



# **HANDBOOK**

## **On**

### **Sexual Harassment of Women at Workplace**

#### **(Prevention, Prohibition and Redressal)**

**Government College for Women (A), Guntur**

**Internal Compliance Committee**

## INTRODUCTION

*“Whereas sexual harassment results in violation of the fundamental rights of a Woman to equality.....”*

[Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act]

### 1.1 The Act

Having raised the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women’s fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

- Prohibition
- Prevention
- Redress

In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (referred to as Act herein after). Consistent with the Vishaka judgment, the Act aspires to ensure women’s right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements.

It is important to note that the Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse of both civil and criminal proceedings.

### 1.2 Purpose of This Handbook

This handbook is meant for all workplaces/institutions/organizations to provide a basic understanding of sexual harassment at places of work. Additionally, it is designed to offer Internal Complaints Committee established under the Act, with simple, user friendly information on sexual harassment; what is expected of Complaints Committee to redress a complaint; and what the inquiry process and outcome should include.

### 1.3 Who Is This Handbook For

This handbook informs the end user (an employee/worker) about workplace sexual harassment and their right to an informed complaint process in seeking redress as provided under the Act and Rules framed there under.

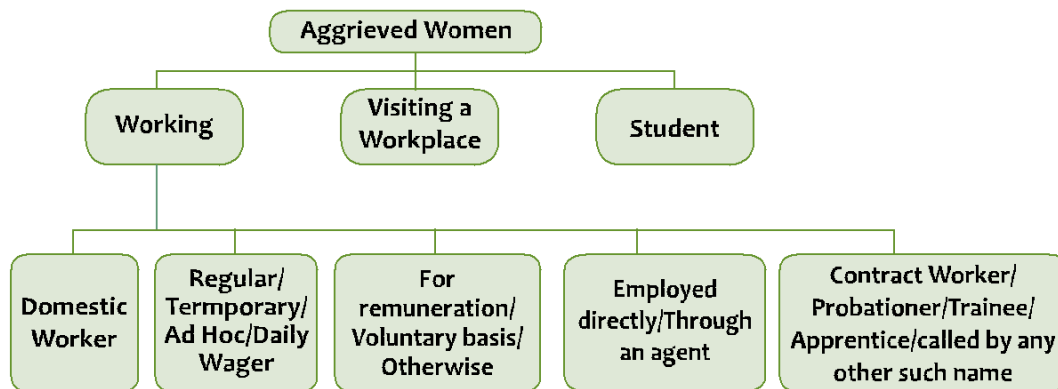
## WORKPLACE SEXUAL HARASSMENT- WHAT IS IT?

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

Section 3(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressed) Act, 2013

### 2.1 Who Is An Aggrieved Woman?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status.



### 2.2 What Is a Workplace?

A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organised and un-organised sectors.

### 2.3 What Is Sexual Harassment At The Workplace?

“Sexual Harassment” includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature

## **Impact of inappropriate behaviour**

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts.

## **2.4 Examples of Behaviours And Scenarios That Constitute Sexual Harassment**

**Some examples of behaviour that constitute sexual harassment at the workplace:**

1. Making sexually suggestive remarks or innuendos.
2. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
3. Offensive comments or jokes.
4. Inappropriate questions, suggestions or remarks about a person's sex life.
5. Displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or e-mails.
6. Intimidation, threats, blackmail around sexual favours.
7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.
10. Physical contact such as touching or pinching.
11. Caressing, kissing or fondling someone against her will (could be considered assault).
12. Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
13. Persistently asking someone out, despite being turned down.
14. Stalking an individual.
15. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours.
16. Falsely accusing and undermining a person behind closed doors for sexual favours.
17. Controlling a person's reputation by rumour-mongering about her private life.

**Some examples of behaviour that may indicate underlying workplace sexual harassment and merit inquiry:**

1. Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
2. Exclusion from group activities or assignments without a valid reason.
3. Statements damaging a person's reputation or career.
4. Removing areas of responsibility, unjustifiably.
5. Inappropriately giving too little or too much work.
6. Constantly overruling authority without just cause.
7. Unjustifiably monitoring everything that is done.

8. Blaming an individual constantly for errors without just cause.
9. Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties.
10. Insults or humiliations, repeated attempts to exclude or isolate a person.
11. Systematically interfering with normal work conditions, sabotaging places or instruments of work.
12. Humiliating a person in front of colleagues, engaging in smear campaigns.
13. Arbitrarily taking disciplinary action against an employee.
14. Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed.

### **Some examples of workplace behaviours that may not constitute sexual harassment:**

1. Following-up on work absences.
2. Requiring performance to job standards.
3. The normal exercise of management rights.
4. Work-related stress e.g. meeting deadlines or quality standards.
5. Conditions of works.
6. Constructive feedback about the work mistake and not the person.

## **2.5 Forms of Workplace Sexual Harassment**

Generally workplace sexual harassment refers to two common forms of *inappropriate behaviour*:

1. Quid Pro Quo (literally ‘this for that’)
  - a) Implied or explicit promise of preferential/detrimental treatment in employment
  - b) Implied or express threat about her present or future employment status
2. Hostile Work Environment
  - a) Creating a hostile, intimidating or an offensive work environment
  - b) Humiliating treatment likely to affect her health or safety

## PREVENTION AND PROHIBITION

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

Late Justice J.S. Verma

### 3.1 Complaints Committee/s

The Act provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All Complaints Committees must have 50 per cent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.

#### 1) Internal Complaints Committee (ICC)

Every employer is obliged to constitute an ICC through a written order. The ICC will be composed of the following members:

No	Member	Eligibility
1.	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2.	2 Members (minimum)	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
3.	Member	From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

### 3.2 Sexual Harassment at Workplace Policy

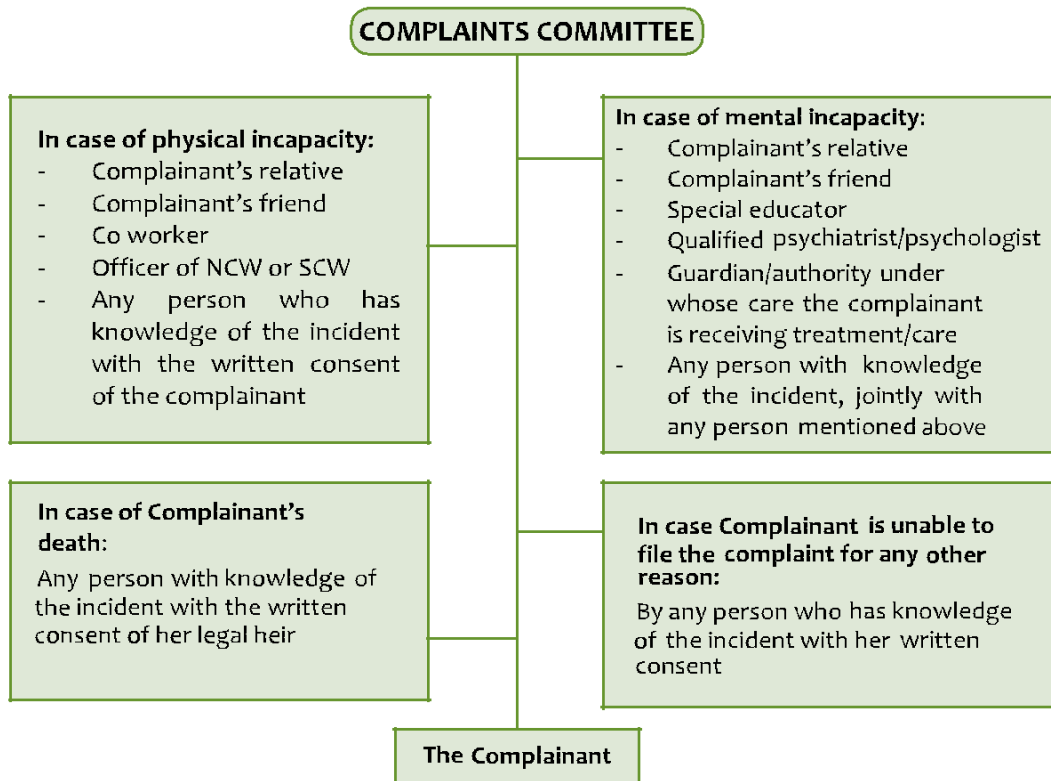
Employers/District Officers are responsible for complying with prohibition, prevention and redress of workplace sexual harassment. In practice, this means having a policy that: (1) prohibits unwelcome behaviour that constitutes workplace sexual harassment; (2) champions prevention of workplace sexual harassment through orientation, awareness and sensitization sessions; and (3) provides a detailed framework for redress.

## Redress

*“...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree”*

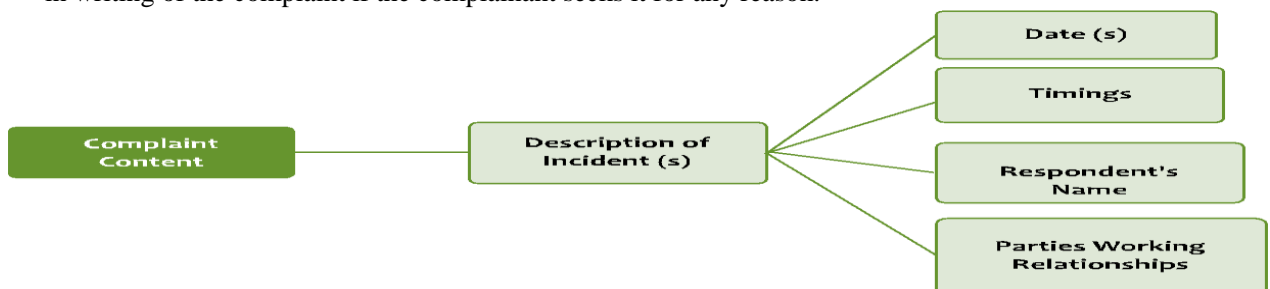
Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013

### 4.1 Who Can Complain And Where?



### 4.2 What Should The Complaint Contain?

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.



### **4.3 What Can An Employee / Worker Expect?**

When it comes to redress for workplace sexual harassment, employee/worker has a right to expect -a *trained, skilled* and *competent* Complaints Committee, a time bound process, information confidentiality, assurance of non-retaliation, counselling or other enabling support where needed and assistance if the complainant opts for criminal proceedings.

#### **4.3.1. Rights of the Complainant**

- An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment
- A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent
- Keeping her identity confidential throughout the process
- Support, in lodging FIR in case she chooses to lodge criminal proceedings
- In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent
- Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee

#### **4.3.2. Rights of the Respondent**

- A patient hearing to present his case in a non-biased manner
- A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- Keeping his identity confidential throughout the process
- Right to appeal in case not satisfied with the recommendations/findings of the Complaints Committee

### **4.4 Key Responsibilities**

To effectively address workplace sexual harassment complaints, a Complaints Committees must first be aware of their key responsibilities, some of which are highlighted below:

1. Be thoroughly prepared
2. Know the Act, Policy and/or relevant Service Rules
3. Gather and record all relevant information
4. Determine the main issues in the complaint
5. Prepare relevant interview questions
6. Conduct necessary interviews
7. Ensure parties are made aware of the process and their rights/responsibilities within it
8. Analyse information gathered
9. Prepare the report with findings/recommendations



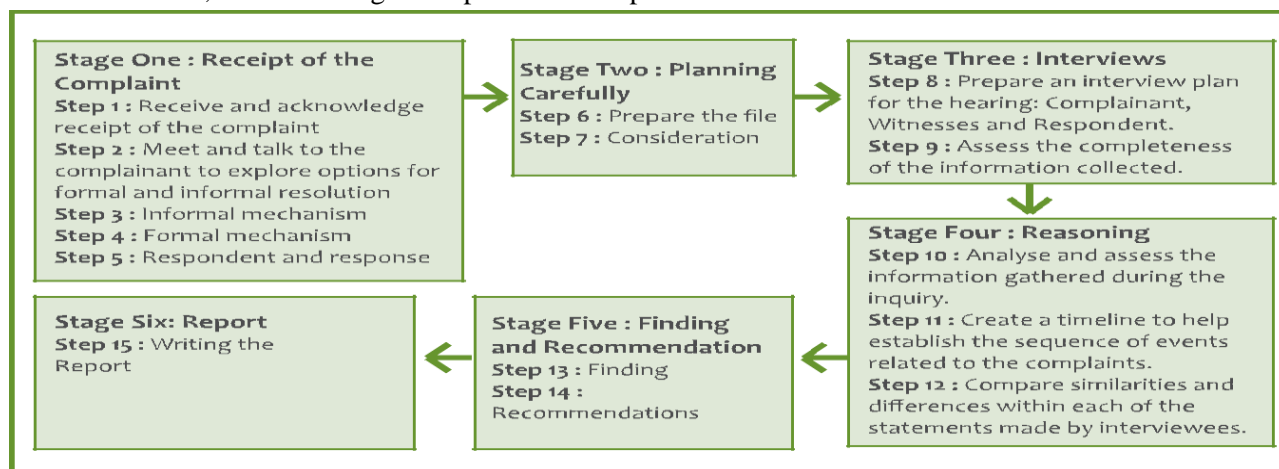
## 4.5 Knowledge, Skills, Training

Dealing with workplace sexual harassment complaints is often complex. Hence Complaints Committee/s must possess critical skills/capacity to effectively carry out their role. That includes a sound grasp of the Act, Vishaka Guidelines, applicable Service Rules, relevant laws and an understanding of workplace sexual harassment and related issues. Complaints Committee skills must include an ability to synthesise information i.e. relevant documents, the law and interviews. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews. They should be competent at showing empathy, being impartial and being thorough. They should be able to identify sexual harassment and its impact.

A Complaints Committee/s is required to be trained in both **skill** and **capacity** to carry out a fair and informed inquiry into a complaint of workplace sexual harassment. An absence of such training will lead to unequal and unfair results, which can cost employers, employees, complainants as well as respondents.

## 4.6 The Sexual Harassment Complaint Process

The Complaints Committee/s needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.



### *Stage One: Receipt of the Complaint*

A fair, prompt, and impartial inquiry process starts with a Complaints Committee capable of creating an environment of trust and confidence throughout the inquiry.

### **Step 1 : Receive and Acknowledge Receipt of the Complaint**

The complainant submits a sexual harassment complaint in writing within three months of the last alleged incident to the Complaints Committee or any other person designated by the organization/ District Officer (i.e. Nodal Officer) to receive and manage complaints of sexual harassment.

### Training and Skill Building : An Institutional Responsibility

It is important that both the Committee and any other person designated by the organization/ District Officer to receive or otherwise handle a sexual harassment complaint has the required competency and skill building training for managing a complaint and/or any concern related to

Upon receipt, the complaint should be reviewed for:

1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
2. Clarity in the complaint.
3. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

#### Elements of the Behaviour

The complaint needs to satisfy the following elements:

- |  |   |  |  |
|--|---|--|--|
| <b>1</b> The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment; | <b>2</b> The behaviour was directed at the complainant; | <b>3</b> The complainant experienced harm. | <b>4</b> The behavior occurred in the workplace or at any location/any event related to work |
|--|---|--|--|

### Step 2: Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

### Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

### Step 4: Formal Mechanism

1. the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.
2. Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
3. Ensure that the independent third party member has sound knowledge, skill, and experience in dealing with workplace sexual harassment complaints.

## Step 5: Respondent and Response

1. As per the procedure provided in the Service Rule; or in absence of the same
2. Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.
3. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

## Stage Two: Planning Carefully

### Step 6: Prepare the File

A sound inquiry relies on sound preparation. This includes taking into account the following steps:

- 1. Documentation** - Create an independent confidential file of the complaint and all subsequent related documentation.
- 2. Review Law & Policy** - Have a clear knowledge and understanding of the Act/Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.
- 3. Make a List** - Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable.
- 4. Supporting Documents** - Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.
- 5. Act Quickly** - Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes:
  - a. The names of the parties and witnesses to be interviewed
  - b. Any documentary support that needs to be examined
  - c. Timeline

### Step 7: Consideration

#### 1. Interim Measures

While a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (upto 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment*.

#### 2. Support

Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.

### ***Stage Three: Interviews***

#### **Step 8: Prepare an Interview Plan for the Hearing: Complainant, Witnesses, Respondent**

1. Based on the results of the previous steps and before conducting interviews, the Complaints Committee should decide which issues need to be pursued for questioning.
2. Interviews are meant to obtain information that is relevant to the complaint from individuals.
3. Interviews should be conducted with each *person separately and in confidence. The complainant and the respondent should not be brought face to face with each other.*

#### **Step 9: Assess the Completeness of the Information Collected**

At this stage, the Complaints Committee should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint

### ***Stage Four: Reasoning***

**Step 10:** Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:-

- Identify the substance of each aspect of the complaint.
- Determine, whether or not, on a **balance of probability**, the unwelcome sexual harassment took place.
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.
- Comment on any underlying factor(s) that may have contributed to the incident.

**Step 11:** Create a timeline to help establish the sequence of events related to the complaint.

**Step 12:** Compare similarities and differences within each of the statements made by the interviewees.

### ***Stage Five: Finding And Recommendation***

#### **Step 13: Finding**

Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.

Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

#### **Step 14: Recommendations**

Based on its findings, the Complaints Committee shall then make appropriate recommendations which may include:

1. Where the Complaints Committee is unable to uphold the complaint, it shall recommend no action.
2. Where the Complaints Committee upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules, which may include a warning to terminate.

**In case service rules do not exist, recommended action may include:**

- Disciplinary action, including a written apology, reprimand, warning, censure;
- Withholding promotion/ pay raise/ increment;
- Termination;
- Counselling;
- Community service.

4. The Complaints Committee can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

***Stage Six: Report***

**Step 15: Writing the Report**

The Complaints Committee will prepare a final report that contains the following elements:

- A description of the different aspects of the complaint;
- A description of the process followed;
- A description of the background information and documents that support or refute each aspect of the complaint;
- An analysis of the information obtained;
- Findings as stated above;
- Recommendations.

**An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties. The Employer or District Officer is obliged to act on the recommendations within 60 days.**

Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.

Given that most workspaces today are gender unequal and male-dominated, it is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

### Timelines as per the Act

Submission of Complaint	Within 3 months of the last incident
Notice to the Respondent	Within 7 days of receiving copy of the complaint
Completion of Inquiry	Within 90 days
Submission of Report by ICC/LCC to employer/DO	Within 10 days of completion of the inquiry
Implementation of Recommendations	Within 60 days
Appeal	Within 90 days of the recommendations

### Confidentiality

The Act prohibits the publication or making known the contents of a complaint and the inquiry proceedings. Any breach of confidentiality will result in specific consequences.

The Act prohibits the disclosure of:

- Contents of the complaint;
- Identity and address of complainant, respondent and witnesses; Information pertaining to conciliatory/inquiry proceedings or recommendations of the ICC/LCC;
- Action taken by the employer/DO.

**Accountability:** Any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action taken under the provisions of this Act.

**Consequences:** As per the Service Rules or Rs.5,000/ to be collected by the employer.

**Exception:** Dissemination of information regarding the justice secured without disclosure of name, address, identity and particulars of complainant or witnesses.

Section 4 completes the details of the Complaints Committee process in addressing formal complaints. It serves as a guideline to action in providing appropriate redress. The manner in which a complaint is addressed will make all the difference to the equal rights of working women as well as the kind of workplace culture being promoted.

## Global Norms and Good Practices

The key benchmarks are listed below:

1. Recognition that workplace sexual harassment is a form of human rights violation.<sup>i</sup>
2. Recognition that sexual harassment is a form of gender-specific violence.
3. Equality, dignity and worth of a human person must be emphasized.
4. Gender-based violence includes sexual harassment and impairs the enjoyment by women of several basic human rights and fundamental freedoms.<sup>iii</sup> Some of these rights include:
  - The right to life, the right to liberty and security of the person.
  - The right to equal protection under the law.
  - The right to the highest standard attainable of physical and mental health.
  - The right to just and favourable conditions of work.
5. Eliminating violence against women and advancing women's equality includes the right to be free from workplace sexual harassment.
6. Legislation on violence against women should define violence to include sexual harassment. Such legislation should also recognize sexual harassment as a form of discrimination and a violation of women's rights with health and safety consequences.<sup>vi</sup>
7. The International Labour Organization (ILO) has also drawn specific attention to domestic workers, who have a right to “enjoy effective protection against all forms of abuse, harassment and violence.”

