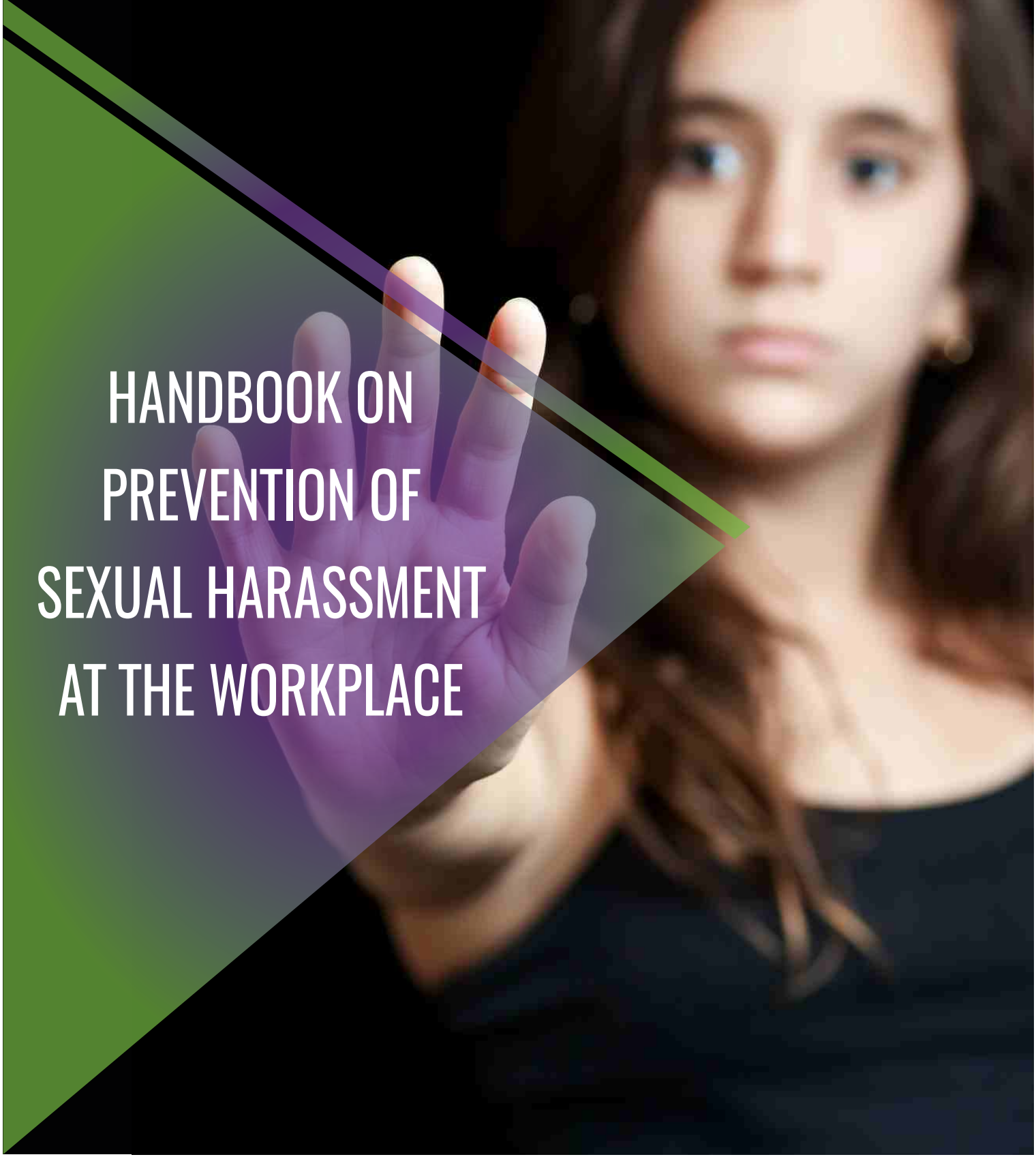




PRODUCERS
GUILD
OF INDIA


Complykaro



HANDBOOK ON
PREVENTION OF
SEXUAL HARASSMENT
AT THE WORKPLACE

About Guild:

Producers Guild of India is the premier film, television and digital content producers' body representing the pre-eminent producers of audio visual content in India, with a significant collective contribution to the country's economy and workforce. The Guild assumes varied roles of significance in the paradigm of the Indian Film and Television and New Media sector such as being a principal negotiator with the Government on various critical industry challenges, industry development, resolving intra and external industry trade disputes, co-productions, treaties, cultural and trade ties with other countries/international bodies, locations and production incentives/liasing with foreign delegations and arranging conclaves for the benefit of its members.

Established as The Film Producers Guild of India Ltd. in 1954 by the stalwarts of the Indian film industry including Raj Kapoor, Mehboob Khan, Sasadhar Mukerji, B.N. Sircar, V. Shantaram, Vijay Bhatt, B.R. Chopra, the Guild also incorporated the television sector in its fold in 2004 and assumed its nomenclature as The Film & Television Producers Guild of India. With the upsurge in new media content as an important stream of entertainment in the last few years, the Guild anticipated an influx of content producers from new media in its fold and accordingly since 2017 it has assumed the role of an all- pervasive industry body incorporating producers from all three mediums - Film, Television and New Media and now known as Producers Guild of India.

About Complykaro :

Complykaro is one of India's first end-to-end compliance service provider which helps companies comply with their legal obligations. In a short span of less than 4 years, Complykaro has become a market leader in Prevention of Sexual Harassment (PoSH) advisory with a clientele of 400+ companies. We also help corporates in effective implementation of Whistleblower / Vigil Mechanism, Information Security and Anti-Bribery & Anti-Corruption Policies.

Our Vision: To make Corporate India compliant with all applicable laws, by exhorting them to 'comply karo'.

Our Mission: To educate and foster a gender sensitive workspace by assisting companies in PoSH.

Complykaro is empanelled by Government of India, Ministry of Women & Child Development as a resource company for providing PoSH training.

Complykaro and its Founder & Director, Mr. Vishal Kedia has also won the following awards & accolades:

- “Best Compliance Training Program” award for its training solution at The IndiaHuman Capital Summit & Awards.
- “Compliance Consulting Firm of the Year” award at The India Leadership Awards 2016 organised by World Leadership Federation.
- Mr. Kedia was bestowed with “Global Diversity & Inclusion Leadership” award at 25th World HRD Congress.
- Mr. Kedia was bestowed with “The Leading CEO of the Year” award at the 6th Annual Greentech HR Conference for our endeavour to prevent sexual harassment in Corporate India.
- Mr. Kedia was felicitated with the "Achiever's Award" by JCI Marine Lines in recognition for his outstanding contribution for prevention of sexual harassment of women at workplace.
- “Start-up Company of the Year” Award at the HR Tech Conference | Awards at 15th Asia Pacific HRM Congress.
- Recognised as “One of the 50 most valuable consultant companies of India” by Insights Success Magazine.
- Recognised as “One of the 10 most trusted business and commercial law solution providers” by Insights Success Magazine.
- Recognised by Government of India, Ministry of Commerce & Industry under StartUp India Action Plan.

Foreword

Dear Guild Member,

The Guild extends its complete support to the movement to call out and report sexual harassment and abuse whenever and wherever it occurs in our industry. We believe that there is an urgent need to set up robust processes to ensure the highest standards of safety for women, employees and crew members at our workplaces - whether in offices or on the sets of productions.

The law mandates that every organisation must take the onus of ensuring this, and consequently has instituted the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act In 2013. Within the Guild we have concluded that it is of crucial importance for us to build awareness of the Act amongst our members, and to share industry-wide best practices from trained professionals.

We have instituted a sub-committee within the Guild to lead this effort and are amending our by-laws to make it mandatory for all existing and new members to institute and implement the law in letter and spirit.

This handbook is our endeavour to make compliance easier for our members. And I thank Complykaro for its efforts in spreading awareness about the issue and sensitising more and more production houses.

I appeal to all Guild member organisations to do everything they can to make their respective organisations safe spaces for women. It will go a long way in ensuring that the industry continues to be a place that millions of young and talented individuals from across the country aspire to be a part of.



Siddharth Roy Kapur
President
Producers Guild of India

Foreword

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; was a milestone in Corporate India specifically, and the society in India as a whole. Being a professional trainer for the said law since inception, I have seen ramification of the same multiply exponentially with ever passing year. I have come across quite a few instances of Sexual Harassment over the course of my interactions with industries and one thing is clear; Sexual Harassment knows no bounds; it can be found from the youngest of start ups to the oldest of corporate. For some reason, it seems to be deep rooted into our being. Somewhere along the way, people pick up that sexual harassment is “ok”. Maybe the reason for this is the stigma that is attached with victim if they speak up or maybe it is lack of accountability for the perpetrator’s actions.

In today’s world, women contribute equally to all things in business and most likely; even more so at home. They are key operatives to the success of many organisations and yet, they are made to endure Sexual Harassment; most of which goes unreported. In most of my interactions the recurrent theme that comes up is the lack of awareness of what exactly Sexual Harassment amounts to and who should the aggrieved person go to.

That is where this milestone law comes in to the picture. In one fell swoop, the law has projected India forward, not only in the office, but in general life too. The definition of Sexual Harassment covers all verbal, non-verbal and physical misconduct. The accountability of both; complaint and accused, lies to the organisation which has been authorised to create a complaints body to deal with such complaints. By enabling such a redressal mechanism, India has ensured that women can receive speedy and private resolution of their issues. Most essentially, by making the sensitisation of all employees mandatory, we are educating today’s workforce on appropriate conduct in the office or on sets of production, and by logical extension, their lives.

The Guild has taken a great initiative to sensitise its members to this social bane. Being the premier national body for Film, Television and Digital Content producers, its reach is far . With the help of great bodies like The Guild, the intent of this law can be made wide spread and the impact can be made to reach the grassroots of our society.

Have you taken the first step by constituting your ICC and sensitising your employees to the said law?



Vishal Kedia
Founder & Director
Complykaro Services Pvt. Ltd.

Contents

01

Evolution of the Law

02

Important Definitions

04

Case Study

05

Features of the Law

06

Misconceptions about the Law

09

Importance of Training & Sensitisation

10

Redressal Procedure

11

Inquiry Procedure

12

Consequences of Non Compliance

13

Obligations of the Employer

14

Impact of Sexual Harassment

15

Conclusion

What

is Sexual Harassment

,

Sexual harassment can be defined as bullying or coercion of a sexual nature that includes any unwelcome acts or behavior (whether directly or by implication) namely physical contacts and advances or a demand or request for sexual favours or making sexually coloured remarks or showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

EVOLUTION OF THE LAW



Pre Vishakha Judgment

“Until 1990’s, women experiencing Sexual Harassment at Workplace had to lodge a complaint under Section 354 & Section 509 of the Indian Penal Code .”

Vishakha Guidelines by Supreme Court of India

“On 13th August 1997, the Supreme Court acknowledged the absence of any domestic law to address the said malice and created binding set of guidelines taking into cognizance the constitutional doctrine of equality as enshrined in Article 14,15 & 21 of the Constitution of India.

The Apex Court further declared that the said directions would be binding and enforceable until suitable legislation is enacted by the Parliament.

However the implementation was far from being satisfactory as there were no penal consequences for any non-compliance.”



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

“The unfortunate Nirbhaya incident of 2012 brought to fore the much needed push and the Government of India sprung into action and immediately promulgated The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 and The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013 and made it effective w.e.f. 9th December, 2013.”

IMPORTANT DEFINITIONS

“ Aggrieved Woman

Means

(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;



”

“ Respondent

Means

a person against whom the aggrieved woman has made a complaint .

”

“ Employer

Means

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

”

“ 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.

”

“ Internal Complaints Committee

Means

a committee constituted by the employer (having 10 or more employees) at each location consisting of

(i) a Presiding Officer who shall be a woman employed at a senior level at the 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.

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation.

(ii) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge and

(iii) one member from amongst NGO 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. ”

“ Workplace 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; ”

CASE STUDY

**Debdulal Maity Vs. National Insurance Co. Ltd & Ors
decided on 7th August 2014 by Calcutta High Court**

Background

In the present case, the High Court has held that the Internal Complaints Committee (ICC) on receipt of a complaint has to apply its mind to form a prima facie opinion about the maintainability of the complaint under The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 before initiating inquiry by issuing notice to the respondent under Rule 7 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013.

Facts

The Internal Complaints Committee (ICC) received a complaint dated May 5, 2014 from an aggrieved woman with respect to an alleged incident occurring on April 27, 2012 wherein the woman further stated that the two persons including the respondent are still behaving in a very unbecoming manner in the office. The ICC issued a notice dated May 14, 2014 to the respondent under Section 11 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013, read with Rule 7 of the Rules.

The respondent filed a Writ Petition before the Calcutta High Court challenging the said notice dated May 14, 2014 alleging non application of mind as the ICC did not consider as to whether the alleged incident comes within the meaning of sexual harassment as defined in the Act and within the period of limitation prescribed under the Act before issuing notice to him and requested the High Court to quash the said notice.

The Company argued that the ICC has no other option than to invoke the provisions of Rule 7 of the Rules and issue a notice to the person against whom a complaint is lodged asking for reply. Further the ICC has no power under the scheme of Act of 2013 to come to a prima facie finding as to whether the complaint before it is one of sexual harassment or not. Further the writ petition is premature. The respondent has to wait for the decision of the ICC.

Issues

- Whether the ICC is obliged to issue notice to the respondent under Rule 7 on receipt of a complaint in a mechanical manner?
- Whether the ICC has the power to come to a prima facie conclusion as to whether the complaint before it is one of sexual harassment or not under the Act?
- Whether the ICC has to issue notice despite the fact that the complaint is filed beyond the period of limitation prescribed under the Act?
- Whether the notice issued by the ICC suffers from non application of mind and ought to be quashed?

Judgement

A complaint made to the authority constituted under Act of 2013 must receive due consideration and the committee must form an opinion as to whether the nature of complaint requires invocation of Section 10 or a process under Section 11. It cannot abdicate its jurisdiction by claiming that it has no other option than to issue notice in term of Rule 7.

The Internal Committee or the Local Committee as the case may be has ample power to consider a complaint received by it to see whether or not such complaint comes within the definition of sexual harassment as defined under the Act of 2013 and whether such incident has taken place at the workplace.

Upon such prima facie finding being formed by the Internal Committee or the Local Committee as the case may be, can initiate proceeding for conciliation under Section 10 or initiate proceeding for enquiry under Section 11. Rule 7 does not require the Enquiry Committee or the Local Committee as the case may be to mechanically issue a notice upon receipt of a complaint.

The period of limitation is for a period of three months and in cases of repeated complaints from the date of last incident. Therefore it can be concluded that the notice has been given without the application of mind.

SALIENT FEATURES OF THE LAW

- ❖ **Time limit to make complaint (3 months)** – Adequate time to file a complaint (3 months from date of incident and in case of series of incident, 3 month from date of last incident). The time limit can be extended in appropriate cases
- ❖ **Time bound redressal**- Ensures time-bound redressal (ICC must complete inquiry within 90 days from receipt of written complaint) by ICC for the Aggrieved Woman or to clear the cloud of suspicion on the Respondent.
- ❖ **Confidentiality** - Ensures total confidentiality in inquiry procedure and recommendation by ICC to prevent identification and sullyng of the reputation of all parties involved.
- ❖ **Conciliation** - There is an inbuilt alternative redressal mechanism for the aggrieved woman to resolve her grievances through mutual consent without promoting misuse of law through lure of monetary compensation.
- ❖ **Interim Relief** - Provision for interim relief on the request of the aggrieved woman to avoid the discomfort of both parties interacting during the pendency of inquiry.
- ❖ **Principle of natural justice** – Equal opportunity to both parties to present their case / evidence as well as rebut adverse case / evidence, which ensures that nobody is condemned unheard.
- ❖ **Lower Burden of Proof** - No need to prove guilt beyond a reasonable doubt . The parties must merely establish the preponderance of probability of their allegation based on evidence produced.
- ❖ **Monetary compensation**- Apart from disciplinary action which ICC recommends to be taken against the Respondent, the law also provides restitution to the Aggrieved Woman for emotional trauma and losses incurred in the form of monetary compensation.
- ❖ **Provision of punishment for false or malicious complaint** - The provision balances the concerns of the Respondent by providing adequate checks and balances. However mere inability to substantiate her allegations of sexual harassment would not amount to false complaint.
- ❖ **Appellate Remedy** - Any person aggrieved by the ICC's recommendation can challenge the same before the appellate tribunal thus providing an adequate check and balance against any error being committed by the ICC during the inquiry proceedings.



MISCONCEPTIONS

ABOUT THE LAW

1. We need not comply as we do not have any women employees .

In order to make a sexual harassment complaint the woman need not be an employee. The woman can be a visitor, a vendor, a customer, a bystander, an intern, or even a job seeker and still be able to complain.

2. The aggrieved woman has to be an employee of the organisation.

The aggrieved woman need not be an employee of the organisation. The respondent has to be an employee of the organisation against whom the complaint has been alleged.

3. We need not comply as we have very few employees.

Every organisation has to comply with the law regardless of the number of employees.

4. Is the law mandatory?

Yes. The law is mandatory for all organisations irrespective of its constitution that include Public Limited Companies, Private Limited Companies, Limited Liability Partnerships, Partnership Firms, Trusts, Societies, Associations, Proprietorships and government departments and undertakings.

5. The organisation is not responsible in case the incident happens outside the office.

Workplace has been defined in the widest manner and it includes any place visited by the employee arising out of or during the course of employment including transportation provided by the employer.

6. Most of my employees are on contractor payroll.

Employee has been defined in the broadest manner which includes anybody working either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not.

7. Sexual Harassment does not occur in our organisation.

“One cannot forecast what the future holds.” thus, stating that sexual harassment does not occur in our organisation would be sheer ignorance. Sexual harassment at workplace may occur at any point of time.

8. We shall comply as and when we receive a sexual harassment complaint.

The mandate of the law is more preventive than punitive. An organisation needs to comply irrespective of it receiving such complaints. Hence all obligations like putting up posters, formation of policy, sensitising employees and skill building of ICC members help to prevent instances of sexual harassment.





9. We have complied as we have formulated an anti sexual harassment policy and constituted an Internal Complaints Committee.

There are several other obligations for complying with the law which includes training and putting up posters. Any non-compliance with any provisions of the law may result in criminal prosecution of the management.

10. Only a NGO member can be the external member of the ICC.

Apart from a NGO member, the external member could be from an association committed to the cause of women or any other person familiar with issues relating to sexual harassment.

11. The Presiding Officer of the ICC has to be the HR Head.

The Presiding Officer of the ICC must necessarily only be a woman employed at a senior level. Under no circumstances can a male member be the Presiding Officer even if he is the HR Head.

12. The law will be better served in case all ICC members are women.

At least one-half (50%) of ICC members must necessarily be women including the Presiding Officer. Though it is legally permissible to constitute an ICC comprising of all women members, it is advisable to have at least one male member to provide comfort to all stakeholders.

13. The ICC needs to take cognizance of even an oral complaint.

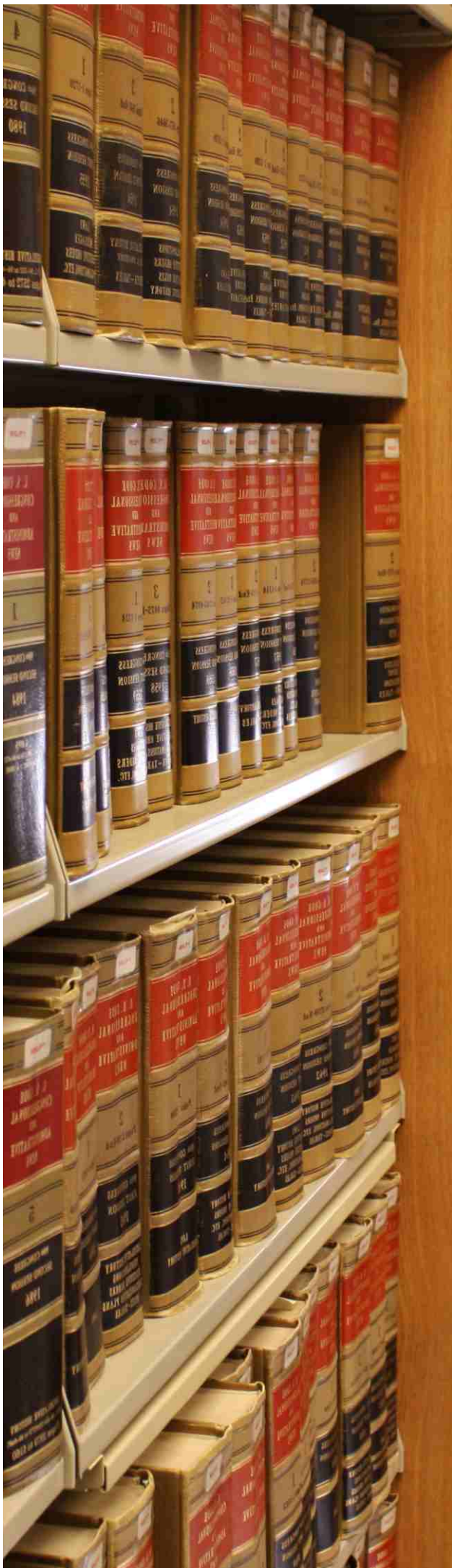
The ICC begins the redressal process only on receipt of a written complaint. In case the aggrieved woman is unable to make the complaint in writing, the ICC members are obliged to help her make the same in writing.

14. Women will misuse the law in case they are denied promotion etc.

The law provides inbuilt mechanism and deterrents against the same like complaints to be ideally made within 3 months from the date of incident /last incident, ICC to follow principles of natural justice and arrive at a collective reasoned decision and punishment in case of false and malicious complaints amongst others.

15. Sensitising employees about the law would lead to more complaints.

It is an unfounded misconception. It is imperative that an employee understands the various actions which may constitute sexual harassment and introspect and change any offending behaviour. Further all stakeholders need to be aware that the same action may be perceived differently by various women on account of various economic and social backgrounds and the simplest way to stop any offending behaviour would be by letting the other person know that his actions are unwelcome. Further the stakeholders need to be aware about the respective consequences of genuine and false complaints.



16. As soon as a complaint is received, the respondent has to be presumed guilty.

There is no such presumption under the law. Though direct evidence may be unlikely available, the initial burden is on the woman to prove her allegations through circumstantial evidence. However she needs to prove the preponderance of probability as against the proof beyond reasonable doubt under criminal law.

17. No harm would come to the organisation even in case the law is not complied with.

Any violation of the provisions of the Act and Rules make the management liable for fine upto INR 50,000. Repeated violations may result in double the penalty and cancellation of business license. This is apart from the liability of the organisation under general law of torts as well as risk of management being charged for abetment of offence of sexual harassment. Further in this age of social media, the reputational risk cannot be ignored.

18. Only aggrieved woman can file a complaint of sexual harassment.

An aggrieved woman needs to file a written complaint personally. Only in exceptional circumstances like physical or mental incapacity or death or otherwise, specified person may make a complaint on her behalf.

19. There is no redressal mechanism for organisations having less than 10 employees.

In case organisations have less than 10 employees, complaint against their employees are heard and decided by the Local Complaints Committee constituted by the District Officer.

★ LOCAL COMPLAINTS COMMITTEE

Means a committee constituted in each district by the District Officer to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

★ DISTRICT OFFICER

Means an officer notified by the Government for every District from amongst District Magistrate or Additional District Magistrate or the Collector or Deputy Collector to exercise powers and discharge functions under this Act.

IMPORTANCE OF MANDATORY TRAINING AND SENSITISATION U/S 19(C) OF THE ACT

Employee Sensitisation Programme:

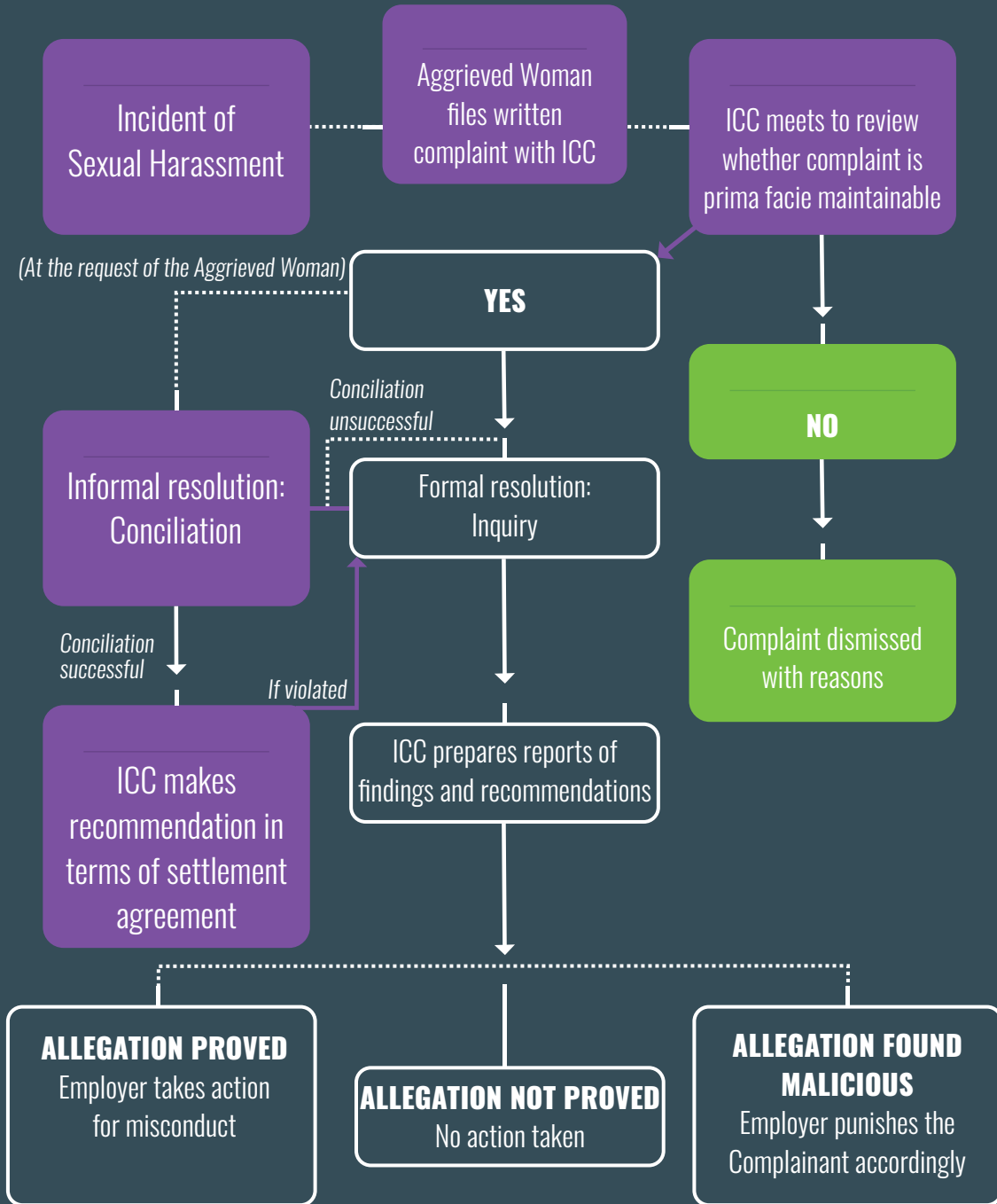
Sexual harassment training doesn't just provide employees with information to help them pursue a harassment charge or avoid being charged. It is a valuable tool that can be used to help provide awareness of activities that are not considered professionally acceptable at work – think instead, business etiquette training. How often do you see employees doing things considered unprofessional while on the job? Whether it is improper business communications or simply inappropriate gossiping, many employees don't come pre-wired to know what is acceptable in the workplace and what is not. Unless you sensitise them they may not even know and that can get them into trouble. Sexual harassment not only includes physical contact but also includes any kind of unwelcome gesture or comments. Therefore the organisation has to explain to its employees the wide scope of sexual harassment. With training and sensitisation, employees will be able to introspect and change their behavior accordingly. This also empowers women to understand the law and help them to take an appropriate action if they face any form of sexual harassment. A well-implemented sensitisation programme will enable the employees to get a proper grasp of the act and will also enable them to understand their rights, roles and responsibilities. A well informed female employee will know her rights in a clearer manner which will enable her to work fearlessly and with a better frame of mind. A well sensitised male employee will not have the fear of a malicious complaints as he will be well aware of the possible consequences for the complainant. Employees as a whole will be benefited as the sensitisation training will explain them their rights and privileges of getting an equal opportunity of being heard in case a complaint is filed.

Skill Building & Orientation of Internal Committee Members:

While employees are an important recipient of the sensitisation training, the Internal Complaint Committee members (ICC) also needs to undergo skill building & orientation program for them to understand the law completely and to be able to take a just and reasoned decision. Since members of the ICC are mostly from amongst employees and may not have legal knowledge, it is imperative that they understand the responsibility taken upon by them and do justice to the same. The effectiveness of the redressal mechanism under the Act is entirely dependent on the competency and skill of the committee members to do justice. They need to be not only aware about the various provisions of the act i.e. timelines & procedure for inquiry, conciliation, interim relief, monetary compensation etc to name a few but they whilst being empathetic to the aggrieved woman have to provide equal opportunity to both parties to prove their case. Injustice at all cost needs to be avoided i.e. perpetrator being left scott free or action being recommended against an innocent party. Further since recommendation of the ICC is subject to challenge before the Appellate Tribunal, it is imperative that the committee maintains proper documentation and arrives at a collective reasoned recommendation by applying their individual minds to the evidence presented before them. The Internal Complaints Committee receives complaints which are different in nature and severity and are viewed differently by different individuals. Each complaint received has its own distinct facts and circumstances which has to be understood in their correct perspective. The Committee is required to assess the entire evidence as a whole and decide the case on the basis of preponderance of probability. Regular skill building programmes nurtures the Committee members to understand each case from a grass root level and implement their decision recommending power in a wise and unjust manner. The Committee can also recommend disciplinary action against the complainant in case of filing false complaints or submitting forged documents. It is pertinent for the Committee members to comprehend that mere inability to substantiate their allegation of sexual harassment does not amount to false complaint. The Committee members handling such complaints need to be trained to make an unbiased and neutral decision. Skill building programmes helps the Committee members in reaching to an impartial conclusion.



REDRESSAL PROCEDURE



TIMELINES

Written complaint to be filed within 3 months from the date of the incident or within 3 months from the date of last incident in case of a series of incidents. The time limit can be extended for a period not exceeding 3 months for which reasons are to be stated in writing. Inquiry to be completed within 90 days. Inquiry report has to be issued within 10 days of completion of the inquiry. Employer to act on the ICC recommendation within 60 days of receipt of report.

INQUIRY PROCEDURE

1. ICC sends notice to the respondent with a copy of complaint and supporting documents submitted by the aggrieved woman.

The respondent files his reply in 6 copies along with his documents, name and addresses of witnesses.

2.

ICC forwards reply to the aggrieved woman and sends a notice to both the parties for the hearing.

3.

4. The aggrieved woman leads her witness or evidence which can be cross examined by the respondent.

The respondent leads his witness or evidence which can be cross examined by the aggrieved woman.

5.

ICC makes its preliminary finding and calls for representations thereon from both parties.

6.

7. After considering the representation, ICC submits the Finding report and Recommendation to the employer.

Timelines

Copy of complaint to be sent to accused within 7 working days.

Accused to reply within 10 working days from receipt of complaint.

Inquiry to be completed within 90 days.

ICC to submit Finding & Recommendation to Employer within 10 days of completion of Inquiry.

Note

- ✓ All evidence is ideally recorded in the presence of both the parties.
- ✓ In case, either party is not present for 3 consecutive meetings without sufficient cause, the ICC can terminate the proceeding or give ex parte order. The concerned party is notified in writing 15 days in advance.
- ✓ This process may have to be modified in term of service rules of the organisation .

CONSEQUENCES OF NON COMPLIANCE

Under the provisions of the Act, for non compliance with any provisions of the Act or Rules the management shall face a penalty of INR 50,000 for their first violation and double the sum and cancellation of business license for subsequent ones. Further the said violations is tried before a Metropolitan Magistrate or a Judicial Magistrate of the First Class.

A Delhi Metropolitan Magistrate has summoned the CEO and representatives of an International Airline to stand trial as accused for violating provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

Source: Indian Express May 18, 2016

An aggrieved woman of a financial institution had filed a sexual harassment case against the respondent, however when no action was taken against him, the aggrieved employee filed a criminal complaint against the respondent for offence of sexual harassment under Indian Penal Code as well as an abetment case against the senior management of the insurance company. The metropolitan magistrate ordered the police to register FIR under Section 156 (3) of the Criminal Procedure Code and investigate the said allegations. The senior management were forced to seek anticipatory bail from the High Court .

Source: Mumbai Mirror Feb 19, 2014.

A Chennai based company was directed by the Madras High court to pay 1.68 crores as damages on account of sexual harassment to an aggrieved woman by a senior employee of the company. The company had to end up paying such a compensation in lieu of loss of career opportunities and mental trauma as they had failed to set up an Internal Complaints Committee as mandated by law to promptly inquire into the allegations of sexual harassment.

Source: The Economic Times, April 11, 2015.

**A RECENT STUDY HAS SHOWN
COMPANIES IN BSE100**

**REPORTED
CASES OF SEXUAL
HARASSMENT**



**A TOTAL OF
750
CASES IN 2017**

752 CASES OF SEXUAL HARASSMENT
OF WOMEN AT WORKPLACE WERE

REPORTED
TO THE NATIONAL COMMISSION OF WOMEN
DURING 2018 TILL OCTOBER

OBLIGATIONS OF THE EMPLOYER



Under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the employers/organisations are required to fulfill the following obligations :

- Framing an anti-sexual harassment policy.
- Displaying posters that highlight the organisations stance on sexual harassment.
- Constitution of an Internal Complaints Committee at each location in case organisation has 10 or more employees.
- Organising Sensitisation programmes for employees and Training and Skill -Building programmes for Internal Complaints Committee members.
- Monitoring timely submission of reports by the Internal Committee to the employer and District officer.
- Disclosure by the employer in its Annual Report or filing it with the District officer.

IMPACT OF SEXUAL HARASSMENT



Loss of Emotional Well Being : The emotional effects of sexual harassment includes depression, anxiety, shock, denial, anger, fear, insecurity, betrayal and powerlessness.



Financial Loss : The respondent shall be made liable to monetarily compensate the victim for any loss in career opportunity, medical expenses and sufferings caused to the aggrieved woman.



Loss of Physical Health : Sexual Harassment can lead to loss of physical well being to the aggrieved woman which includes causing problems like headache, lethargy, weight fluctuations, sleep disturbances, phobias, gastrointestinal distress.



Job and Career Damage : Besides the financial liabilities to the aggrieved woman, the respondent may face disciplinary actions, where he may lose his job and career opportunities.



Bad Reputation : The bad reputation a respondent earns after indulging in sexual harassment affects him on multiple levels which includes physical, emotional and financial losses. Besides the financial liabilities to the aggrieved woman, the respondent may face disciplinary actions, and loss in career opportunities.



Loss of Time and Productivity : Organisations lose substantial amount of money annually to sexual harassment in the form of absent employees, increased churn of employees, reduced productivity and they also lose credibility in the market.

CONCLUSION

As recent economic and social changes have brought about changed power equation between men and women in the Indian society, there is a general sense of insecurity. One of the major reason that sexual harassment goes on unabated is because organisations are in a mode of denial and refuse to acknowledge the possibility of incidents of sexual harassment occurring amongst its employees.

It's absolutely imperative that organisations implement The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 so that all employees are aware of the consequences of sexual harassment and also what type of gestures and comments can constitute as sexual harassment. All staff members must be trained and sensitised so that they behave in an appropriate manner with women in general. Implementing the act in the organisation will also empower women to speak up about the instances of sexual harassment and thereby getting a fair chance at justice.

There is a view or thought that the law can be misused by certain women and this might create unpleasant repercussions in an organisation, however what needs to be understood is that the law has deterrents to avoid such situations. The respondent has a fair chance to prove their point if they feel that they are being framed.

Sexual harassment at workplace is a sensitive issue. It cannot be checked merely by providing staff members with information about the anti sexual harassment policy or relying on disciplinary action. The organisation must play a proactive role, provide behavioral support and discuss this aspect as a part of their work routine. The staff must nurture an inclusive, supportive, and respectful environment in the office in order to build a congenial working atmosphere. Equally important is that the organisation must support the victim of sexual harassment, and help her overcome the negative effects of such an experience.

We firmly believe that if all organisations implement the law in letter and spirit as mandated by law, 80-90% instances of sexual harassment can be avoided.



How Complykaro can support your organisation?

- ⦿ Formulation of an anti-sexual harassment policy.
- ⦿ Provide poster to display within the organisation which accentuates the legal consequences of sexual harassment.
- ⦿ Create an Internal Complaint Committee (ICC) at each location to address the sexual harassment complaints (compulsory if organisation employs 10 or more workers).
- ⦿ Help identify and nominate an External member for the Internal Complaints Committee (ICC) situated at each location.
- ⦿ Draft nomination and acceptance letters and formulate order constituting the Internal Complaint Committee (ICC) at each location, incorporating therein the names and contact details of its members.
- ⦿ Sensitise all employees with provisions of law, through online or classroom training and awareness programmes.
- ⦿ Make Internal Complaint Committee (ICC) members aware about the provisions of law to effectively deal with sexual harassment complaints through online or classroom training and skill building programmes.
- ⦿ Help formulate the annual report to be submitted by the Internal Complaint Committee (ICC) to the organisation and District Officer.
- ⦿ Help the organisation formulate its Annual Report to the appropriate authority.
- ⦿ Provide support to the Internal Complaint Committee (ICC) and the organisation throughout the year.

For compliance-related queries, contact us at:

Vishal Kedia: 98200 99696
vishal@complykaro.com

Manoj Sharma: 70452 92525
manoj@complykaro.com

Rishab Bhuwalka: 97691 68502
rishab@complykaro.com

DID YOU KNOW



Every **organisation** has to follow the law on **sexual harassment of women at workplace**. Be it big, or small, and whether it has **women employees** or not.

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

Complykaro

Sexual harassment is a **criminal offence** and is **punishable** with **imprisonment** for a term of up to **3 years**.

TED GatewayWomen
[The Indian Penal Code]

Complykaro

You need **lesser proof** under the law, Than what you need to get justice under **criminal law**. In this case, one would need to **prove probability**, whereas in criminal law, the **proof** has to be **beyond reasonable doubt**.

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

Complykaro

The **law mandates confidentiality**. This is to **prevent** identification of the **woman, harasser** and the **witnesses** in public or to the media.

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

Complykaro

You **don't have** to be working at an organisation to make a **sexual harassment** complaint against its employee. You could be a **visitor, a vendor, a customer, a bystander, an intern, or even a job seeker** and still be able to **complain**.

TED GatewayWomen

Complykaro

The law provides **prompt remedy**. That's because the Complaints Committee has to **complete** the inquiry within **90 days**. And, the 90-day period **starts** from the **time** you lodged the **complaint** and **not** from the **day** when the incident occurred.

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

Complykaro

The **evaluation** of a charge of sexual harassment would **depend** on how you see it. What matters is how **you perceived it**, and not what the harasser says he intended.

TED GatewayWomen

Complykaro

An organisation has to **assist you** in **lodging** a complaint with the complaint committee of the organisation where the **harasser** works. Or, **even** lodge a **police complaint** against the **harasser**, if you so desire.

TED GatewayWomen

Complykaro



Complykaro Services Private Limited

Regd. Office : 41,4th Floor, A-Wing, Mittal Towers, Nariman Point, Mumbai 400 021.

Tel : 022 4213 9595, Fax : 022 4213 9599

Email : info@complykaro.com Web : www.complykaro.com

Mumbai - New Delhi - Hyderabad - Chennai



**PRODUCERS
GUILD
OF INDIA**

Producers Guild of India

1003-04, 10th Floor, Sri Krishna, Fun Republic Lane, New Link Road, Andheri (W), Mumbai - 400 053.

Tel: 022 2673 3065 / 68, Fax: 022 2673 3904

Email: support@producersguildindia.com Website: www.producersguildindia.com