am sure your organization even has a policy incorporating the Vishakha guidelines.

And so you may ask, do I really need to take note of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013? My intent is clear, my actions are clear – so do I have to really?

The answer is a resounding YES. And yes on many counts.

Firstly, on the aspects of the law. To cite a few,

It is mandatory for your organization to form an Internal Complaints Committee if you have more than 10 people .

Your organization is duty-bound to provide assistance to your employee if she wishes to file a complaint under the Indian Penal Code.

Upon the request of the aggrieved employee, your organization needs to provide relief (such as grant leave for a period of up to 3 months or transfer the victim or the alleged harasser to another location).

Secondly, on the implications of the Act. To name a few,

How do I establish an Internal Complaints Committee? Who shall be its members?

What are the organization's accountabilities?

What are the elements of a grievance redressal mechanism that must be in place?

How will my organization be deemed compliant in terms of policy, awareness programs and processes?

Answers to these questions carry shades and nuances, all inextricably linked to the Act that is unforgiving of lapses. And rightly so. It is time for your organization to seriously revisit its intent, its policies, its processes and yes, perhaps even its culture.

When you do, some of the critical implications can overwhelm you.

My organization has a committee with committed senior members. Is that enough? Or not?

My organization has multiple offices – how should I handle it for each of them?

Is a gender-neutral policy enough? Or should my organization draft a new policy specifically for women employees?

If the aggrieved employee is a man, can he appeal under this Act? Can all the provisions of the Act be still invoked, both from a legal and moral standpoint?

Does the Act require specific documentation and reporting requirements?

Believe me this is but a sample. Many more questions will cascade.

To finally, the million-dollar question – Can anyone help us ensure that our intent and outcome match?

It is a good idea to take the help of an expert. Look for someone whose expertise and experience amalgamates both human resources and legal compliance. Look for consultants who carry authentic credentials of leading organizations, of leading HR functions and of leading program delivery. Give them their due, and they will give you the guarantee of results.

CONCLUSION:

The Act has helped to create a healthy and safe environment which would bring a tremendous change in the workplace where it would help weed out the mindset that women are inferior to men.

Is your organisation compliant to the sexual harassment Act? If not, visit www.kelphr.com

**A safe workplace is every
person's right**

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