

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE

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 Redressal) Act, 2013

This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviours through which a woman can experience possible professional and personal harm. It presents the user with scenarios from across-section of work contexts to build clarity on different forms of sexual harassment as identified under the Act.

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. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied.

Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such

name. The Act also covers a woman, who is working in a dwelling place or house.

Aggrieved Women

Working Visiting a Student
Workplace

Domestic Worker	Regular/ Temporary/ Ad Hoc/ Daily Wager	For remuneration/ Voluntary basis/Otherwise	Employed directly/ Through an agent	Contract Worker, Probationer/ Trainee/Apprentice/ called by any other such name
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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, workplace covers both the organized and un-organised sectors.

It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes:

- Government organizations, including Government company, corporations and cooperative societies;
- Private sector organizations, venture, society, trust, NGO or service provides etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;
- Hospitals/Nursing Homes;
- Sports Institutes/Facilities;

- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

The Act defines the Unorganised Sector as:

- Any enterprises owned by an individual or self employed workers engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.

All women working or visiting workplaces, for example:

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. Making sexually coloured remarks;
3. Showing pornography;
4. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

2.4 KEY ELEMENTS OF WORKPLACE SEXUAL HARASSMENT

Very often situations that start off innocently end up in inappropriate and unprofessional behaviours. It is important to remember that **workplace sexual harassment is sexual, unwelcome** and the experience is **subjective**. It is the **impact** and not the intent that matters and it almost always occurs in a matrix of power. It is possible that a woman may experience a single instance of sexual harassment or a series of incidents over

a period of time. It is important also to remember that each case is unique and should be examined in its own context and according to the surrounding circumstances as a whole.

The following table highlights the subjective nature of the experience and the impact it may have on the person involved, irrespective of the intent of such behaviour.

To enable prevention of sexual harassment at the workplace, it is critical to recognize and differentiate between welcome and unwelcome sexual behaviour. Listed are some examples of how “unwelcome” and “welcome” behaviour is experienced.

UNWELCOME	WELCOME
Feels bad	Feels good
One-sided	Reciprocal
Feels powerless	In-control
Power-based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Causes anger/sadness	Happy
Causes negative self-esteem	Positive self-esteem

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.

Professional	Personal

SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for the reason held “We therefore prefer to

analyze harassment from the (complainant's) perspective. A complete understanding of the (complainant's) view requires ... an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women ... Men tend to view some forms of sexual harassment as "harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. ... Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive."

2.5 EXAMPLES OF BEHAVIOURS AND SCENARIOS THAT CONSTITUTE SEXUAL HARASSMENT

Below are examples of behaviour that may or may not constitute workplace sexual harassment in isolation. At the same time, it is important to remember that more often than not, such behaviour occurs in cluster. Distinguishing between these different possibilities is not an easy task and requires essential training and skill building.

2.6 FORMS OF WORKPLACE SEXUAL HARASSMENT

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

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