



CHAPTER – XII

PREVENTION AND REDRESSAL OF SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

HR | P & RSHWAW - 2013-14 | 012



Objective:

- The purpose of this policy is to follow the Supreme court Directives and guidelines provided to all kinds of organizations to mandatorily follow it and thus to prevent sexual Harassment at workplace. The purpose of this policy is to undertake a complete investigation of the complaint/ incident reported, to provide support to victim of such harassment and to take disciplinary action against alleged under law.
- To foster a professional, open and trusting workplace.
- To ensure employees are treated fairly and equitably in an environment free of intimidation and sexual harassment.
- To make necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

Policy:

- Sexual harassment is an unacceptable form of behavior which will not be tolerated under any circumstances. It is also unlawful. All complaints of sexual harassment will be treated seriously and promptly, with due regard to confidentiality. Disciplinary action will be taken against any employee who breaches the policy.
- The sexual harassment policy will be successfully applied when all staff is treated on merit by their managers, by peers, by direct reports and by all other team members.

Scope / Coverage:

- This Policy extends to all employees of the Company and is deemed to be incorporated in the service conditions of all employees.

Responsibility:

- It shall be the duty of the employer or other responsible persons in work places or other



institutions to prevent or deter the Commission of Acts of Sexual Harassment and to provide the procedures for the resolution, settlement or prosecution of Acts, of sexual harassment by taking all steps required.

- All managers and supervisors have a responsibility to:
 - ✓ Monitor the working environment to ensure acceptable standards of conduct are observed at all times.
 - ✓ Model appropriate behavior themselves.
 - ✓ Treat all complaints seriously and take immediate action to investigate and resolve the matter.
 - ✓ Refer complaints to another manager if they do not feel they are the best person to deal with the case (e.g. if there is a conflict of interest or if the complaint is particularly complex or serious).

- All employees have a responsibility to:
 - ✓ Comply with the organization's sexual harassment policy.
 - ✓ Offer support to anyone who is being harassed and let them know where they can get help and advice (they should not approach the harasser themselves).
 - ✓ Maintain complete confidentiality if they provide information during the investigation of a complaint (employees who spread gossip or rumours may expose themselves to defamation action).

Definition:

- Sexual harassment is any unwanted, unwelcome or uninvited behavior of a sexual nature which makes a person feels humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the displaying of offensive material or other behavior which creates a sexually tense or hostile working environment. Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:
 - ✓ Objectionable physical proximity or contact and unwelcome advances.
 - ✓ A demand or request for sexual favors.
 - ✓ Sexually colored remarks.
 - ✓ Discussion of a person's physical characteristics.
 - ✓ Showing pornography.
 - ✓ Narrating offensive jokes or sexually explicit stories.
 - ✓ Circulation or posting of offensive pictures.



- ✓ Spreading rumors or talking to third parties about an individual in a demeaning fashion.
- ✓ Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

NOTE: All the above is prohibitive through any mode of communication including in person, over the phone, on voice mail, through pen and paper, on e-mail, through chat, through SMS or any other form of communication.

- Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

Exceptions:

- Harassment shall not include occasional compliments or voluntary relationships between individual employees.
- However, in case of voluntary relationships, employees must ensure that the work environment is free from favouritism and the relationship does not affect work in any way.

Policy- Clause Guidelines:

- The company shall be committed to providing and maintaining an open, positive work environment, which is free from any discrimination or harassment.
- All employees must be treated with respect, dignity, and courtesy.
- There shall be no discrimination or harassment against any person on the grounds of race, color, religion, national origin, disability, age, sex, marital status, sexual orientation or citizenship.
- Any discriminatory action against full time employees, contractual employees, clients, or vendors shall be met with disciplinary action.



- Every complaint shall be promptly and thoroughly investigated and confidentiality is maintained as far as the situation would permit. Furthermore, the Company does not retaliate against any employee for bringing questionable circumstances to attention.

Preventive Steps:

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps:

- Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways. The employee/victim should inform the offender the behavior is offensive, unwelcome, and against company policy and should stop (only if the victim feels comfortable enough to approach them directly) and should keep a record of the incident(s).
- The Rules / Regulations of Private Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.
- When a manager investigates a complaint, he / she should determine appropriate action based on investigation and evidence collected and check to ensure the action meets the needs of the complainant and company.
- As regards private employers, steps should be taken to include the aforesaid prohibitions in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946.
- Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

Criminal Proceedings:

- Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.



- In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

Disciplinary Action:

- Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules. Appropriate disciplinary action will be taken against anyone in this company's employment who is found to have sexually harassed a co-worker. Depending on the severity of the case, consequences can include an apology, counselling, transfer, dismissal, demotion or other forms of disciplinary action. Immediate disciplinary action will also be taken against anyone who victimizes or retaliates against a person who has complained of sexual harassment.
- If the offensive behavior continues or if the employee feels uncomfortable in confronting the offender, the situation needs to be brought to the attention of the manager or the Grievance Redressed Committee. A thorough investigation of the case and necessary action shall be taken. It shall be ensured that the case is kept confidential both internally as well as externally.
- If an employee hears about or observes a possible harassment or discrimination, the employee is accountable to report the situation to the Grievance Redressal Committee / Complaints Committee. The employee's identity will be kept confidential. To maintain confidentiality, employees should not confer with anyone else at the company about the situation. All complaints of discrimination or harassment are serious and appropriate investigation of complaints will be conducted.
- The Grievance Redressal Committee / Complaints Committee shall spearhead the investigation. The questions asked during an investigation shall be focused on what occurred during the incident, including specifics about what happened, who said what, who was present, venue, time and what happened before the incident. After all the facts have been analysed a determination shall be made and appropriate corrective action will be taken.

Corrective action shall depend upon the nature and intensity of the situation and may include counselling or termination of employment.

- After completion of an investigation, the concerned parties shall be informed of the decision taken.



Complaint Mechanism:

- Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's Organization for redressal of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. A mail Id shall be separately created by the IT Department for the Grievance Redressal Committee, wherein mails regarding complaints or grievance will directly reach the Committee members. The employees can also call to the following phone numbers in case of any complaint or grievance for direct approach to the Committee members:
 - Ms. Sheuley Sarkar (Manager, HR) : +91 341 2445210
 - Ms. Sneha Agarwala (Manager, F & A) : +91 341 2445210

Grievance Redressal Committee / Complaints Committee:

- In order to resolve all cases related to Workplace Harassment or Discrimination, setting up a Complaints Committee would be set up on which the Corporate HR will be represented. The complaint mechanism, referred to above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.
- The Complaints Committee should be headed by a woman and not less than half of its member should be women. The senior members in the Committee will include Mr. S. Adhikari (GM, Mechanical), Ms. Sneha Agarwala (CA, Manager F & A) and Ms. Sheuley Sarkar (Manager HR). Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.
- Confidentiality of the complaint procedure shall be maintained.
- Complainants or witnesses shall not be victimized or discriminated against while dealing with complaints.
- The Complaints Committee shall make an annual report to the Management Committee of the organization of complaints received and the action taken by them.
- The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.



NOTE: These have been extracted from the Supreme Court of India Guidelines on Sexual Harassment, August 1997; the same can be referred to for further details.

Worker's Initiative:

- Employees should be allowed to raise issues of sexual harassment at a workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer Employee Meetings.

Awareness:

All the Employees, especially female members should be given education about the issue and promote a healthy discussion of the policy.

Sexual Harassment Awareness Training:

- The setting up of a complaints committee and an anti-sexual harassment policy lays a strong foundation for a sexual harassment free workplace. However, effective training programmes are essential to sensitize / train all the staff members, men and women, to recognize sexual harassment, deal with it when it occurs and prevent it. The training programme is the best way to ensure proper understanding and implementation of the policy. It is the best forum to communicate to employees what behavior is acceptable and what is not, in a non-threatening atmosphere of mutual learning. Training for the members of the Complaints Committee and others who are going to be instrumental in implementing the policy, is very essential. Their training should include a component of gender sensitization, along with the procedures for taking complaints, and for enquiry, etc.
- Conducting yearly meetings with the Head of Departments to review the sexual harassment policy, and to make sure that they understand that an employee does not need to suffer negative consequences in order to make a complaint of sexual harassment. The employees should be informed that even mild to moderate sexual jokes or statements can create an atmosphere of hostility that will make some employees uncomfortable, and could lead to the creation of a hostile work environment.
- Sexual harassment training for all employees should address perceptions and understanding of sexual harassment, impact of sexual harassment on individuals and workplace, understanding the policy and complaints mechanism. The training for Complaints Committee should address, in addition to these, the procedures of investigation, skills necessary for



enquiries, documenting the procedures. Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

Third Party Harassment:

- Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.



Laws for Prevention of Sexual Harassment of Women at Workplace

❖ **THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2006**

Preamble:

- A Bill conferring upon Women the Right to Protection against Sexual Harassment and to protect the Right to Livelihood and towards that end for the prevention and redressal of Sexual Harassment of Women.
- Whereas Sexual Harassment infringes the Fundamental Right of a woman to gender equality under Article 14 of the Constitution of India and her Right to life and live with dignity under Article 21 of the Constitution which includes a Right to a safe environment free from Sexual Harassment.
- And Whereas the Right to protection from Sexual Harassment and the Right to work with dignity are recognized as universal human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which has been ratified by the Government of India.

Penalties:

- In any action under section 7, the aggrieved woman may submit an authorized or certified report of the Internal Complaints Committee or the Local Complaints Committee, and if that records a finding that sexual harassment did take place, and that report has become final, the Court or forum shall proceed to award compensation without requiring the person aggrieved to establish her claim of Sexual Harassment.
- Provided further that the court may for reasons impose a fine of not less than Rs.10, 000/- on any workplace which has failed to constitute an internal complaints committee or opted to have been governed by the local complaints committee or failed to initiate action within a reasonable time on the complaint referred to it alleging sexual harassment or failed to comply with any orders passed by the district officer under this Act



❖ THE PROTECTION OF WOMEN AGAINST SEXUAL HARASSMENT AT WORK PLACE BILL, 2010

Highlights of the bill:

- India has signed and ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). However, India does not have a specific law to address the issue of sexual harassment of women at the place of work. Currently, the Indian Penal Code (IPC) covers criminal acts that outrage or insult the 'modesty' of women. It does not cover situations which could create a hostile or difficult environment for women at the work place.
- In 1997 as part of the Vishaka judgment, the Supreme Court drew upon the CEDAW and laid down specific guidelines on the prevention of sexual harassment of women at the work place. The Vishaka guidelines defined sexual harassment and codified preventive measures and redressal mechanisms to be undertaken by employers.
- A draft Bill was circulated by the Ministry of Women and Child Development for public feedback in 2007. The current Bill establishes a framework to be followed by all employers to address the issue of sexual harassment.

Penalties and appeal:

- If the allegation is proved, the Committee shall recommend penalties for sexual harassment as per service rules applicable or the Rules under the Act. In addition, it may provide for monetary compensation to the complainant.
- If the allegation is proved to be false or malicious, the Committee may recommend action against the complainant. However, action may not be taken against a complainant merely on the inability to substantiate a complaint or provide adequate proof.
- Appeals against the recommendations of either Committee shall lie with the courts.
- Penalties have also been prescribed for employers who fail to comply with the provisions of the Act. Non-compliance shall be punishable with a fine of up to Rs 50,000. Repeated violations may lead to higher penalties and cancellation of license or registration required for carrying on the business.



- ❖ **THE BILL ON THE SEXUAL HARASSMENT AT THE WORKPLACE [THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2012] GOT PASSED BY THE LOK SABHA ON 3rd SEPTEMBER, 2012 WITH AMENDMENTS.**

- ❖ It has been held that all employers should take appropriate step to prevent sexual harassment: (a) the prohibition of sexual harassment should be notified published and circulated in appropriate ways. (b) The rules/regulation of government of public sector bodies should included rules prohibiting sexual harassment and provide for appropriate penalties. (c) As regard private employees steps should be taken to include the prohibition in this standing order under the **INDUSTRIAL EMPLOYMENT (STANDING ORDERS) ACT, 1946.**

- ❖ **THE PROTECTION OF HUMAN RIGHTS ACT, 1993**

(Act No. 10 of 1994)
 - It extends to the whole of India and it shall be deemed to have come in to force on the 28th day of September 1993.
 - An act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protections of human rights and for matters connected therewith or incidental thereto.
 - The employer has been directed to initiate criminal action by making a complaint in cases where specific offence of sexual harassment has taken place. He is also required to initiate disciplinary action. The guidelines of the Act are in addition to rights available to women under the Protection of Human Rights Act, 1993.

- ❖ In order to eliminate sexual harassment at the working place, the Employer shall follow a Code of Good Conduct, published in terms of the powers granted by the Basic Conditions of **EMPLOYMENT ACT (ACT 75 OF 1997).**



❖ **THE INDIAN MEDICAL COUNCIL OF INDIA ACT, 1956**

- The following item shall be added as Section 33(o) to The Indian Medical Council of India Act, 1956.

“Protection against Sexual Harassment”.

- The following item shall be added as Section 20A (3) to the Indian Medical Council of India Act, 1956.

“Any form of Sexual Harassment shall also be included in this definition”.

- The following shall be added as explanation to Section 7(4) of The Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002

“Explanation: any form of Sexual harassment shall be to be an improper Conduct”

❖ **NATIONAL COMMISSION FOR WOMEN ACT, 1990**

- In an effort to promote the well being of all women employees at the work place a certain Code of Conduct has been prescribed. According to the Code of Conduct, it shall be the duty of the employer to prevent or deter the commission of any act of sexual harassment at the work place.

- Sexual harassment includes unwelcome sexually determined behavior by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as eve-teasing, unsavory remarks, jokes causing or likely to cause awkwardness or embarrassment, innuendos and taunts, gender based insults or sexist remarks, unwelcome sexual overtone in any manner over the telephone, touching or brushing against any part of the body and the like, displaying pornographic or other offensive or derogatory pictures, cartoons, pamphlets or sayings, forcible physical touch or molestation, physical confinement against one’s will and any other act likely to violate one’s privacy. It includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment at the work place hostile or intimidating to a person belonging to the other sex.



Penalties:

- **Sub-section 7:** The Commission shall be deemed to be a civil court for the purposes of any offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code and if any offence is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same.

❖ **PROTECTION AGAINST SEXUAL HARASSMENT OF WOMEN BILL, 2005**

Preamble:

- A Bill conferring upon women the right to protection against sexual harassment and towards that end for the prevention and redressal of sexual harassment of women.
- Sexual Harassment infringes the fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution which includes a right to a safe environment free from sexual harassment.

Penalty:

- Irrespective of whether the complainant opts to initiate criminal proceedings under the Indian Penal Code, the Special Officer / Local Officer / Member of the Committee and the Complaints Committees shall be bound to initiate and conduct proceedings as laid out under this Act.

❖ **THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (“SEXUAL HARASSMENT ACT”) HAS BEEN MADE EFFECTIVE ON APRIL 23, 2013 BY WAY OF PUBLICATION IN THE GAZETTE OF INDIA.**



Scope:

- The ambit of the Sexual Harassment Act is very wide and is applicable to the organized sector as well as the unorganized sector. In view of the wide definition of 'workplace', the statute, inter alia, applies to government bodies, private and public sector organizations, non-governmental organizations, organizations carrying on commercial, vocational, educational, entertainment, industrial, financial activities, hospitals and nursing homes, educational institutes, sports institutions and stadiums used for training individuals. As per the Sexual Harassment Act, a workplace also covers within its scope places visited by employees during the course of employment or for reasons arising out of employment - including transportation provided by the employer for the purpose of commuting to and from the place of employment.

Internal Complaints Committee and Local Complaints Committee:

- The Sexual Harassment Act requires an employer to set up an 'Internal Complaints Committee' ("ICC") at each office or branch, of an organization employing at least 10 employees. The government is in turn required to set up a 'Local Complaints Committees' ("LCC") at the district level to investigate complaints regarding sexual harassment from establishments where the ICC has not been constituted on account of the establishment having less than 10 employees or if the complaint is against the employer. The Sexual Harassment Act also sets out the constitution of the committees, process to be followed for making a complaint and inquiring into the complaint in a time bound manner.
- The ICC also needs to involve a member from "amongst non-governmental organizations or associations committed to the cause of women or who have had experience in social work or have legal knowledge. The members of the ICC have to be replaced every 3 years.
- If an employer fails to constitute an Internal Complaints Committee or does not comply with any provisions contained therein, the Sexual Harassment Act prescribes a monetary penalty of up to INR 50,000 (approx. US\$1,000). A repetition of the same offence could result in the punishment being doubled and / or de-registration of the entity or revocation of any statutory business licenses.



Interim Reliefs:

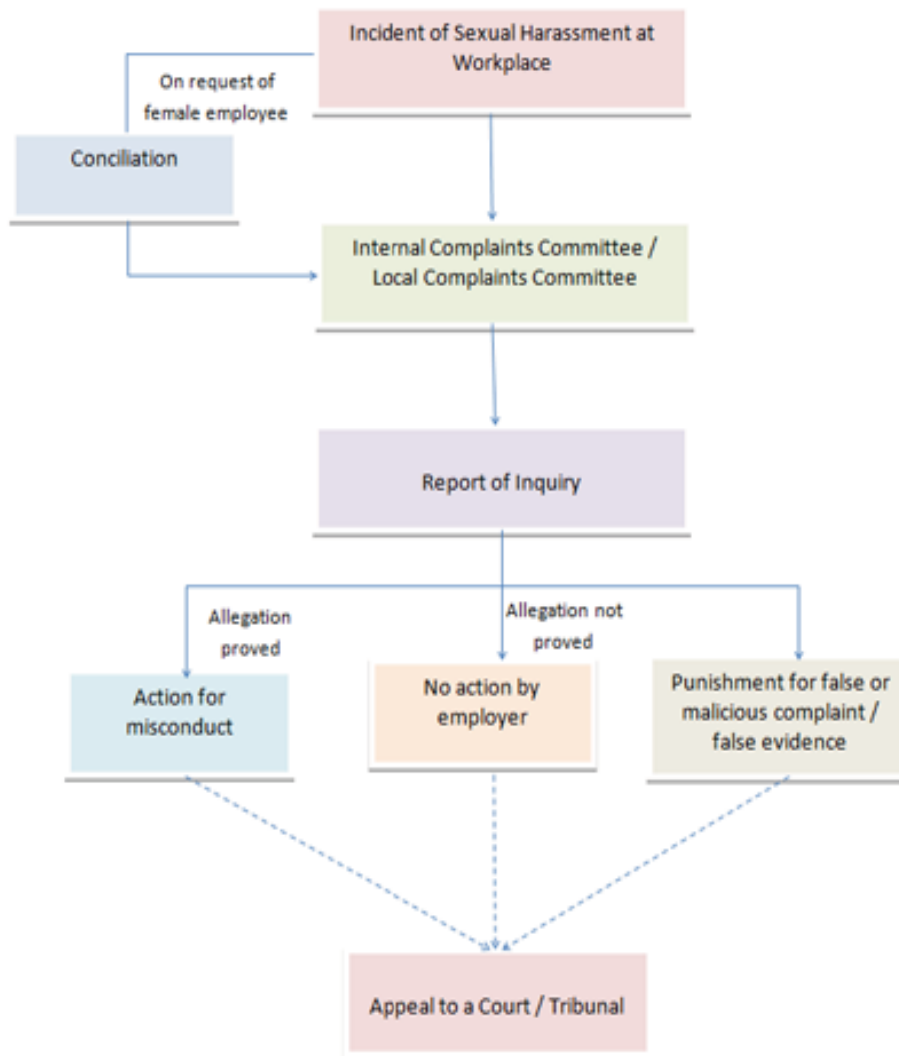
- The Sexual Harassment Act empowers the ICC and the LCC to recommend to the employer, at the request of the aggrieved employee, interim measures such as (i) transfer of the aggrieved woman or the respondent to any other workplace; or (ii) granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/ contractual leave entitlement.

Process for Complaint and Inquiry:

- Please refer to the following flowchart which provides, in brief, the process to be followed by the aggrieved employee to make the complaint and by the employer to inquire into the complaint. The law allows female employees to request for conciliation in order to settle the matter although a monetary settlement should not be made as a basis of conciliation.

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

Procedure to be followed



Timelines

A written complaint has to be filed by the female employee within 3 months of the date of the incident.

The Inquiry has to be completed within 90 days.

The Inquiry report has to be issued within 10 days from the date of completion of inquiry.

Employer is required to act on the recommendations of the committee within 60 days of receipt of inquiry report.

Appeal against the decision of the committee is allowed within 90 days of the date of recommendations.

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Penalty:

- As a result of the growing importance of the issues relating to sexual harassment and protection of female employees in India, a new section was added to the Indian Penal Code, 1860 through the Criminal Law (Amendment) Act, 2013, which enlists the acts which constitute the offence of sexual harassment and further envisages penalty / punishment for such acts. A man committing an offence under this section is punishable with imprisonment, the term of which may range between 1 - 3 years or with fine or both. Since the amendment criminalizes all acts of sexual harassment, employers shall be required to report any offences of sexual harassment to the appropriate authorities.
- In case the allegation has been proved, the Sexual Harassment Act allows the ICC to recommend to the employer to deduct from the respondent's salary such sums it may consider appropriate to be paid to the aggrieved woman.