

Illustrative Cases

- Supervisor during a business trip invited the complainant to join him in hotel lounge, which she felt compelled to accept because he was her superior. He made comments on her breasts which she did not encourage. Then he told her “loosen up” and warned her he could make life “very hard or very easy” at the company.
- At the promotion interview, the supervisor expressed reservations saying that she was not “loose enough” and reached over and rubbed her knee. The complainant however received the promotion.
- On another occasion, the woman called him for permission on business related issue, he responded “I don’t have time for you...unless you want to tell me what you are wearing.” Again, he commented, “Are you wearing shorter skirts yet...because it would make your job a whole heck of a lot easier.”
 - Perpetrator played a role in promotion
 - Veiled threats and demeaning comments were never carried out (Burlington v. Ellerth 1998)



- An employee made a comment about her weight and said, “why don’t you take your clothes off and we’ll judge you.”
- Employer told a story to the female employee of watching sexual interplay between a couple at a hotel and made sexual gestures.
- Employer asked the woman employee to sit on his knee and “give him a kiss.”(Bannister v. General Motors of Canada 1998).
- Throwing objects on the ground and then telling woman employees to pick them up. Faragher v. Boca Raton 1998: No premise mathematical formula to decide, but it has to be understood in the totality of circumstances.



Sexual Harassment- Indian Perspective

- Violation of Equality, Life and Dignity under Arts 14, 15 & 21 of the Indian Constitution.
- Criminal Offence under Sections 354 and 509 Indian Penal Code, 1860.
- By virtue of Criminal Law Amendment Act 2013, Sexual Harassment has been specifically declared as an offence under Section 354A IPC, 1860.



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- **Vishaka v. State of Rajasthan (1997)**- Supreme Court recognized the problem of sexual harassment and laid down guidelines to ensure a fair, secure and comfortable work environment on one hand and eliminate situations of abuse on the other.
- Followed in subsequent cases, Apparel Export Promotion Council v. A. K. Chopra 1999 ; Shenaz Mudbhalkal v. Saudi Arabian Airlines 1999; R. B. S. Chauhan v. Reserve Bank of India 2003;
- Dr. Medha Kotwal v. Union of India 2004; Dr. Medha Kotwal v. Union of India 2013- Issued guidelines to States to immediately set up adequate number of Complaint Committees at taluka, district and State levels; Directed the change of Civil Service (Conduct Rules) within two months of the order and further that the findings of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under the Civil Service Conduct Rules.



Sexual Harassment at Workplace(Prevention, Protection and Redressal) Act, 2013

- Received Presidential assent on 23rd April 2013 and came into force from 9th December, 2013.
- The Act supersedes the Vishaka Guidelines laid down by the Supreme Court of India.



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"sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:--

- (i) physical contact and advances; or
- (ii) a demand or request for sexual favours; or
- (iii) making sexually coloured remarks; or
- (iv) showing pornography; or
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature:



Circumstances amounting to Sexual Harassment

- Implied or explicit promise of **preferential treatment** in employment or
- Implied or explicit threat of **detrimental treatment** in employment or
- Implied or explicit **threat** about her present or future employment status or
- **Interference** with her work or creating an **intimidating** or **offensive** or **hostile** work environment for her or
- **Humiliating** treatment likely to affect her health or safety.
- **Must be read in conjunction with the definition of Sexual Harassment**



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 that reason held “...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.” [Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009 on 9 September, 2010]



"workplace"

- (i) any department, organisation, undertaking, establishment, enterprise, institution, etc. of Govt.
- (ii) any private sector organisation or a private venture,
- (iii) hospitals or nursing homes;
- (iv) any sports institute, stadium, sports complex or games venue;
- (v) any place visited by the employee arising out of or during the course of employment;
- (vi) a dwelling place or a house;

All offices, institutions in private or public sector, including educational institutions are workplaces.



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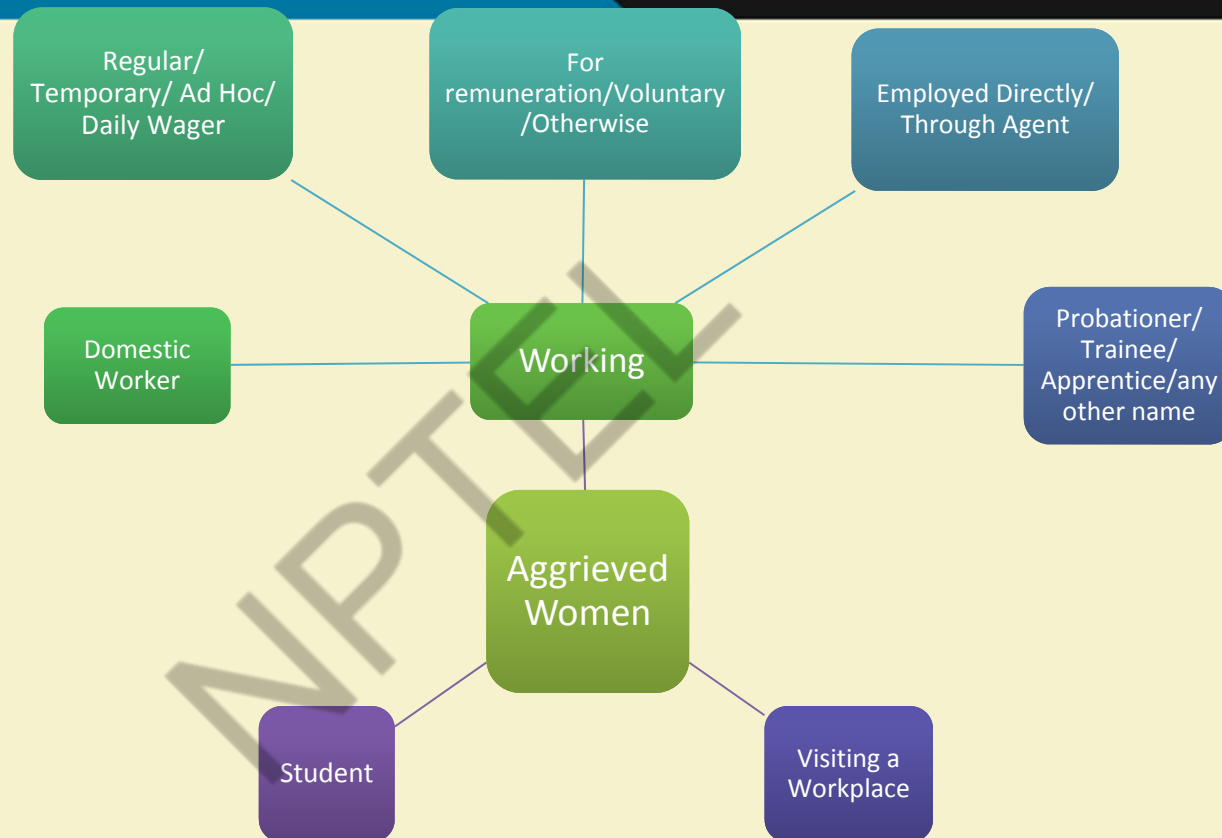
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Who can make a complaint?

- Any **aggrieved woman**
- A woman, of any age, **whether employed or not**, who alleges to have been subjected to any act of sexual harassment.
- Also includes, a woman working in a dwelling place or house.
 - Regular, Temporary, Ad hoc, Daily Wage Basis, Contractual, Voluntary,
 - Probationer, Trainee, Intern, Apprentice, Student etc.





What to Do??

(Victim Perspective)

- **Speak Out**
- Hold the harasser responsible for his action
- Objecting to harassment is one's **Right**
- Don' succumb to pressure or diversionary tactics
- **Report the harassment immediately to the Internal Complaints Committee.**
- There is **no Shame** in being a victim- the shame is of the harasser, not yours.



Proceed during Inquiry

Defend Your Case

Provide Witnesses/ Documents
Be consistent, Do Not exaggerate/ hesitate

Ask for Privacy/ Confidentiality

Names should be suppressed

Ask for Protection

Leave/Transfer/ Transfer of Harasser
In case of educational institute, the harasser may be debarred from all activities involving the complainant.



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Seek Remedies

Adequate action taken by ICC-

- Written Apology,
- Censure,
- Loss of Pay,
- Loss of Increments,
- Black mark in Service Records,
- Counselling session,
- Dismissal from Service

Compensation to the Woman-

- Mental trauma,
- Emotional Distress,
- Loss of Career Opportunity,
- Medical or Other expenses



Not Satisfied??

- Appeal to the Authority
- Time Period- 90 days.



Is there any consequent Duty??

Yes

A False or Malicious Complaint is Punishable.



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Internal Complaints Committee

	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



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Responsibilities of ICC

Effectively Address Complaints

- Know the Act, Policy and/or relevant Service Rules
- Know the procedure
- Be thoroughly prepared
- Ensure parties are made aware of the process and their rights/responsibilities within it
- Determine the main issues in the complaint
- Gather and record all relevant information
- Prepare relevant interview questions
- Conduct necessary interviews
- Analyze information gathered
- Prepare the report with findings/ recommendations



Do's and Don'ts for ICC

DO'S

- Create an enabling meeting environment.
- Use body language that communicates complete attention to the parties.
- Treat the parties with respect.
- Discard pre-determined ideas.
- Determine the harm.

DON'TS

- Get aggressive.
- Insist on a graphic description of the sexual harassment.
- Interrupt.
- Discuss the complaint in the presence of the complainant or the respondent.



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Time line

- 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.



Duties of Employer

- ✓ Provide a safe working environment at the workplace;
- ✓ display at any conspicuous place in the workplace, the law on sexual harassment and Internal Complaints Committee
- ✓ organise workshops and awareness programmes at regular intervals
- ✓ provide necessary facilities to the Internal Committee for dealing with the complaint and conducting an inquiry;
- ✓ assist in securing the attendance of respondent and witnesses before the Internal;
- ✓ provide assistance to the woman if she so chooses to file a complaint with Police
- ✓ treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- ✓ monitor the timely submission of reports by the Internal Committee.



Thank You

Life with Dignity is Your Basic Right

You have every right to demand and enforce the same.



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Gender Justice and Workplace Security

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Gender Violence- Within and Beyond

Module 4



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Contemporary Challenge

- **Gender Based Violence** is the worst form of discrimination that seriously inhibits women ability to enjoy rights and freedoms on a basis of equality with men.
- Such violence involves acts which result in **physical, sexual** or **psychological** harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty.



Violence

An act of violence may be defined as a **conscious and deliberate act** that causes or threatens to cause harm. It is a type of coercive behaviour that involves the use, attempted use or threatened use of physical force intended to lead to physical or mental injury or even death, of the victim.



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Gender Violence

Can be divided in two categories:

- **Physical, sexual and psychological violence occurring in the family**, including battering, sexual abuse of female children in the household, dowry-related violence and other traditional practices harmful to women, non-spousal violence and violence related to exploitation.
- **Physical, sexual and psychological violence occurring within the community**, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;



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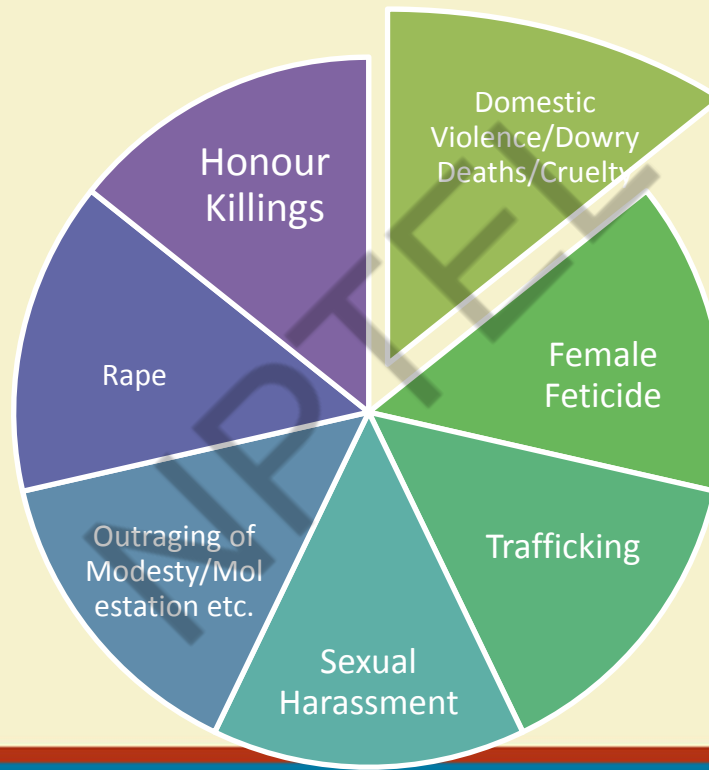
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Types of Gender Violence

- ☐ **Physical**- beating, aggressive care giving, rough handling
- ☐ **Emotional**- verbal abuse, using derogatory language, overtly hostile
- ☐ **Sexual**- rape, sexual harassment, touching
- ☐ **Economic**-Obtaining property/funds by fraud, misuse of funds
- ☐ **Neglect**- failure to supervise, care or provide medical treatment



Gender Violence in Indian Perspective



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Women Specific Legislations

- The Immoral Traffic (Prevention) Act 1956
- The Dowry Prohibition Act 1961
- The Indecent Representation of Women (Prohibition) Act 1986
- The Commission of Sati (Prevention) Act 1987
- The Pre natal Diagnostics Techniques Act 1994
- The **Protection of Women from Domestic Violence Act 2005**
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013



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The PWDV Act 2005

- Came into effect on 26th Oct 2006.
- Aimed at providing increased protection to women as victims of domestic violence. It is designed to help women during the most intense phase of abuse. It not only provides a support mechanism but also acts as a tool for women to negotiate for their rights from a position of equality.
- Provide a chance for resettlement of matrimonial home and relationship prior to actual registration of the crime under Section 498A of the Code, 1860. *Abasaheb Yadav Honmane & Ashwini Abasaheb Honmane v. The State of Maharashtra* 2008(2) Mh.L.J 856



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Domestic Violence

- ***Defined as a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner.*** It is a broad term encompassing child abuse, spouse abuse, sibling abuse, elder abuse etc. However, in general, it is broadly focused on spousal violence or domestic violence against women.
- Under the Act, 2005, the term "domestic violence" includes elaborately all forms of actual abuse or threat of abuse of physical, sexual, verbal, emotional and economic nature that can harm, cause injury to, endanger the health, safety, life, limb or well-being, either mental or physical of the aggrieved person.



Types of Abuse

- Physical Abuse-
 - an act or conduct causing bodily pain, harm, or danger to life, limb, or health;
 - an act that impairs the health or development of the aggrieved person;
 - an act that amounts to assault, criminal intimidation and criminal force.
E.g.- beating, kicking, punching, etc.
- Sexual Abuse-
 - any conduct of a sexual nature that abuses, humiliates, degrades, or violates the dignity of a woman.
E.g. – forced sexual intercourse by the husband, making a woman watch pornography against her will etc.



- Verbal and Emotional Abuse-

- any insult, ridicule, humiliation, name-calling;
- insults or ridicule for not having a child or a male child;
- repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

E.g. – commenting on looks, calling her a loose woman, ostracizing, blaming a woman for not having a male child etc.

- Economic Abuse-

- depriving the aggrieved person of economic or financial resources to which she is entitled under any law or custom or which she acquires out of necessity such as household necessities, stridhan, her jointly or separately owned property, maintenance, and rental payments;
- disposing of household assets or alienation of movable or immovable assets;
- restricting continued access to resources or facilities in which she has an interest or entitlement by virtue of the domestic relationship including access to the shared household.

E.g. – denial of food, disposing off household assets to the detriment of the woman, disposing off her own assets (such as Stridhan) against her will etc.



Who can complain and against whom?

- Any **Woman** in domestic relationship subjected to domestic violence.
- Against any **Adult male person** in a domestic relationship or relationship in nature of marriage, as also a relative of the husband.
- Does it include a woman as well?
- *Smt. Menakuru Renuka and Ors. v. Menakuru Mono Reddy and Anr.* 2009 Cri.LJ 819 : AIR 2009 AP 1544; *Tehmina Qureshi v. Shazia Qureshi* ILR (2010) MP 296; *Ajay Kant & Ors v Smt. Alka Sharma* 2008 Cri LJ 264- female members are excluded.
- But see, *Sou. Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and Ors.* 2012(2)ALT(Cri)391-No restrictive meaning has been given to the expression "relative"; In a recent judgment of Supreme Court in October, 2016, Justices Kurian Joseph and Rohinton F Nariman ruled that “perpetrators and abettors of domestic violence” can be women too.



Domestic Relationship

- **Domestic Relationship:** All persons living together in a shared household, whether related by consanguinity, marriage, adoption etc. Includes Past relationships as well- “lived together at any point of time”.
- A domestic relationship as under the Act includes live-in relationships



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Rights Under the Act

Right to obtain Assistance and Protection

Right to Reside in Shared Household

Right to Compensation & Monetary Reliefs



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What do the rights entitle her to?

A woman can get reliefs from the court. This includes much needed support and compensation.

The orders the court can direct are as follows:

1. Protection Order [Section 18]-

- This can also be termed as a “**stop violence**” order. Through this order the court can direct the other party to immediately stop the acts of violence.



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Residence Order [Section 19]-

A residence order may be passed by the court in cases where the woman apprehends being thrown out of the house (shared household) or in cases where she has been thrown out and wants to return to her house. The aim of this order is to ensure that women have a shelter that is safe.

In cases where a woman does not feel safe living with the male perpetrator of violence, she can apply for an order seeking his removal from the shared household. Or else, the court can direct the perpetrator to provide alternate accommodation for the woman.



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Monetary relief [Section 20] -

This order can be sought to **meet any expenses** the woman may have incurred as a result of the violence faced. This may include payment of medical bills, any loss of belongings, etc. Married women or women living in the nature of marriages can also claim maintenance from the husband/ male partner.



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Compensation order [Section 22] -

A compensation order can be asked for by the woman for injuries (mental and physical) sustained. This is over and above the actual expenditure that can be obtained by a monetary order explained above.



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Custody order [Section 21] -

A woman can also ask for temporary custody orders for her children. This is to prevent the woman from being separated from her children, which itself is a form of emotional abuse and blackmail.

This order is temporary in nature and does not affect rights under existing laws on custody and guardianship.



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Interim / Ex parte order [Section 23] -

An interim order can be given by the court at the time the proceedings are initiated and before a final order is passed. In order to get interim orders, a woman has to show that she has or she is facing violence, or fears violence.

An ex parte order means an order that is passed in the absence of the other party to the dispute. Such orders are interim in nature and passed only if there is an immediate danger to the person making the application or when the other party refuses to appear in court despite prior intimation given by the court.



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Procedure

- Simple and Expeditious
- Information to Protection Officers
- Complaint to P.O., Police, Magistrate
- Assistance of Counsellors, Family Welfare Experts
- Disposal within 60 days of proceedings



Violence against Women (IPC 1860)

Against Life and Dignity

- ☐ Rape
- ☐ Outraging of Modesty
- ☐ Acid Throwing
- ☐ Sexual Harassment
- ☐ Stalking
- ☐ Voyeurism
- ☐ Indecency
- ☐ Disrobing a woman

In Matrimonial relationship

- Dowry Death
- Cruelty in Marriage (S. 498A)



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Development of Law

“ Women were wholly owned subsidiaries and not independent beings. Rape could not be envisioned as a matter of female consent or refusal...Rape entered the law through backdoor, as it were, as a property crime of man against man. Woman, of course, was viewed as the property.”

- Infact, the laws framed were not to protect the women and her bodily integrity, but to protect the man's control and dominance over the female body.
- The making of the Indian Penal Laws, especially those concerning women, clearly indicate the then prevailing notions of morality and the secondary status of women in society.

