

# **Gender sensitisation- Sexual harassment at the workplace**

# Gender

- The Qualitative and Inter dependent character/position of women and men in Society.
- A dynamic concept that varies across time, races, class, age, economic circumstance & culture

- **GENDER AWARENESS:** means the ability to identify problems arising from gender inequality and discrimination, even if these are not very evident on the surface.

# Internationally.....

- Women perform 2/3 of the world's work
- Women earn 1/10 of the world's income
- Women are 2/3 of the world's illiterates
- Women own less than 1/100 of the world's property

(Courtesy: UN statistics)

# Gender sensitisation

- Refers to the modification of behaviour by raising awareness of gender equality concerns.
- Gender sensitizing is about changing behavior and instilling empathy into the views that we hold about our own and the other sex.

As officers who would be heading offices/organisations where you have women employees, what do you think

1. Are their concerns/needs?
2. How will you address them?

# Sexual harassment at workplace

- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013
- redressal and prevention of sexual harassment within the workplace a central concern for all employers

# What we will run through....

- Sexual Harassment at Workplace Act – Definitions, Roles and Responsibilities of Key Stakeholders
- Understanding how to deal with sexual harassment within the workplace



# The Act

*WHEREAS sexual harassment results in*

- *violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India*
- and*
- *her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;*

# Definition

- The Act has adopted the definition of 'sexual harassment' from Vishaka Judgment and the term sexual harassment includes

***any unwelcome acts or behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature.***

## More clearly...section 3

- The circumstances which if present or connected with any act or behaviour of sexual harassment may amount to sexual harassment such as
- Implied or expressed promise to preferential treatment or implied or explicit threat of detrimental treatment in her employment, implied or explicit threat about her present or future employment, interference with work or creating an intimidating or offensive or hostile work environment, humiliating treatment likely to affect health or safety of a woman.

# Major features of the Act

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The Act also covers concepts of 'quid pro quo harassment' and 'hostile work environment' as forms of sexual harassment if it occurs in connection with an act or behaviour of sexual harassment.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

- While the "workplace" in the Vishakha Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.

- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.

- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.
- The inquiry process under the Act should be confidential and the Act lays down a penalty of Rs 5000 on the person who has breached confidentiality.
- The Act requires employers to conduct education and sensitisation programmes and develop policies against sexual harassment, among other obligations.

# Penalties

- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to ₹ 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.
- Government can order an officer to inspect workplace and records related to sexual harassment in any organisation.



# Indian Penal Code

- Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence.
- Penalties range from one to three years imprisonment and/or a fine.
- Additionally, with sexual harassment being a crime, employers are obligated to report offences

# Reality check

- Vishakha guidelines: Very few Indian employers compliant.
- Most Indian employer's have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it.
- According to a FICCI-EY November 2015 report, 36% of Indian companies and 25% among MNCs are not compliant with the Sexual Harassment Act, 2013.

# Reality check

- Both managers and employees often believe that harassment is not a problem in their workplace -*especially if there are no complaints. But a complaint-free workplace does not mean a problem-free workplace*
- People who are harassed may be afraid to complain for many reasons:
  - Retaliation
  - Job loss
  - Embarrassment
  - Loss of acceptance by others
  - Not being believed

# Duties of the employer

- Provide a safe working environment at the workplace, which shall include safety from the persons coming into contact at the workplace
- Display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the ICC

# Duties(Contd..)

- Organise workshops/awareness programmes
- Provide necessary facilities to the ICC
- Securing the attendance of the respondent and witnesses before ICC
- Make available all information to ICC

# Duties(Contd...)

- Provide assistance to the woman if she chooses to file a complaint under the IPC or any other law in force
- Cause to initiate action under the IPC/any other law against the perpetrator, if the woman so desires, where the perpetrator is not an employee, in the workplace at which the incident took place

# Duties(Contd...)

- Treat sexual harassment as misconduct under the Service Rules and initiate action
- Monitor timely submission of reports by the ICC

## **A couple of additional thoughts**

- It does not matter what was the intent of the harasser's behaviour it is the impact on the receiver that is taken into consideration
- Develop an understanding on behaviours that might be construed as unwelcome.



Thank You