

POSH



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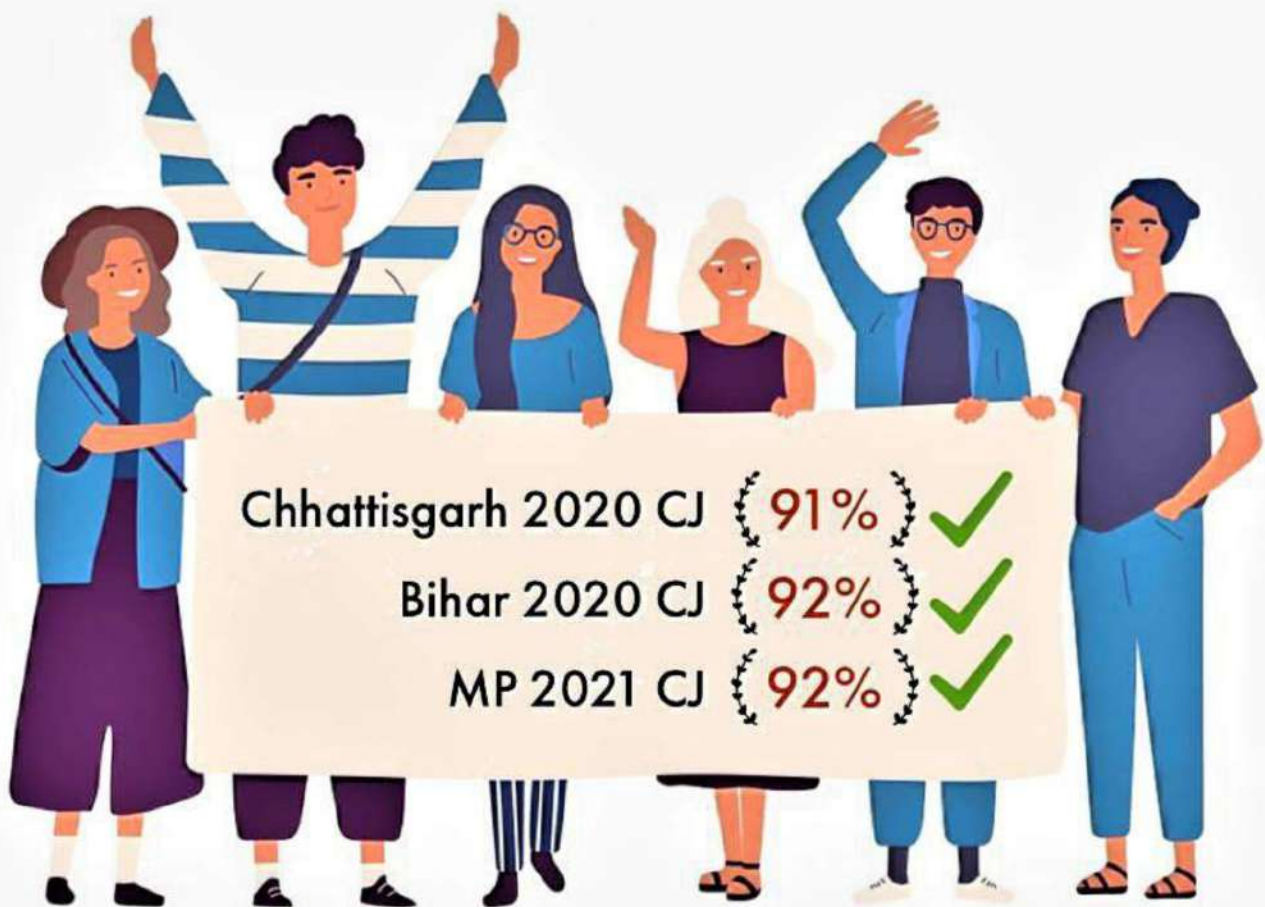
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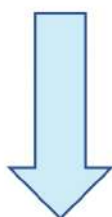


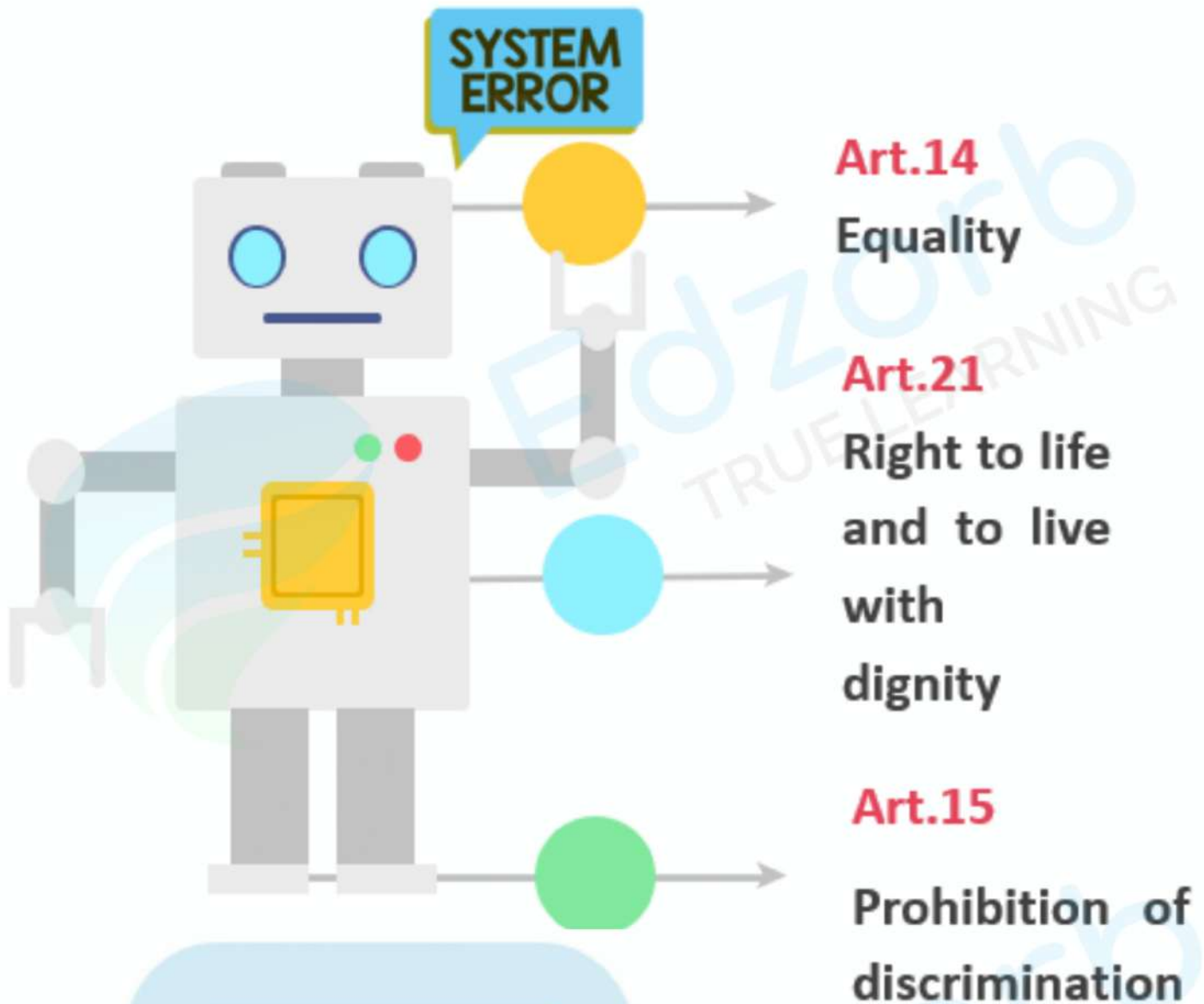
“The **meaning and content** of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality....”

Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan



WHEREAS sexual harassment results in **violation of fundamental rights of a woman to**





Art.19- 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**



The Commission on Human Rights
joins in the celebration of the



OPTIONAL PROTOCOL TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

06 OCTOBER 2019



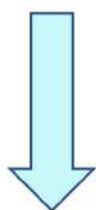
Ratified on the 9th July
1993 by the Government
of India

Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013
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Convention for protection of
**women against sexual harassment
at work place.**



Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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WHAT IS SEXUAL HARRASSMENT?

According to **the Act**, 'sexual harassment' includes the following, whether directly or by implication

Making sexually-coloured remarks



Showing pornography



Physical contact and advances



Unwelcome physical, verbal or non-verbal conduct of sexual nature

A demand or request for sexual favours

HOW DO YOU KNOW IF YOU ARE FACING WORKPLACE SEXUAL HARASSMENT?



#ZeroTolerance

Recognise, Refuse and Report Sexual Harassment

THE GENESIS



1981

Feminist movement against all forms of discrimination against woman

1992



Bhanwari Devi case, PIL was filed by Vishaka proposing all workplace to be made accountable for sexual harassment

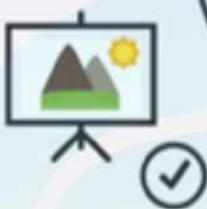
1997



SC created **legally binding guidelines** on equality and dignity as well as **UN CEDAW**



SC **defined sexual harassment** which covers woman disadvantaged in workplace relating to threat to employment decisions



SC placed **responsibility on employer** to ensure women did not face a hostile Environment and establish redressal mechanism.

2013

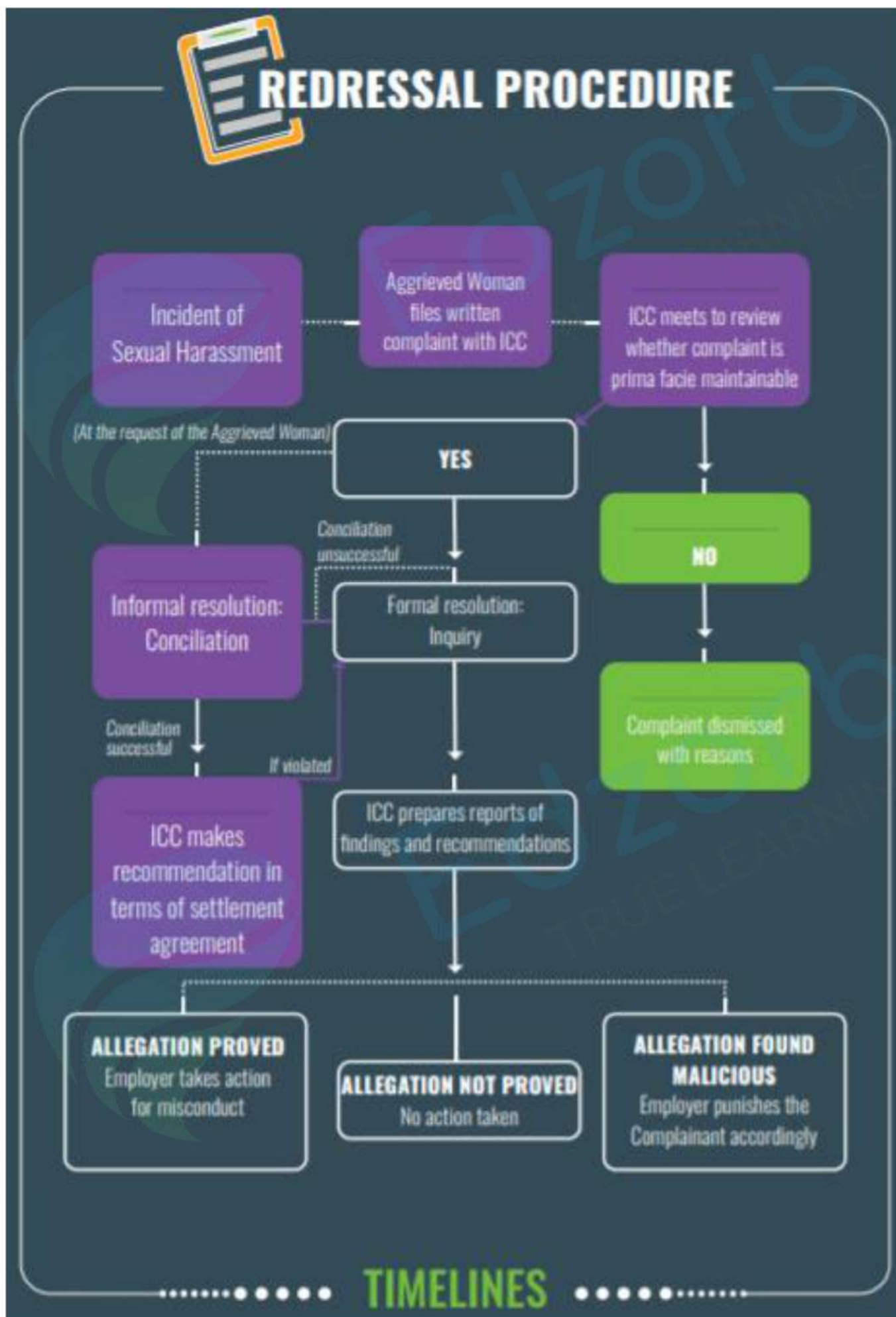


Government of India **notified** the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act

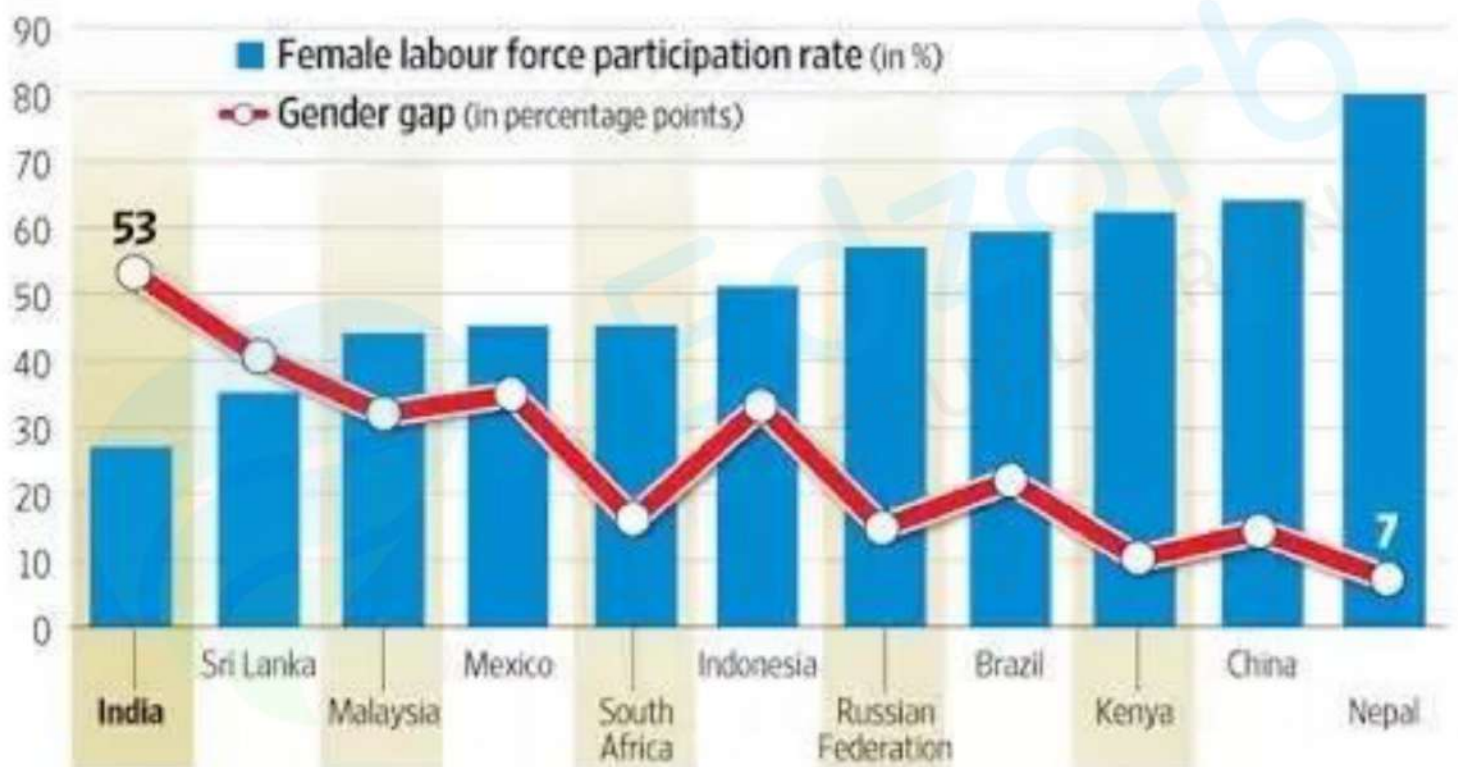


Legislative Timeline of POSH Act & POSH Rules

2007	Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 ("Bill") approved by the Union Cabinet.
2010	The Bill was introduced in the Lok Sabha
2012	The Bill was amended and re-introduced in the Lok Sabha.
September 03, 2012	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Lok Sabha
February 26, 2013	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Re-dressal) Bill, 2012 was passed by the Rajya Sabha.
April 23, 2013	The POSH Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013.
December 09, 2013	The Indian Ministry of Women and Child Development notified December 09, 2013 as the effective date of the POSH Act and the POSH Rules.



MISSING WOMEN



Source: World Development Indicators

- Given, that **93 per cent** of women workers are employed in the **informal sector**, they remain unprotected by laws.
- With **no laws or mechanisms to protect them**, proactive measures are required to make their workplaces safe.

Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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INQUIRY PROCEDURE

1. ICC sends notice to the respondent with a copy of complaint and supporting documents submitted by the aggrieved woman.

The respondent files his reply in 6 copies along with his documents, name and addresses of witnesses.

2.

ICC forwards reply to the aggrieved woman and sends a notice to both the parties for the hearing.

3.

4. The aggrieved woman leads her witness or evidence which can be cross examined by the respondent.

The respondent leads his witness or evidence which can be cross examined by the aggrieved woman.

5.

ICC makes its preliminary finding and calls for representations thereon from both parties.

6.

7. After considering the representation, ICC submits the Finding report and Recommendation to the employer.

Timelines

Copy of complaint to be sent to accused within 7 working days.

Accused to reply within 10 working days from receipt of complaint.

Inquiry to be completed within 90 days.

ICC to submit Finding & Recommendation to Employer within 10 days of completion of Inquiry.

Note

- ✓ All evidence is ideally recorded in the presence of both the parties.
- ✓ In case, either party is not present for 3 consecutive meetings without sufficient cause, the ICC can terminate the proceeding or give ex parte order. The concerned party is notified in writing 15 days in advance.
- ✓ This process may have to be modified in term of service rules of the organisation.



Post Vishaka – Some Other Judgments

Apparel Export Promotion Council V. A.K Chopra (1999) 1 SCC 759

Facts:

- Superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexually harassing a subordinate female employee at the workplace

Held:

- “Sexual harassment is a form of sex discrimination through unwelcome sexual advances, request for sexual favours and other verbal or physical conduct whether directly or by implication.
- When submission to or rejection of such conduct by the female employee was capable of being used for affecting the employment of the female employee and unreasonably interfering with her work performance and had the effect of creating an **intimidating or hostile work environment for her.**”

Medha Kotwal Lele & Ors. V. Union of India & Ors.

AIR 2013 SC 93

Facts:

- A letter written by Dr. Medha Kotwal of Aalochana (an NGO) highlighted a number of individual cases of sexual harassment stating that the Vishaka Guidelines were not being effectively implemented. Converting the letter into a writ petition

Held:

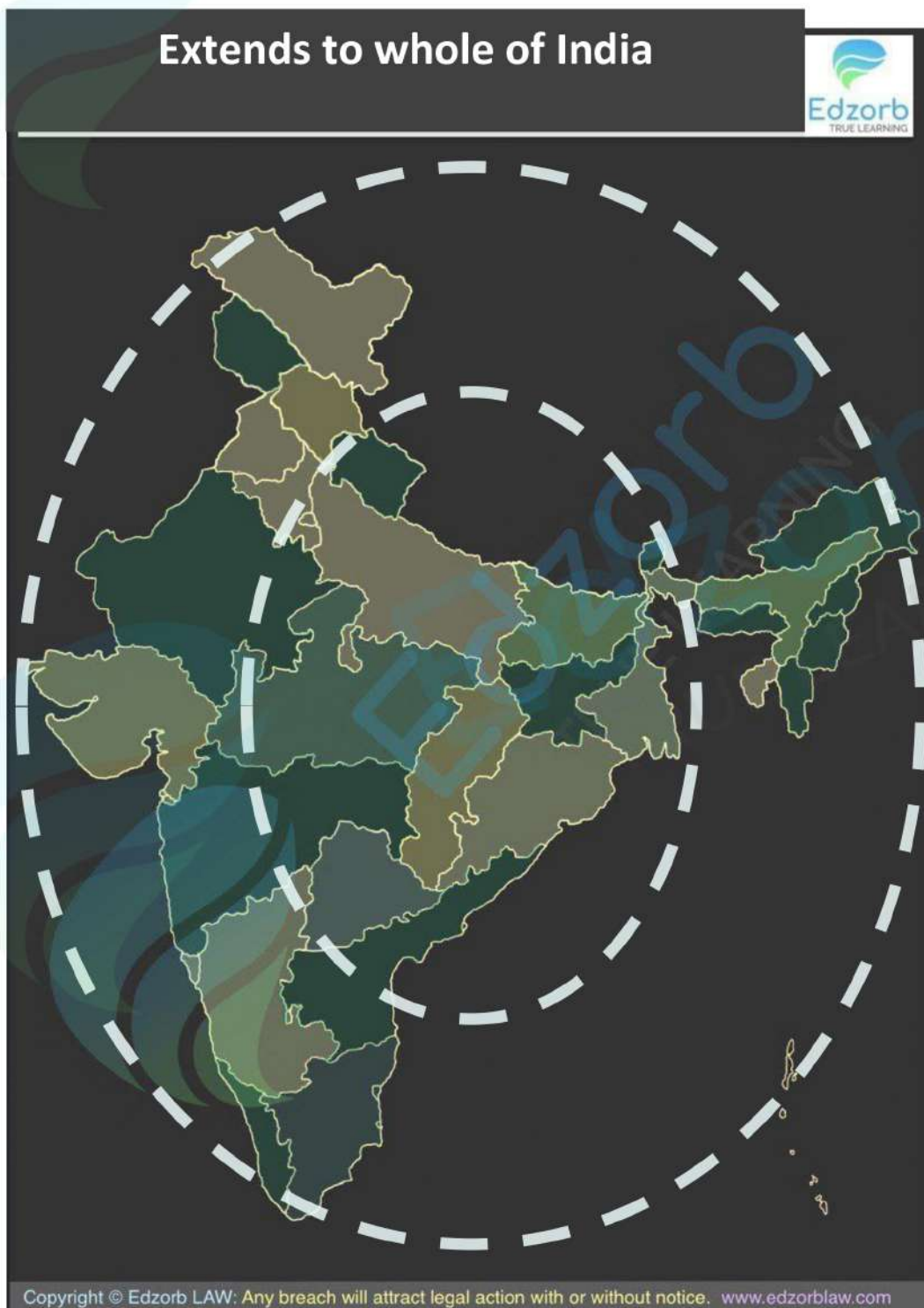
- Non-compliance or non-adherence of the Vishaka Guidelines, it would be open to the aggrieved persons to approach the respective High Courts.
- States to put in place sufficient mechanisms to ensure effective implementation of the Vishaka Guidelines.

CHAPTER I

Preliminary

Section 1: Short title, extent and commencement

- Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- Extends to the **whole of India**.



- Shall come into force as **on (9th Dec.2013)** the Central Government may, by notification in the Official Gazette, appoint.



सत्यमेव जयते


Government of India


भारत का राजपत्र
The Gazette of India

SEXUAL HARASSMENT AT WORKPLACE

If you touch a woman inappropriately, you could go to jail for 5 yrs

As India has its #MeToo moment, here's a look at the laws that are in place to make our workplaces safe for women. Vishaka guidelines, promulgated by the Supreme Court, were in place since 1997. This was superseded in December 2013, when the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, or POSH Act, was passed. The Criminal Law (Amendment) Act, 2013, was also passed and Section 354 was added to the Indian Penal Code. This defines sexual harassment and the penalties for the offence. Additionally, with sexual harassment being a crime, employers are obligated to report offences



WHAT AMOUNTS TO SEXUAL HARASSMENT AT THE WORKPLACE?
 Unwelcome, sexually determined behaviour, whether directly or by implication:

- Physical contact and advances
- A demand or request for sexual favours
- Sexually coloured remarks
- Showing pornography
- Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

ONUS ON EMPLOYER TO CREATE A SAFE WORKPLACE

- Rules on prohibition of sexual harassment should be notified, published and circulated in appropriate ways
- There should be appropriate penalties for violation

HOW DO EMPLOYERS GO ABOUT THE INQUIRY

All workplaces with 10 employees or more are required to constitute an **internal committee** to probe an allegation. The committee will have to be constituted at all units or offices of a company

The committee should have a minimum of **four members** and half of them have to be women. The presiding officer will have to be a senior-level woman worker

Workplaces with less than 10 employees need not form an internal committee and all complaints will go to the local complaints committee set up as per the Act by district officers in each district

The committee should also have an **external member** from an NGO working on women's rights or a related area

VICTIMS MUST BE ALLOWED TO SEEK TRANSFER


- The rules say that **workers should be allowed to raise issues of sexual harassment at staff meetings** and other appropriate fora and it should be affirmatively discussed in meetings with the employer
- Awareness of the rights of women employees should be created by prominently **notifying the guidelines**
- Company should ensure that victims or witnesses are not discriminated against and that victims have the option to seek transfer of the perpetrator or their own transfer

AND THIS IS WHAT HAPPENS TO VIOLATORS

- Inappropriately touching a woman
 > 1-5 years' jail and fine under Criminal Law Act, 2013
- Observing, capturing, distributing images of a woman without her knowledge
 > 1-7 years' jail and fine under Information Technology Act, 2000
- Using words, gestures to outrage a woman's modesty
 > 3 years' jail and fine under Criminal Law Act, 2013
- Consensual sex with a subordinate
 > 5-10 years' jail and fine under Criminal Law Act, 2013

OUTSIDE OFFICE CAN ALSO BE WORKPLACE

Apart from office, any place visited by an employee during the course of employment, including transportation provided by employer for the visit, is covered under the Act. If harassment takes place during a **lunch meeting at a restaurant**, it will also be covered



Source: poshatwork.com

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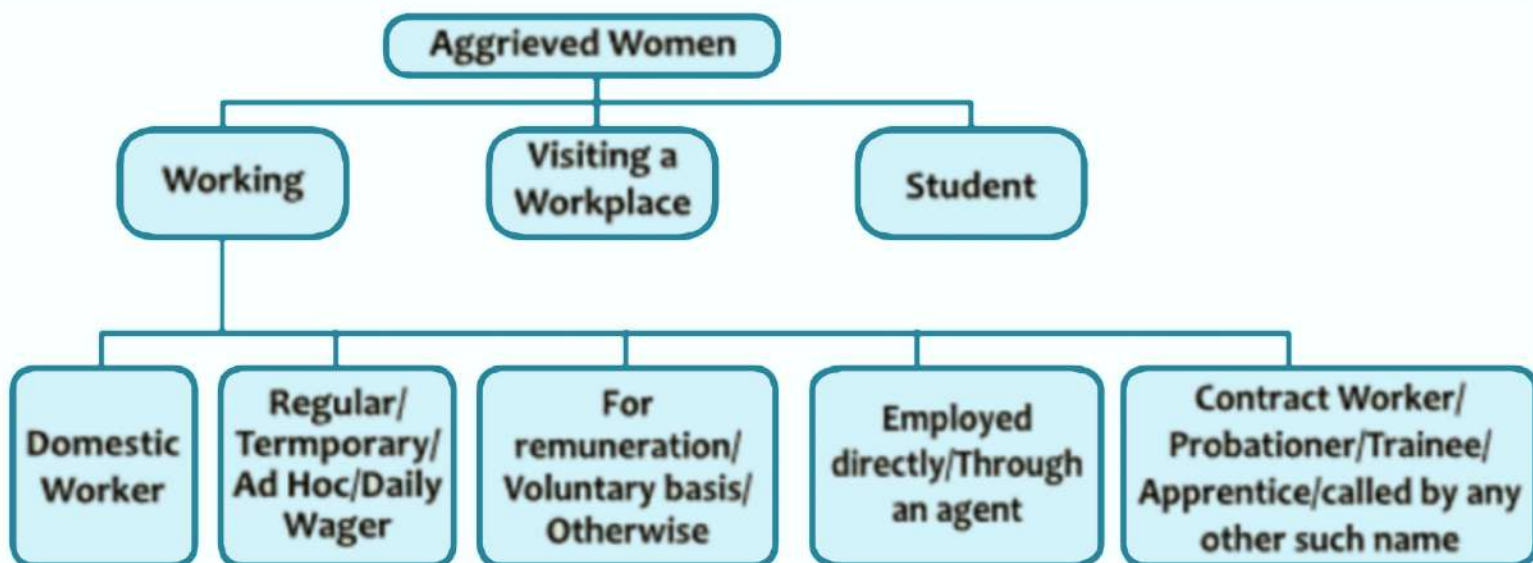


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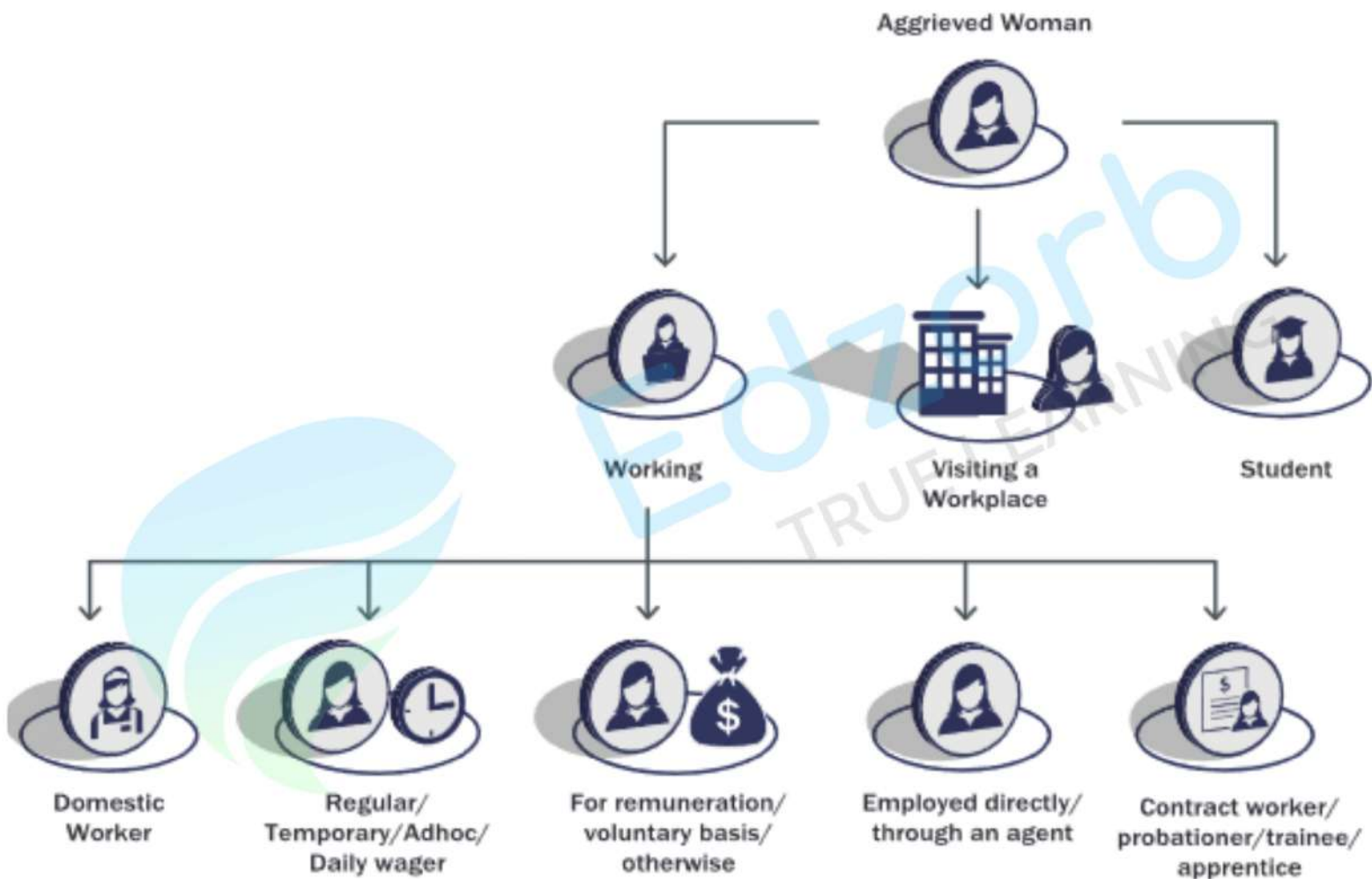
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Section 2: Definitions.

- In this Act, unless the context otherwise requires, —
- **“Aggrieved woman”** means—
- **Woman of any age**, whether employed or not, who alleges to have been subjected to any act of sexual harassment.
- Even at **dwelling place or house**, a woman of any age who is employed in such a dwelling place or house



- The definition does not necessitate the woman to be an employee, **even a customer/client** who may be sexually harassed at a workplace can claim protection under the POSH Act.



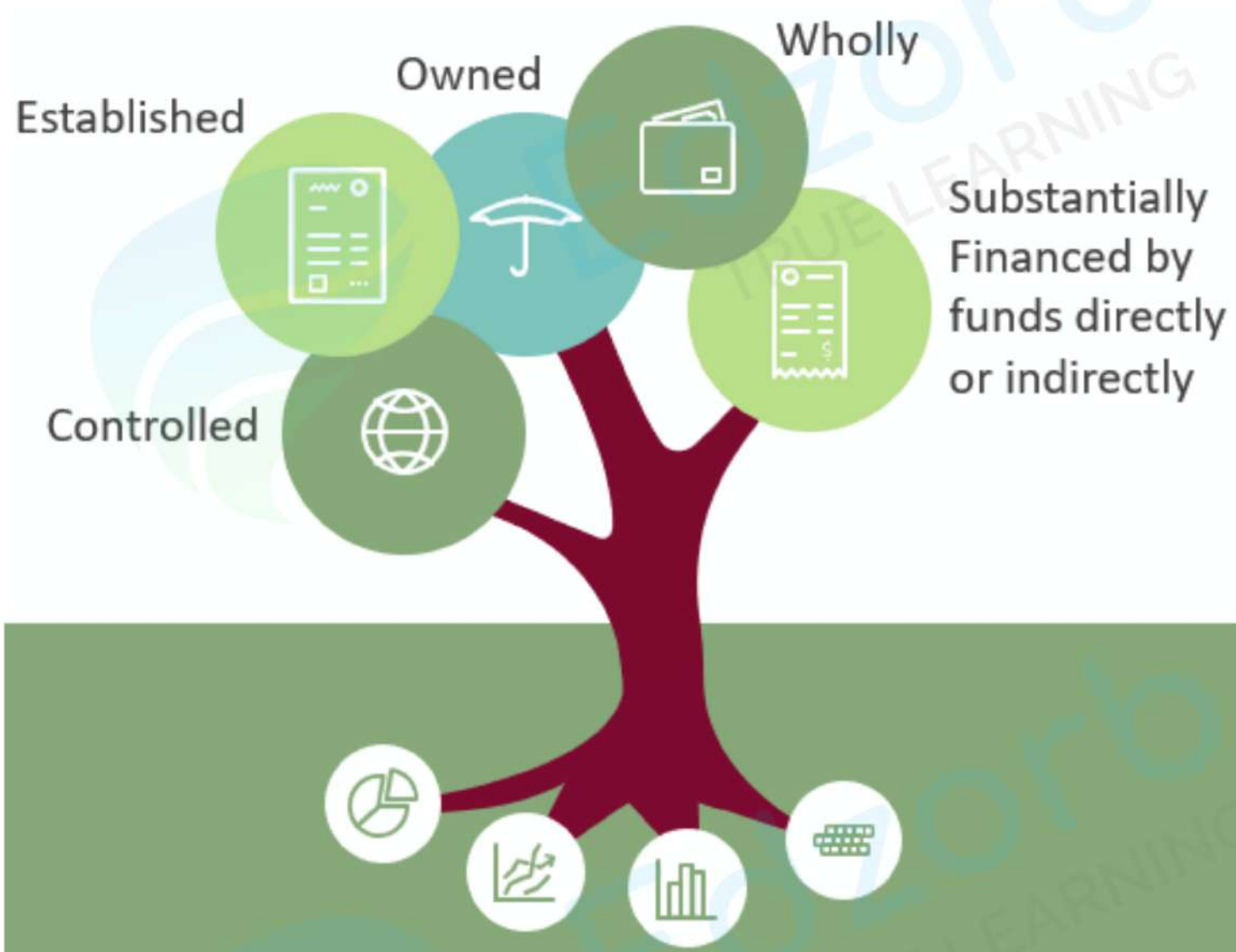
- All women **working or visiting workplaces**, for example:



Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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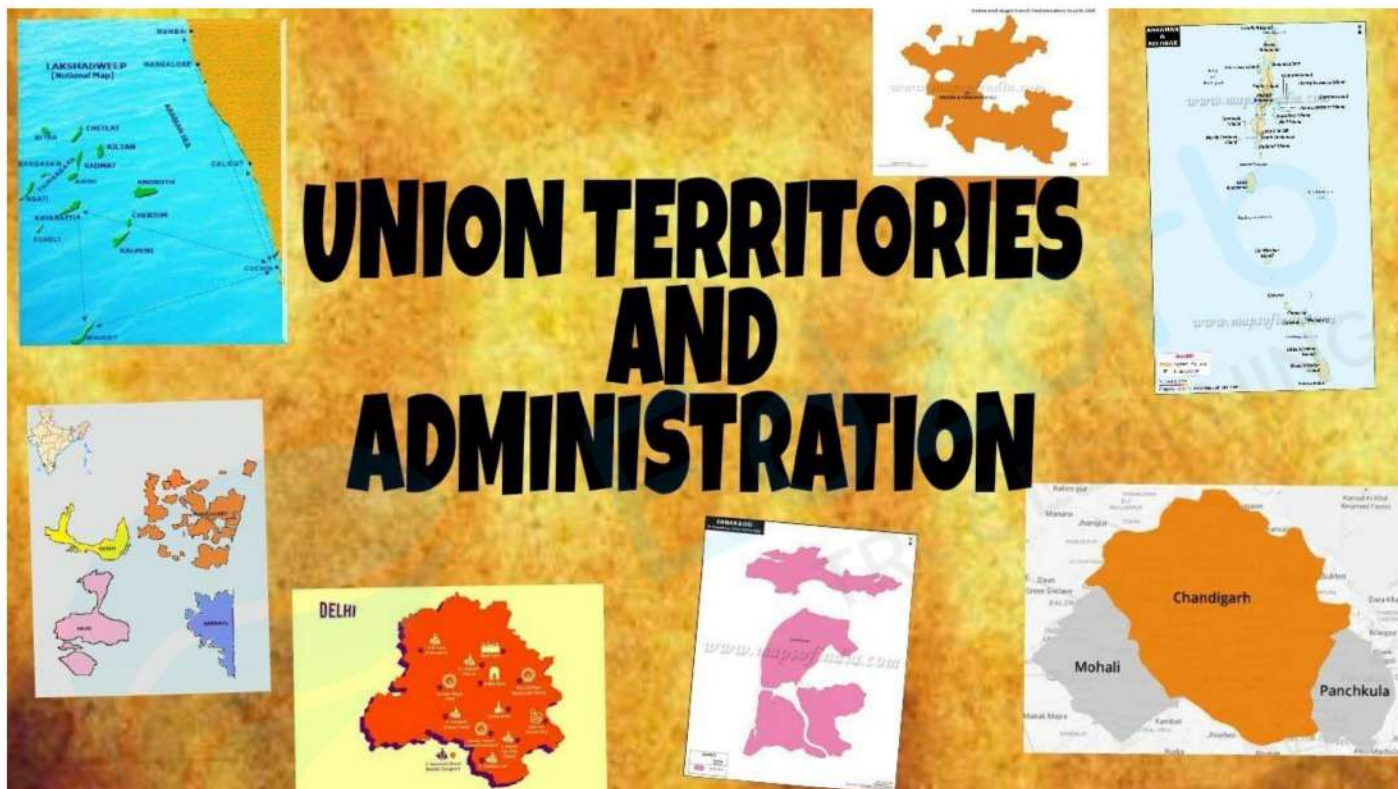
- “Appropriate Government” means—
- A workplace which is



- By the Central Government or the Union territory administration, the Central Government;



Or



सत्यमेव जयते

Government of Gujarat

- By the **State Government** in relation to any **workplace not covered** under sub-clause (i) and falling within its territory.

- “**Chairperson**” means the Chairperson of the **Local Complaints Committee** nominated under sub-section (1) of **section 7**.

Local Complaints Committee
under the POSH Act



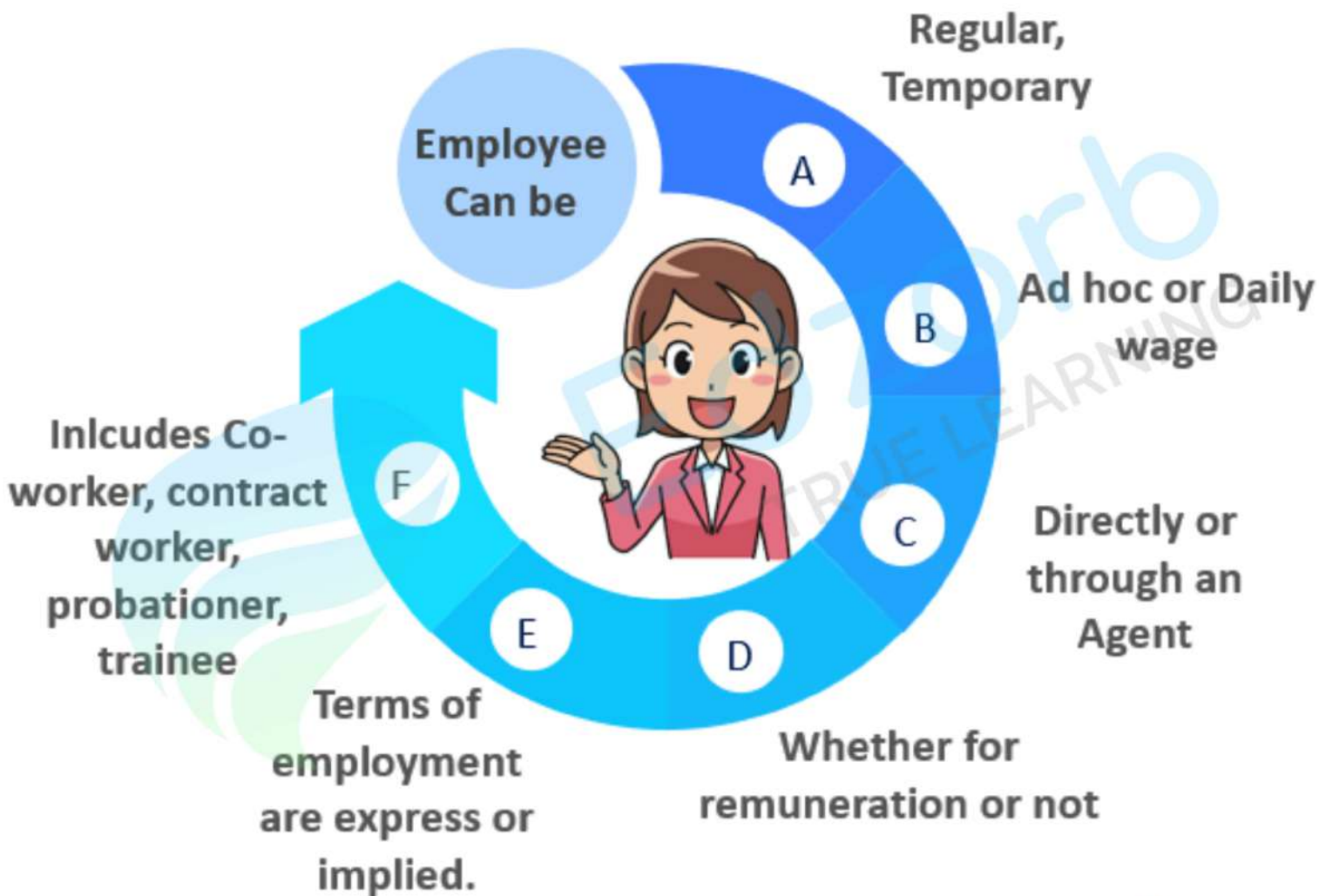


- “**District Officer**” means an **officer** notified under **section 5**.

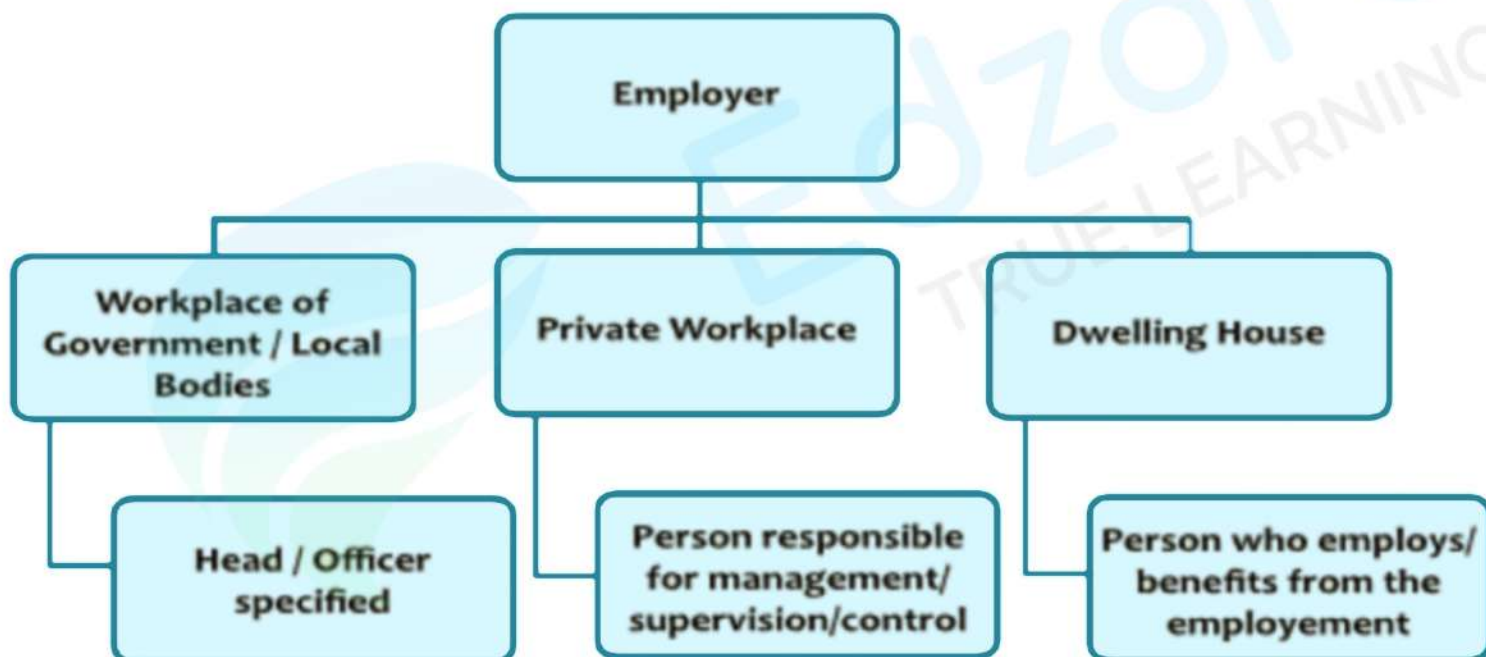
- “**Domestic worker**” means
- A woman employed to do the **household work for remuneration** whether in cash or kind,
- Either directly or through any agency on a temporary, permanent, part time or full-time basis,
- But **does not include** any member of the family of the employer.



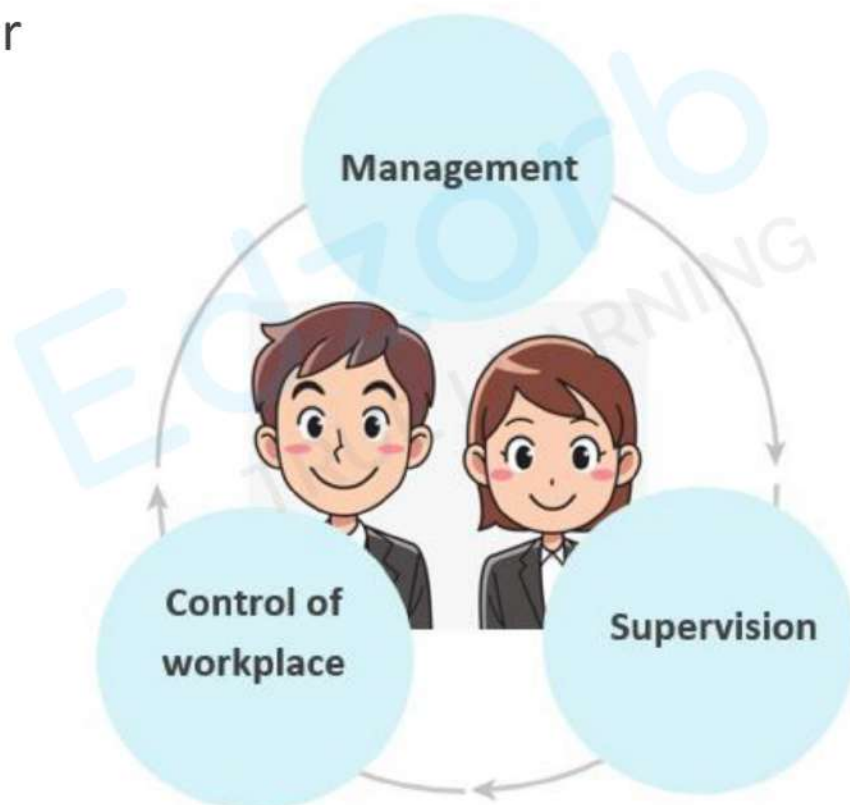
- “**Employee**” means a person **employed at a workplace for any work**



• “Employer” means—



- Any workplace not covered under sub-clause (i); any person responsible for



- “**Management**” includes the **person or board or committee** responsible for formulation and administration of policies for such organisation.

- In relation to the person discharging **contractual obligations** with respect to his or her employees



- In relation to

A dwelling place or house, a person who employs

Benefits from the employment of domestic worker,

Time period or type of such worker employed

The nature of the employment

Activities performed by the domestic worker

- “Internal Committee” means an Internal Complaints Committee constituted under section 4
- “Local Committee” means the Local Complaints Committee constituted under section 6;



- “Member” means a Member of the **Internal Committee or the Local Committee**, as the case maybe.



- “Prescribed” means **prescribed by rules** made under this Act.



- “Presiding Officer” means the Presiding Officer of the **Internal Complaints Committee** nominated under sub-section (2) of **section 4**

- “Respondent” means a **person against whom the aggrieved woman has made a complaint** under **section 9**.



Dr Malabika Bhattacharjee vs Internal Complaints Committee, Vivekananda College & Ors.

W.P.A. 9141/2020

Facts:

- An action of an ICC of an institution to accept a complaint uunder POSH was challenged as **without jurisdiction** on the ground that both respondent and complainant belonged to the same gender

Held:

- Sexual harassment **cannot be a static concept** but has to be interpreted in the backdrop of the social perspective
- It **pertains to the dignity** of a person which relates to his/her gender or sexuality, so it does not mean that any person of the same gender cannot hurt the modesty or dignity
- **S. 2(m) shows the term “Respondent”** “brings within its fold “a person” thereby including persons of all genders.

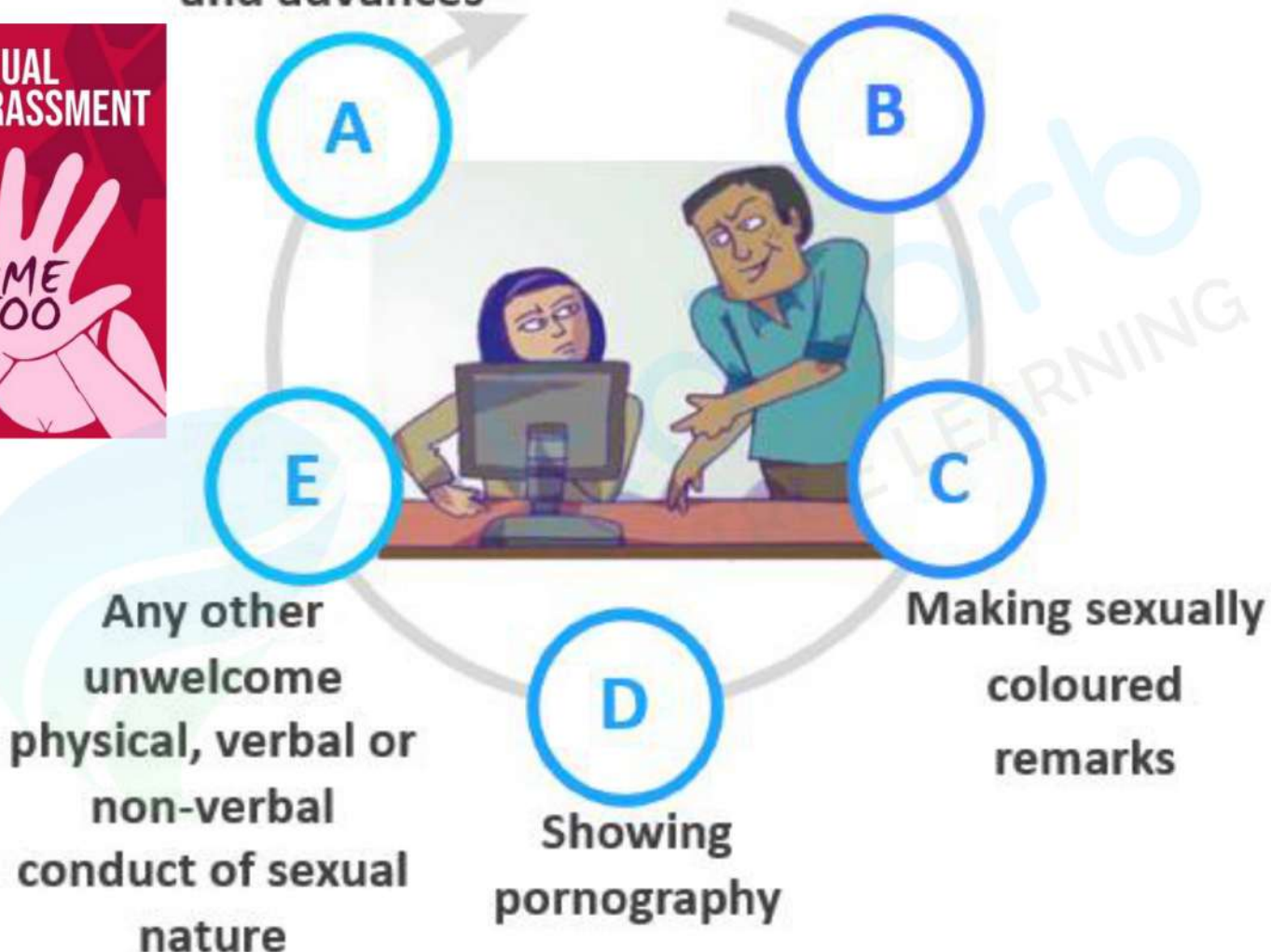




- “**Sexual harassment**” includes any one or more of the following **unwelcome acts or behaviour** (whether directly or by implication) namely: —

Physical contact and advances

Demand or request for sexual favours



Sexual Harassment dealt under IPC

Sections	Provisions
Section 354	Outraging the modesty of a woman
Section 354-A	Sexual harassment by a man
Section 354-B	Assault or use of criminal force to woman with intent to disrobe
Section 354-C	Voyeurism
Section 354-D	Stalking
Section 509	Insulting the modesty of a woman

Dr. Punita K. Sodhi V. Union of India & Ors.
W.P. (C) 367/2009 & CMS 828, 11426/2009

Held:

- 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.**

Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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- “Workplace” includes—



Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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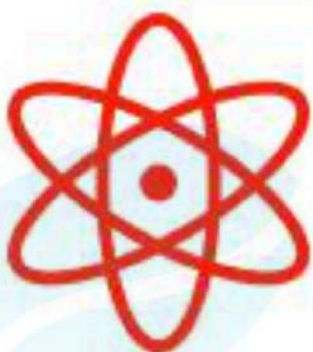




Any private sector organisation or a private venture



Undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit



Financial activities including production, supply, sale, distribution or service



Service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services

- While the Vishaka Guidelines were confined to the traditional office set-up, the **POSH Act has introduced** the concept of an **'extended workplace'**

**Saurabh Kumar Mallick V. The Comptroller & Auditor
General of India & Another
W.P. No.8649/2007**

Facts:

- The respondent who was facing departmental inquiry for allegedly indulging in sexual harassment of his senior woman officer contended that he could not be accused of sexual harassment at workplace,
- As the alleged took place not at the workplace but at an official mess where the woman officer was residing.

Held:

- A narrow and pedantic approach cannot be taken in defining the term 'workplace' by confining the meaning to the commonly understood expression "office".
- The following factors would have bearing on determining whether the act has occurred in the 'workplace':
 - **Proximity** from the place of work;
 - Control of the management over such a place/ residence where the working woman is residing; and
 - Such a **residence** has to be an extension or contiguous part of the working place.

- Hospitals or nursing homes:



- Any sports institute used for **training, sports or other activities.**



Office people are on business trip



- Employee visiting any place during the **course of employment** including transportation by the employer for undertaking such journey.



- A dwelling place or a house



- “Unorganised sector” means an enterprise **owned by individuals or self-employed** workers and engaged in the production or sale of goods and
- Where the enterprise employs workers, the **number of such workers is less than ten.**



**UNORGANISED
SECTOR**
90% of
Indian
Work
force



Section 3: Prevention of sexual harassment:

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

THE FIRST STEP TO PREVENTION IS RECOGNITION

Workplace Sexual Harassment is behaviour that is

UNWELCOME

SEXUAL in nature

A **SUBJECTIVE** experience

IMPACT not intent is what matters

Often occurs in a matrix of **POWER**

- The following circumstances, in relation to or connected with **any act or behaviour of sexual harassment** may amount to sexual harassment: —



Threat about her present or future employment status; or

Threat of detrimental treatment in her employment; or

Implied or explicit promise of preferential treatment in her employment or

interference with her work or creating an intimidating or offensive or hostile work environment for her.

Hostile work environment for her.

Humiliating treatment likely to affect her health or safety.





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CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

Section 4: Constitution of Internal Complaints Committee.

- 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 another 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.

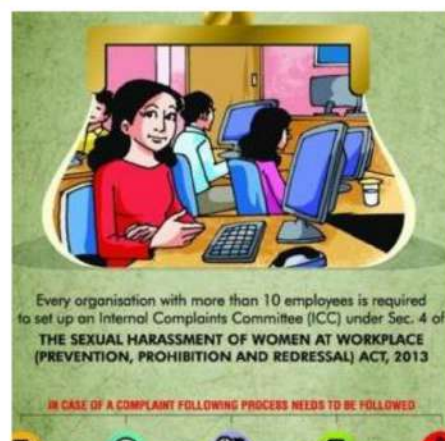
Provided...

- At least **one-half** of the total **Members** so nominated shall be **women**.



ONE HALF

- The **Presiding Officer** and every **Member** of the Internal Committee shall hold office for **three years**, from the date of their nomination.



- **Fees or allowances** to be paid to member appointed from non-governmental organisation or association.

NGO
NON
GOVERNMENTAL
ORGANIZATION



- Where the **Presiding Officer or any Member** of the Internal Committee: -

Contravenes the provision of sec.16 or

Convicted for an offence or an inquiry into an offence pending against him

Found guilty in any disciplinary proceedings

Abused his position as continuance in office prejudicial to the public interest



Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013
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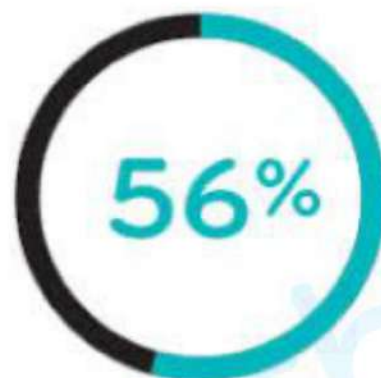
- Such Presiding Officer or Member, as the case may be, shall be **removed from the Committee.**



THE DISCONNECT

54%

Segment of women polled who reported unwanted sexual advances.



Portion of men who believe workplace harassment goes unpunished.

30%

Segment who said they were subject to unwanted advances at work.



Portion of men who go unpunished, according to women who have reported harassment.

23%

Segment who said the harasser had influence over their work.

Source: ABC News/The Washington Post



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CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

Section 5: Notification of District Officer

- The appropriate Government may notify



**Exercise powers
or discharge
functions**



Did the Act help in enhancing awareness among employees?



of the organisations believe that the Act helped in enhancing awareness amongst employees, which is a great trend.



No



May be

Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013
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Section 6: Constitution and jurisdiction of Local Committee.



District officer

Constitute a local committee



Where less than 10 workers or complaint against employer himself



Receive complaints



District officer

Designate **one**
nodal officer

In every **district, block, taluka and tehsil** in rural or tribal area and ward or



- To **receive complaints** and **forward** the same to the concerned Local Committee within a period of **seven days**.



Section 7: Composition, tenure and other terms and conditions of Local Committee.

No.	Member	Eligibility
1.	Chairperson	Nominated from amongst the eminent women in the field of social work and committed to the cause of women
2.	Member	Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district
3.	2 Members	Nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that: <ul style="list-style-type: none"> • At least one must be a woman • At least one
4.	Ex Officio member	The concerned officer dealing with social welfare or women and child development in the district



Provided...



- At least one of the nominees should, preferably, have a background in **law or legal knowledge**



Provided...

At least **one nominee** to be woman belonging to the **Schedule Castes or the Scheduled Tribes or the Other Backward Classes or minority community**

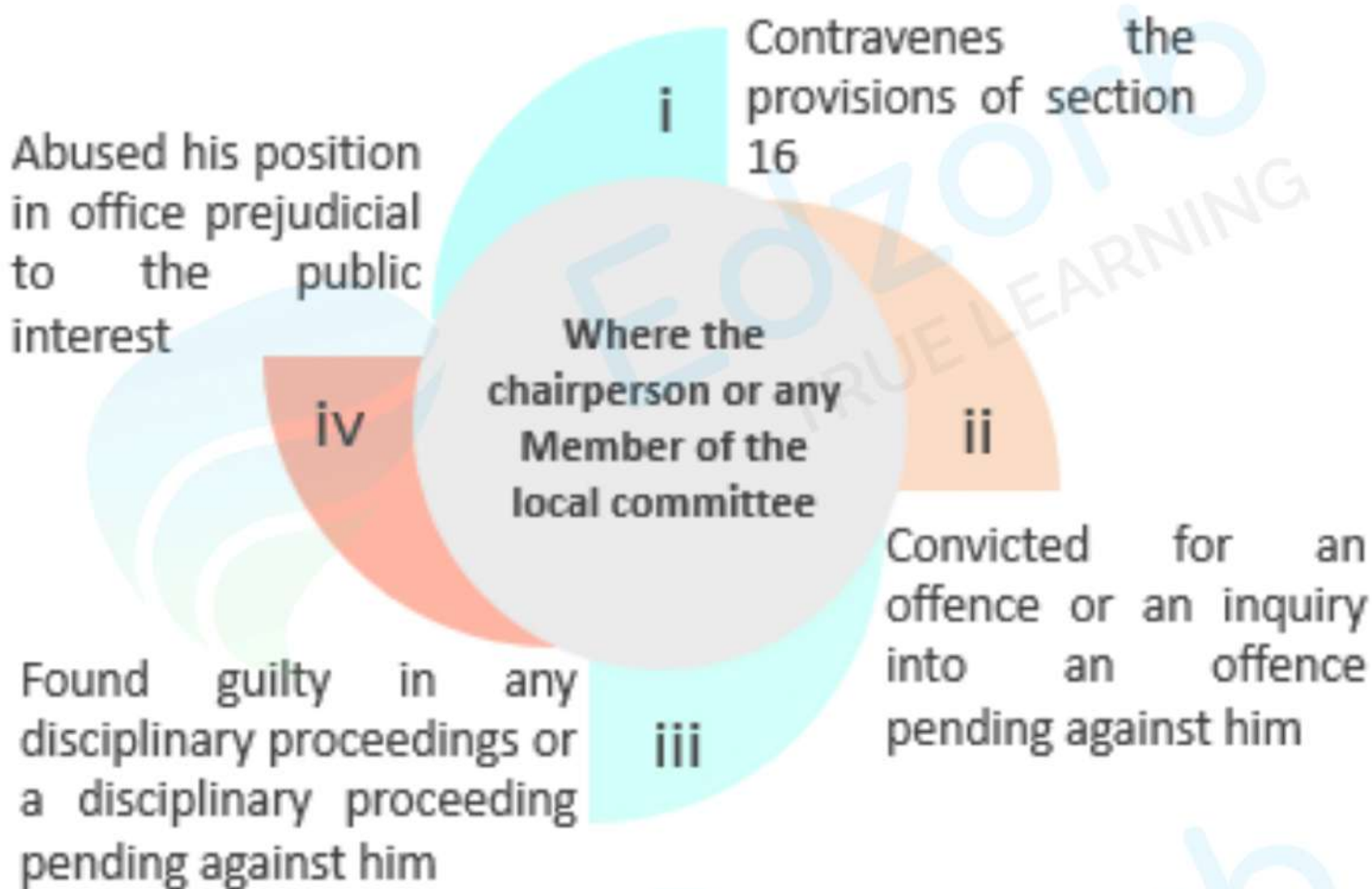


Year 3

- Chairperson and every Member of the Local Committee shall hold office **not**



exceeding three year as specified by the **District Officer.**



Chairperson



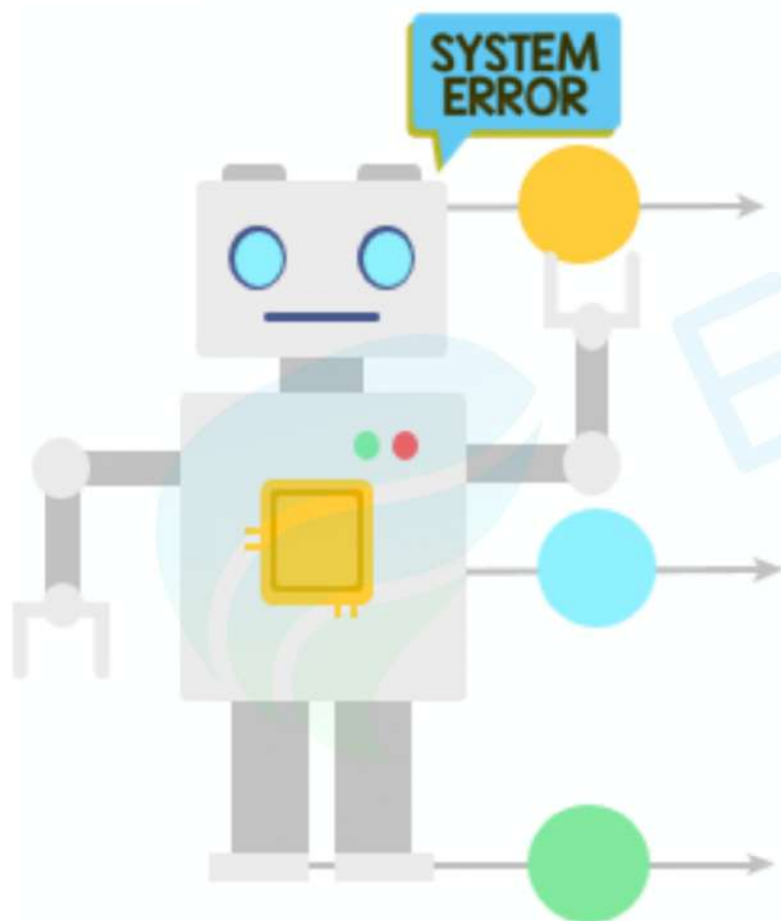
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Section 8: Grants and Audit



Central government may grant money to state government for **paying fees or allowances**

State government may set up **agency and Agency shall pay to District officer** for payment of fees or allowance

Accounts of agency maintained and audited in consultation with **Accountant General of state**

A Grim Picture

NUMBER OF SEXUAL HARASSMENT CASES REPORTED BY TOP NIFTY COMPANIES

Companies	No. of Cases	YoY % Change
Wipro	111	11.0
ICICI Bank	87	-7.4
Infosys	62	17.0
TCS	34	100.0
Axis Bank	32	-5.9
SBI	27	92.9
Tech Mahindra	26	NA
IndusInd Bank	20	233.3
Tata Steel	18	-25.0
Cipla	14	-17.6
Total Cases Disclosed by 33 Nifty Cos*	525	26.5

SOURCE COMPANY ANNUAL REPORTS

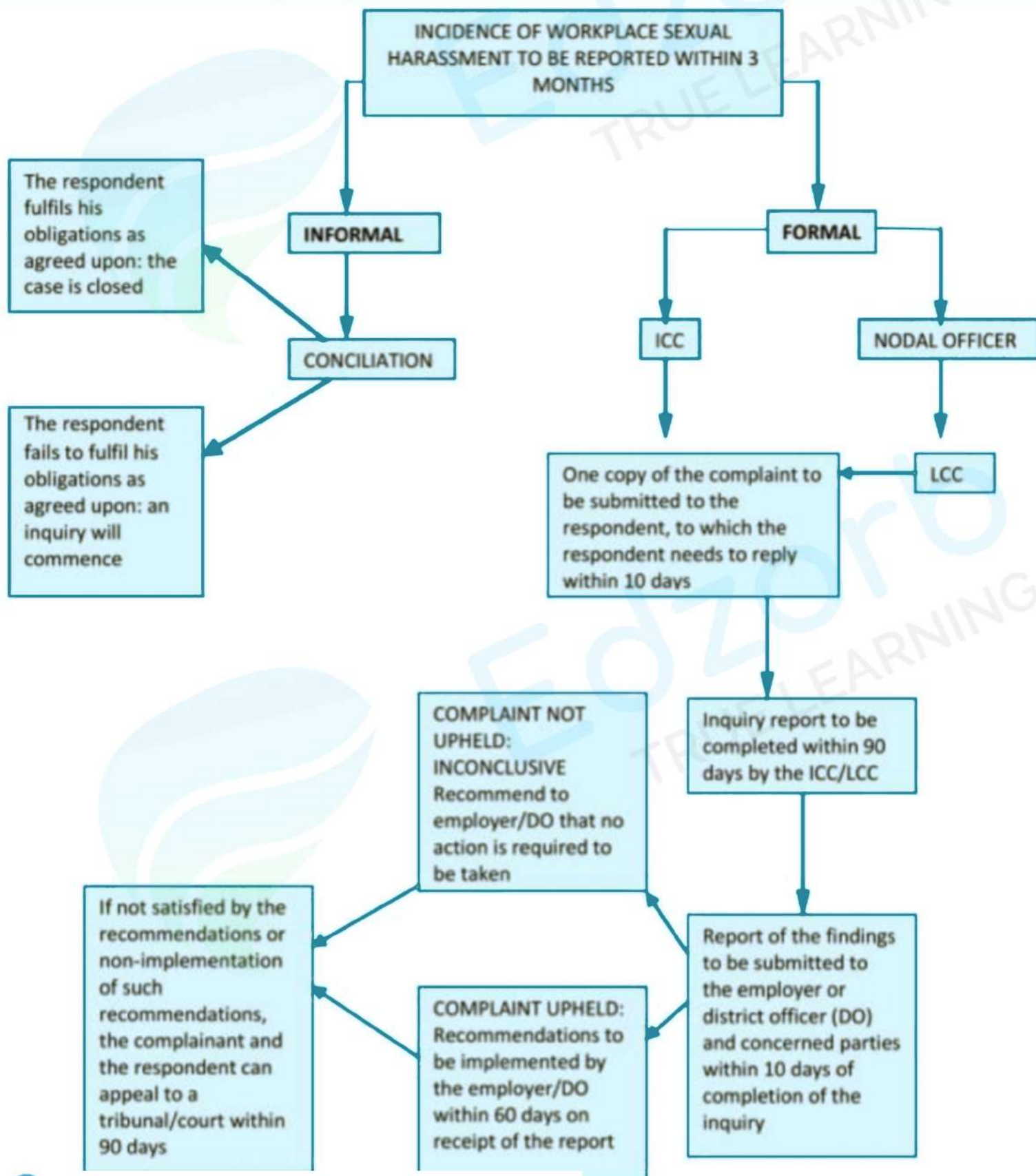
NA HAD REPORTED ZERO CASES IN THE PREVIOUS YEAR

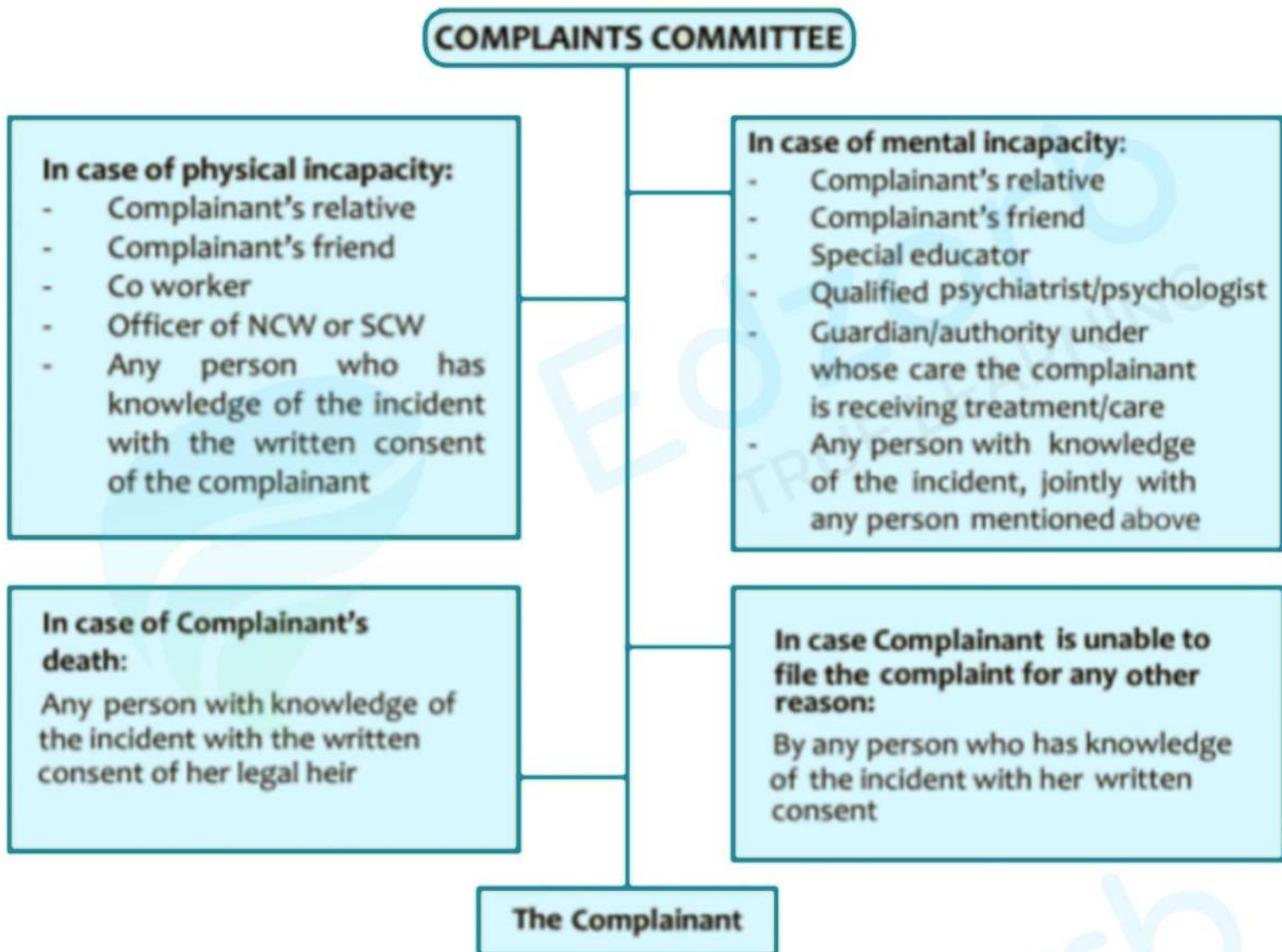
* 15 COMPANIES REPORTING ZERO CASES AND 2 COS HAVE NOT MENTIONED ANY NUMBER

CHAPTER IV

Complaint

Section 9: Complaint of Sexual Harassment





None aware of **support mechanism**

Survey conducted by Martha Farrell Foundation and Participatory Research in Asia (PRIA)

291 women domestic workers surveyed in Delhi-NCR

100% respondents unaware of support mechanism available to them

15% have spoken to friends/co-workers about it



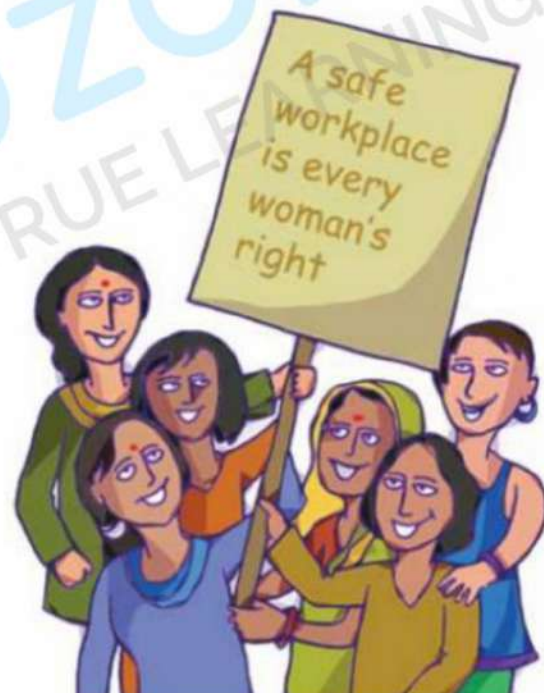
29% are sexually exploited

19% of victims chose to ignore

2.3% quit jobs when they were sexually harassed

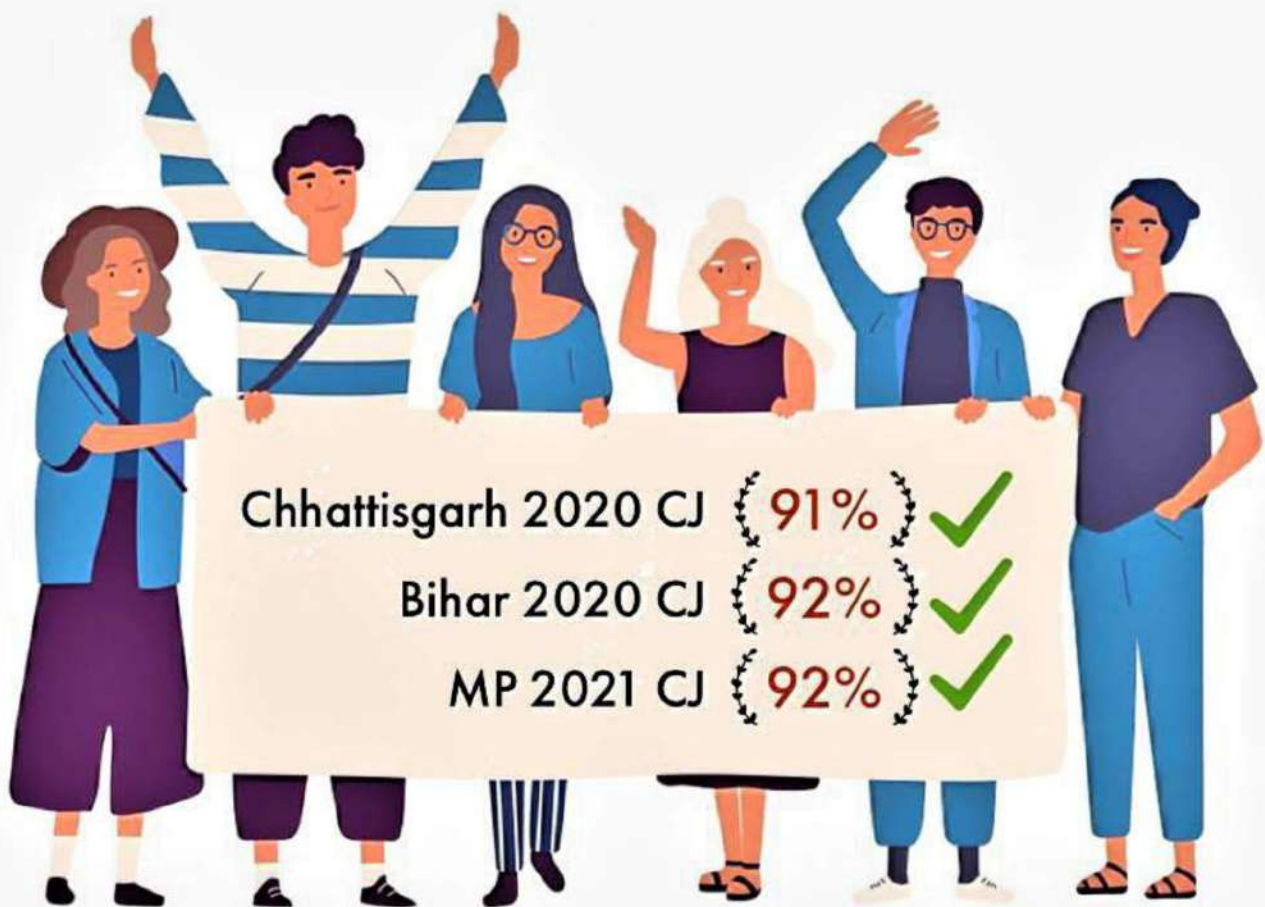
20% complained to cops, but there was no outcome

Of the 11 districts in Delhi, nine do not have a local anti-sexual harassment committee



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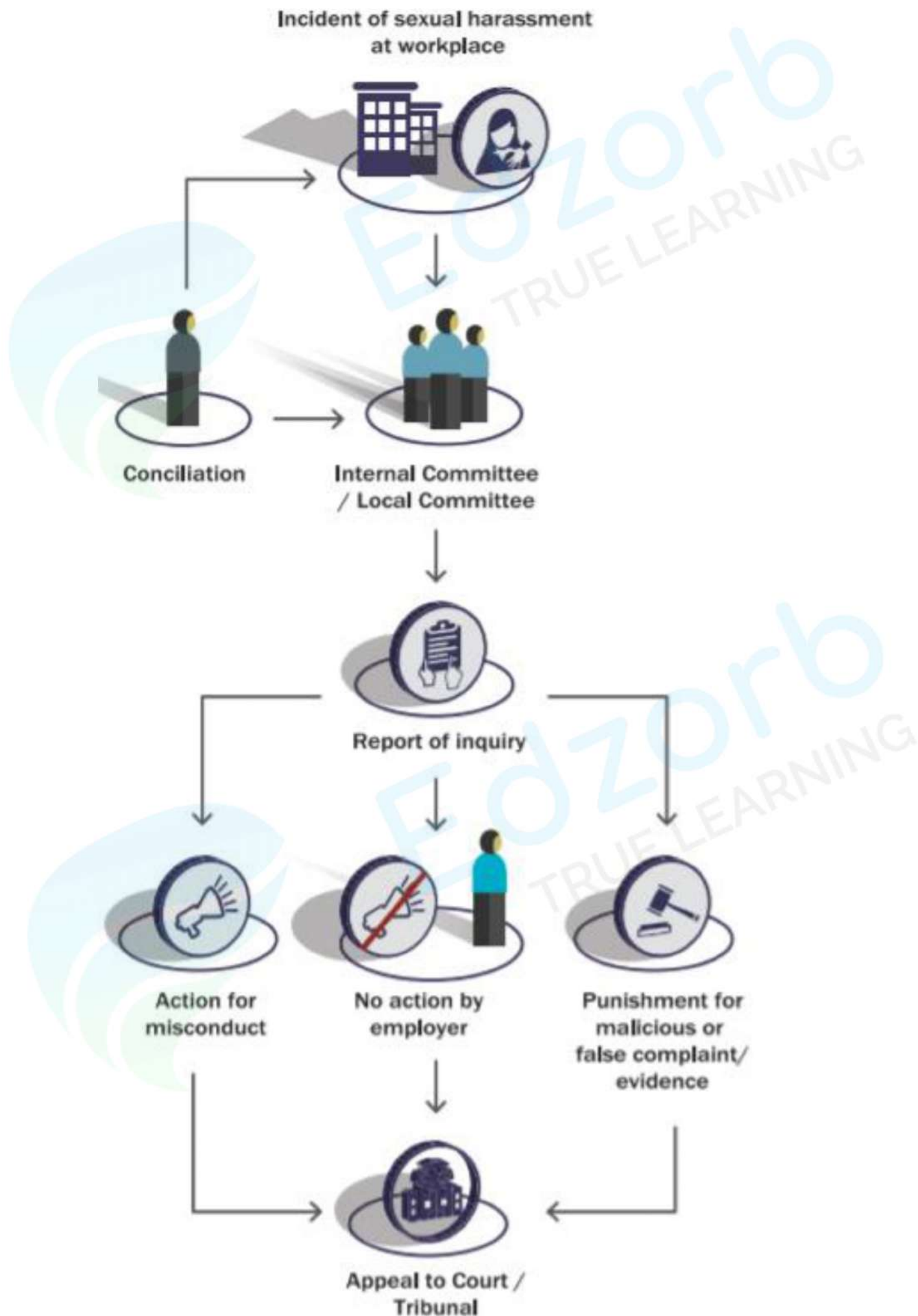
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Section 10: Conciliation



Section 11: Inquiry into complaint

Respondent is an employee, proceed to make inquiry into the complaint

Local Committee shall, forward complaint to the police, if prima facie case exist

For registering the case under



Section 509 of the Indian Penal Code (45 of 1860)

Provided...



Aggrieved woman



Informs committee

Any term or condition of the settlement arrived not complied by respondent

Proceed to make an inquiry into the complaint or forward the complaint to the police.



Provided...

Employee no.1



Employee no.2

Both parties are employees- during inquiry be given chance of being heard and a copy of finding to be provided to both parties to make representation before the committee



Completed Within



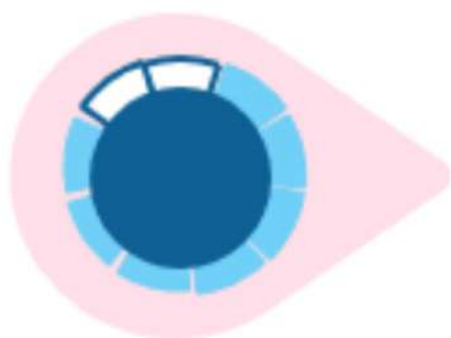


**Internal
Committee or
Local Committee**



Civil Court

In following matters:-



Summoning and enforcing the attendance of any person and examining him on oath



Discovery and production of documents



Any other matter which may be prescribed





- The court may when the respondent is convicted of the offence, **order payment of such sums** to the aggrieved woman by the respondent.

Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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Haryana Judicial service (civil judge) Main Examination

Civil Law

Paper - 1

Q.1. (a) A agrees to sell and deliver to B 500 Kgs of sugar at the time rate of Rs.50 per Kg on date X. On the same day he agrees to sell and deliver to C a like quantity of sugar at the same rate on the same date. Can B and C join together as plaintiffs in one suit against A and if not, then why not?

(b) Under which other provisions of the code of civil procedure besides section 11, a second suit has been barred? Discuss briefly

EPIC Mains Test Series Question & Evaluation

SAMPLE

Q.2. (a) The rules in rejection of a plaint are based as much on substantive grounds as on procedural reasons. Elaborate.

(b) The plaintiff delivered one thousand bags of potatoes to the defendant, the cold storage proprietor on certain conditions for preservation. The defendant did not fulfil all those conditions and thereby committed breach of contract. The plaintiff filed a suit for damages. The defendant filed counter claim. Discuss the effect of the counter claim in the light of statutory provision and decided cases.

TOTAL MARKS:- Haryana Judicial Service Exam

Civil Law-1

95/200 (Total Marks - 200)

Q1 (a) A agrees to sell and deliver to B 500 kgs of sugar at the time rate of Rs 50 per kg on date X. On the same day, he agrees to sell and deliver to C a like quantity of sugar at the same rate on same date. Can B and C join together as plaintiffs in one suit against A and if not, then why not?

(b) Under which other provisions of CPC besides section 11, a second suit has been barred? Discuss briefly (25 marks)

(a) Introduction - The term 'suit' has not been defined in Civil Procedure Code. It is a civil proceeding instituted by presentation of a plaint.

The essential of suit are -

- 1) Parties to suit
- 2) Cause of Action
- 3) Relief / Remedy.

The presence of opposing parties is one of the essential of requirement of any

Parties to suit have been briefly described in Order 1 CPC. It is the first essential of suit. It contains addition, deletion, joinder, mis-joinder & non-joinder of parties.

Joinder of Parties -> The joinder of parties may arise with regards to plaintiffs or defendants. The question of joinder of parties arises only when an act is done by 2 or more persons or it affect 2 or more persons

eg - If A cause damage to B & C or B & C cause damage to A. Then question of joinder of plaintiffs or defendants arise.

Joinder of Plaintiff -> Order 1 Rule 1 of Civil Procedure Code provides joinder of plaintiffs. -> State the provision.

Krishnappa Vs. Shivappa -> essential requirements of any civil suit.

10/25
Civil suit is classified into 2 parts Body of the case & Rules



A enters into contract → Salt → Released to deliver

It states that person may be joined as plaintiff, if following conditions

1) The right to relief exist in each plaintiff arises out of same act or transaction.

2) Any common question of law or fact arise if such person brought separate suits.

Both of the above conditions should be fulfilled for joinder of plaintiffs. The main purpose behind joinder of plaintiff is to avoid multiplicity of suits and to avoid unnecessary expenses & wastage of time.

Eg- A enters into agreement jointly with X and Y to 500 kg of salt. A refuses to deliver the goods. Here, both X and Y has a right to recover damages from A and said right arises out of same transaction. Also, common question of law & fact would arise.

So, X and Y can file a suit jointly as plaintiff against A for damages.

In the given case where A agrees to sell and deliver to B, 500 kgs of sugar at same time, rate & date as to C, only common question of law & fact would arise. The right of B and C is not arising out of same transaction. Hence, B and C cannot jointly file a suit as plaintiff against A as both conditions of joining as plaintiff i.e. Order 1 Rule 1 is not satisfied.

Conclusion → Joinder of cause of action is also given under Order 1 Rule 3 of Civil Procedure Code. Therefore, where there are 2 or more plaintiff & 2 or more cause of action, they can also be joined in 1 suit.

State the provision. Situation Against Case

(b) Introduction → The doctrine of Res-Judicata under Section

11 of Civil Procedure code lays down the following 3 principles upon which second suit is barred under CPC -

1) No man should be vexed twice for the same cause (Nemo Debet Bis Vexari Pro Una et Eadem Causa)

2) There should be an end to litigation (Interest Republicae ut sit finis litium)

3) Judicial decisions should be accepted as correct and final (Res Judicata Pro Veritate Occipitur)

Besides Section 11 of Civil Procedure Code, there are various other provisions where second suit has been barred:

1) Section 12 of CPC - Bar to further suit:

This section also discourages litigation and multiplicity of suit. The party under this section cannot file a second suit for the same cause of action.

1) Order 2 Rule 2 of CPC - Suit to include the whole claim: It states that if the party is instituting a suit then that suit should contain whole claim.

No second suit shall be allowed under this order if the party institute the second suit including other part of the claim which he did not institute in former suit.

3) Order 9 Rule 9 of CPC - Decree against Plaintiff bars fresh suit: It states that if the suit is dismissed under Order 9 Rule 8 where only defendant appears before the court on date of hearing, the plaintiff shall be barred from instituting a second

Res-Judicata
Pro Veritate Occipitur
all p. for
Res-Judicata
illegitimate??
not judged, decided, judgment
subject matter, dispute
Scope of Res-Judicata
no one has the right to reopen it with subsequent suit.
Essentials of Res-Judicata



suit on same cause of action. The plaintiff can apply to set aside the dismissal order.

The court will set aside the dismissal order if there was a sufficient cause for non-appearance of plaintiff.

Shree Prasad Singh Vs. Ram Nandan Prasad.

4) Order 11 Rule 21 → Non compliance with order for discovery. If the plaintiff fail to comply with any order to answer interrogatories or for discovery/inspection of documents then his suit shall be dismissed for want of prosecution.

Duty of court

And if any suit is dismissed under Order 11 Rule 21, then plaintiff shall be precluded from instituting a second suit on same cause of action.

5) Order 22 Rule 9 → Effect of abatement or dismissal:

For want of ability to continue

If the suit is abated or dismissed under this order then plaintiff shall be precluded from instituting a second suit on same cause of action. The plaintiff or his legal representative/assignee/receiver can apply for an order to set aside the abatement or dismissal.

6) Order 23 Rule 1 → Withdrawal of suit or abandonment of part of claim: If the plaintiff withdraw or abandon any suit or part of claim without any defect or sufficient ground then he shall be precluded from instituting a second suit on same cause of action.

at discretion of court does not apply

Conclusion: Res Judicata is the main principle under Section 11 of Civil Procedure Code which directly bars the plaintiff from instituting a second suit but there are also many other provisions which is further based on this principle.

Sec 11 of CPC applies to court proceeding



Q2 (a) The rules in rejection of a plaint are based ~~as~~ much on substantive grounds as on procedural reasons. Elaborate.

(b) The plaintiff delivered 1000 bags of potatoes to the defendant, the cold storage proprietor on certain conditions for preservation. The defendant did not fulfil all these conditions and thereby committed breach of contract. The plaintiff filed a suit for damages. The defendant filed counter claim. Discuss the effect of counter claim in the light of statutory provision and decided cases. (25 marks)

(a) Introduction: The rules regarding rejection of plaint has been provided under Order 7 Rule 11 of Civil Procedure Code.

→ State the provision.

The plaint shall be rejected for following reasons -

1) Where it does not disclose a cause of action →

Cause of action is the main reason for instituting a suit. So, if any plaint does not disclose a cause of action then it shall be rejected.

2) Where the relief claimed is undervalued →

If the plaintiff has claimed a relief which is undervalued and valuation is not corrected within the prescribed time then plaint shall be rejected by court.

3) Where plaint is insufficiently stamped →

If the plaint is insufficiently stamped and the plaintiff fails to stamp within prescribed time then the plaint shall be rejected.

Being sheeted as → Plaint is rejected even after numbered & instituted as a suit.

The defendant cannot be asked to file counter statement deciding on such application.

Need to prove certain elements

10/25



Illustration 9, 2.

Grounds of case.

4) Where the suit appears from the statement in the plaint to be barred by any law →

O-7 R.11(d)

In such case, plaint is rejected if suit is barred by law. For eg → If the suit is against government and notice required by section 80 of civil procedure code has not been given by the plaintiff then plaint shall be rejected.

Provision in Code

5) Where it is not filed in duplicate: According to section 26 and Order 4 of Civil Procedure Code, the plaint has to be filed in duplicate. If it is not filed in duplicate then it is rejected.

Case

6) Where the plaintiff fails to comply Rule 9:

Plaint is also rejected when court has ordered plaintiff to present as many copies of plaint to defendant within 7 days of such order and plaintiff fails to comply with this order under Order + Rule 9.

Substantive Law refers to the right and liabilities of the parties whereas Procedural Law refers to the procedure for enforcement of those rights and liabilities.

The rules given under rejection of plaint are based on combination of both substantive as well as procedural grounds.

Eg - The rule where the plaint is rejected where it does not disclose cause of action is based on substantive ground whereas the rule where plaint is rejected because it is not filed in duplicate is based on procedural ground.

Conclusion: Civil Procedural Code is a procedural law but the rules contained in rejection of plaint under CPC consists of substantive grounds as well.

O-6 R-16
Partly
Striking
out of
pleading
but not
partly
of rejection
of proper



Rules 6B to 6G
27th Law
Commission
report

(b) Introduction: Counterclaim is a claim made by the defendant in a suit against the plaintiff.
It has been given under Order 8 Rules 6A to 6G of Civil Procedure Code.

It is a claim independent of the plaintiff's claim which can be enforced by a cross-action. Counter-claim is to be treated as a plaint and the plaintiff can file written statement to answer it. **Amendment Act 1976**

According to Order 8 Rule 6A of Civil Procedure Code, the right of counter-claim accrue either before or after filing of suit but before the defendant had delivered its defence.

Also, the counter-claim should not exceed the pecuniary limits of the jurisdiction of the court.

When to file counter claim
↓
Rule 6A

Case law: Rohit Singh vs State of Bihar →

Under this case, features of counter claim was given which are as follows -

- 1) Counter-claim should be directed against the plaintiff.
- 2) It can be filed even after written statement is filed.
- 3) It cannot be filed after framing of issues and closure of evidence.
- 4) It is not maintainable if solely against the co-defendants.

The period of limitation for counter-claim is provided under Section 3(2)(b) (ii) of Limitation Act.

Case law: Ashok Kabra vs Surendra Agnihotri →

Under this case, it was held that Limitation Act treats counter-claim as plaint because like a plaint, the limitation of counter-claim is also given.

Manikchand vs. Holchand case → O.S. R.G.A → Not only limited to money suit.



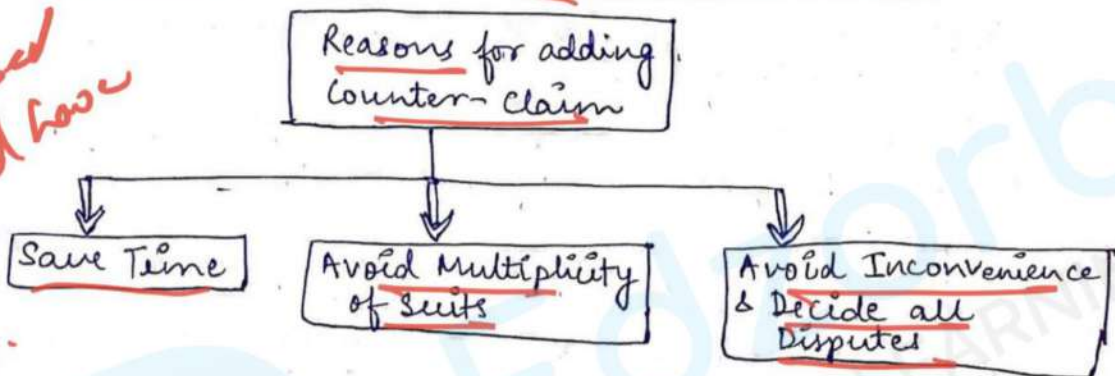
The defendant can set up a counter-claim in addition to his claim to set-off.

Difference between Set off & Counter-Claim ⇒

<u>Set-off</u>	<u>Counter-Claim</u>
1) It has been given under <u>Order 8 Rule 6</u> ,	1) It has been provided under <u>Order 8 Rule 6A to 6G</u> .
2) It is a defence against <u>plaintiff's action</u> .	2) It is a <u>cross-action against plaintiff</u> .
3) It should arise out of <u>same transaction</u>	3) It need <u>not arise out of same transaction</u> .

Counter-claim was added by Amendment Act of 1976 on recommendation of Law Commission.

As used
could have
been
better.



Effect of counter-claim → According to Order 8 Rule 6D, even if the suit of plaintiff is dismissed or withdrawn, the counter-claim will be decided on merits and defendant will have a right to get decree for counter-claim under Order 8 Rule 6F.

Conclusion - counter-claim is an effective defence to defeat the relief sought by the plaintiff.

↳ explain how it can act as a tool for unnecessary delay on disposing of suit.



Evaluation Remarks



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Remarks :-

- ① Include Top & hand mark case laws which makes answer authentic
- ② Illustration could make it more presentable with an Arrow diagram.
- ③ Answer Format Introduction, Main body in diff. parts, Case laws, Correlation, correct Abbrev, Conclusion.
- ④ Conclusion part Needs to be Cumulative of the whole Topic.
- ⑤ Top points to be stated in Bullet points, and not to be missed out from Answer.





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CHAPTER V

Inquiry into complaint

Section 12: Action during pendency of inquiry.

- During the pendency of an inquiry on a written request made by the aggrieved woman, the **Internal Committee or the local Committee**, may recommend to the employer to

Transfer aggrieved woman or respondent to any other workplace

Grant leave to aggrieved woman up to 3 months

Grant other relief to aggrieved woman as prescribed



- Leave granted to aggrieved woman shall be in **addition to leave** she is entitled.



The employer **shall implement** the recommendation by local or internal committee

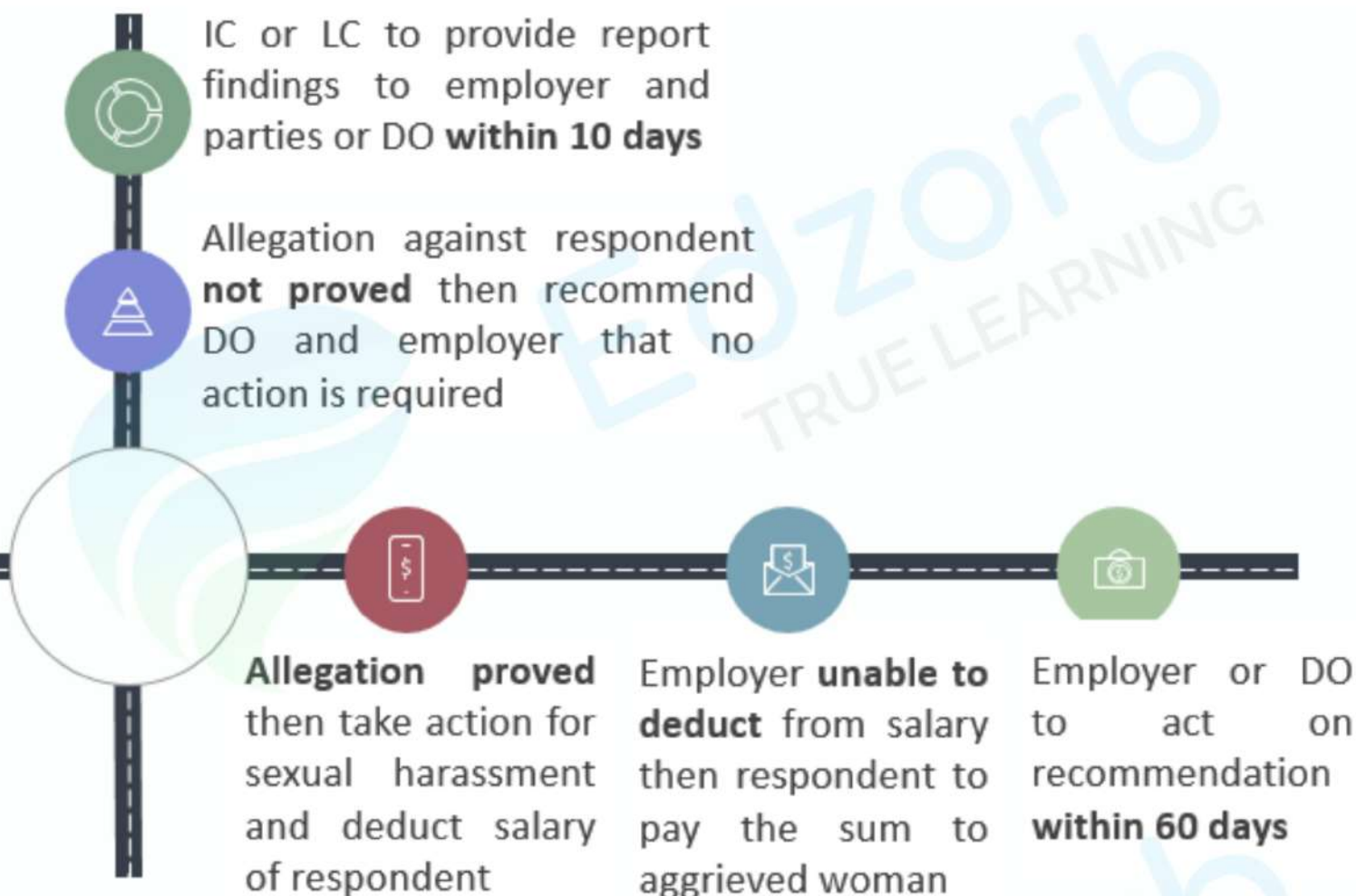


Also shall send the **report to the concerned committee.**

POSH Training - Organizational Benefits



Section 13: Inquiry Report.

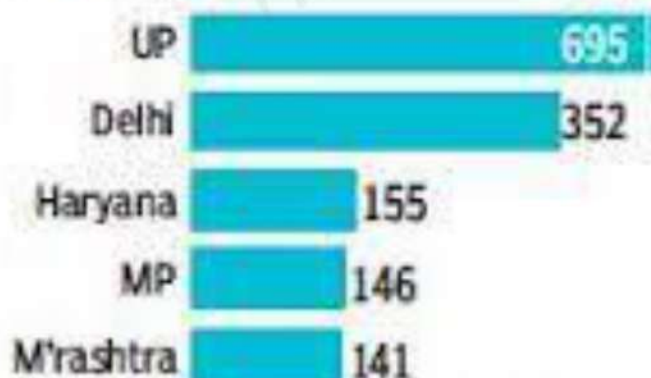


SEXUAL HARASSMENT AT WORKPLACE

NCW has received 2,383 complaints between 2015 and 2018 so far



Maximum complaints between 2015 to 2018:

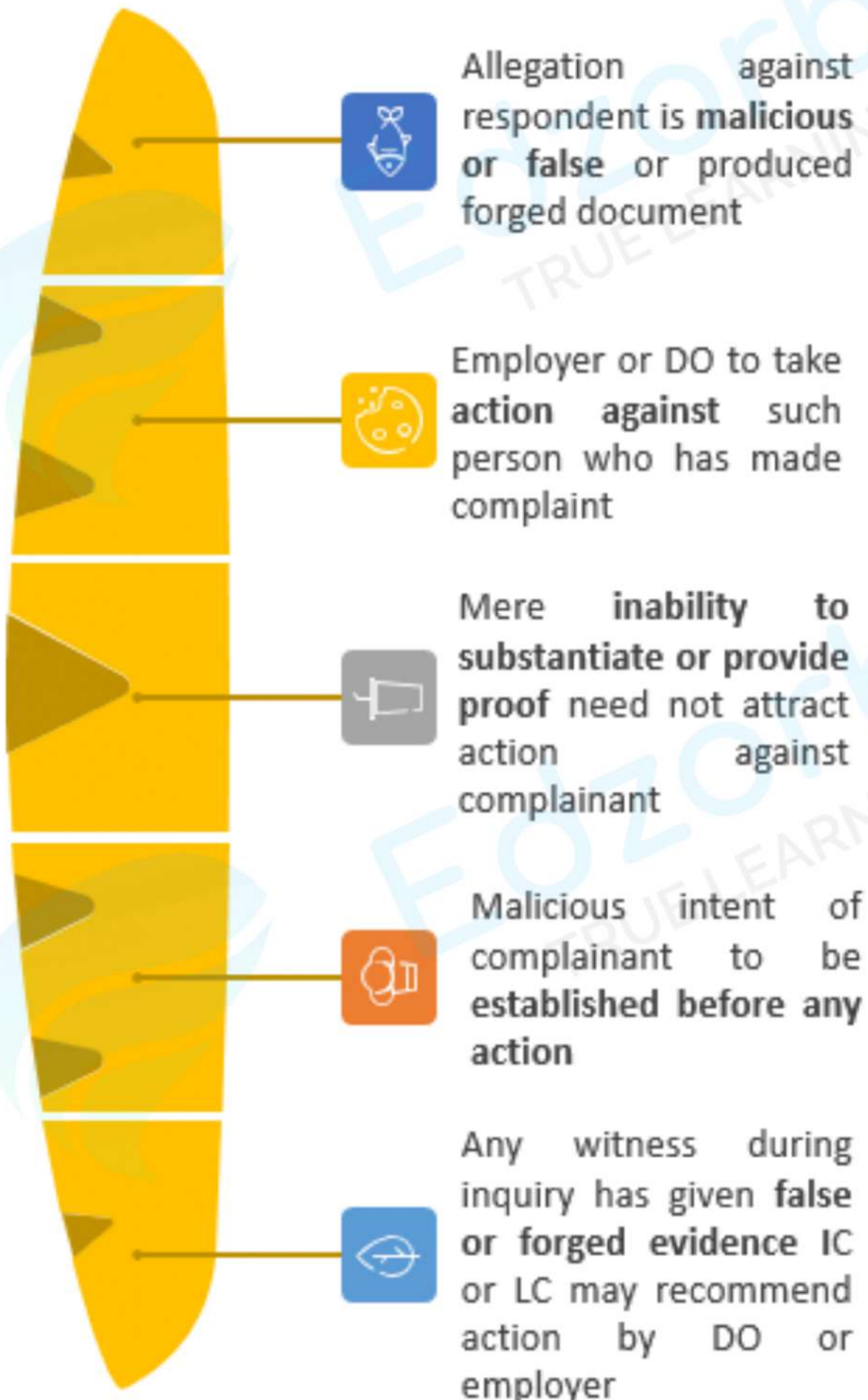


Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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Section 14: Punishment for false or malicious complaint and false evidence.



Section 15: Determination of compensation.

- The **IC or LC** for determining the sums to be paid to aggrieved woman shall have regards to-

- 1 **Mental trauma, pain, emotional distress**
- 2 **Loss in career opportunity due to incident of sexual harassment**
- 3 **Medical expenses incurred by victim for physical or psychiatric treatment**
- 4 **Income and financial status of respondent**
- 5 **Feasibility of payment**

Section 16: Prohibition of publication or making known contents of complaint and inquiry proceedings

Notwithstanding anything contained in



Right To Information Act
A Powerful Tool For Citizens

Contents of complaint

Identity and address of aggrieved women, witness, respondent

Conciliation and inquiry proceedings

Recommendation of internal or Local committee

Action by employer or district officer





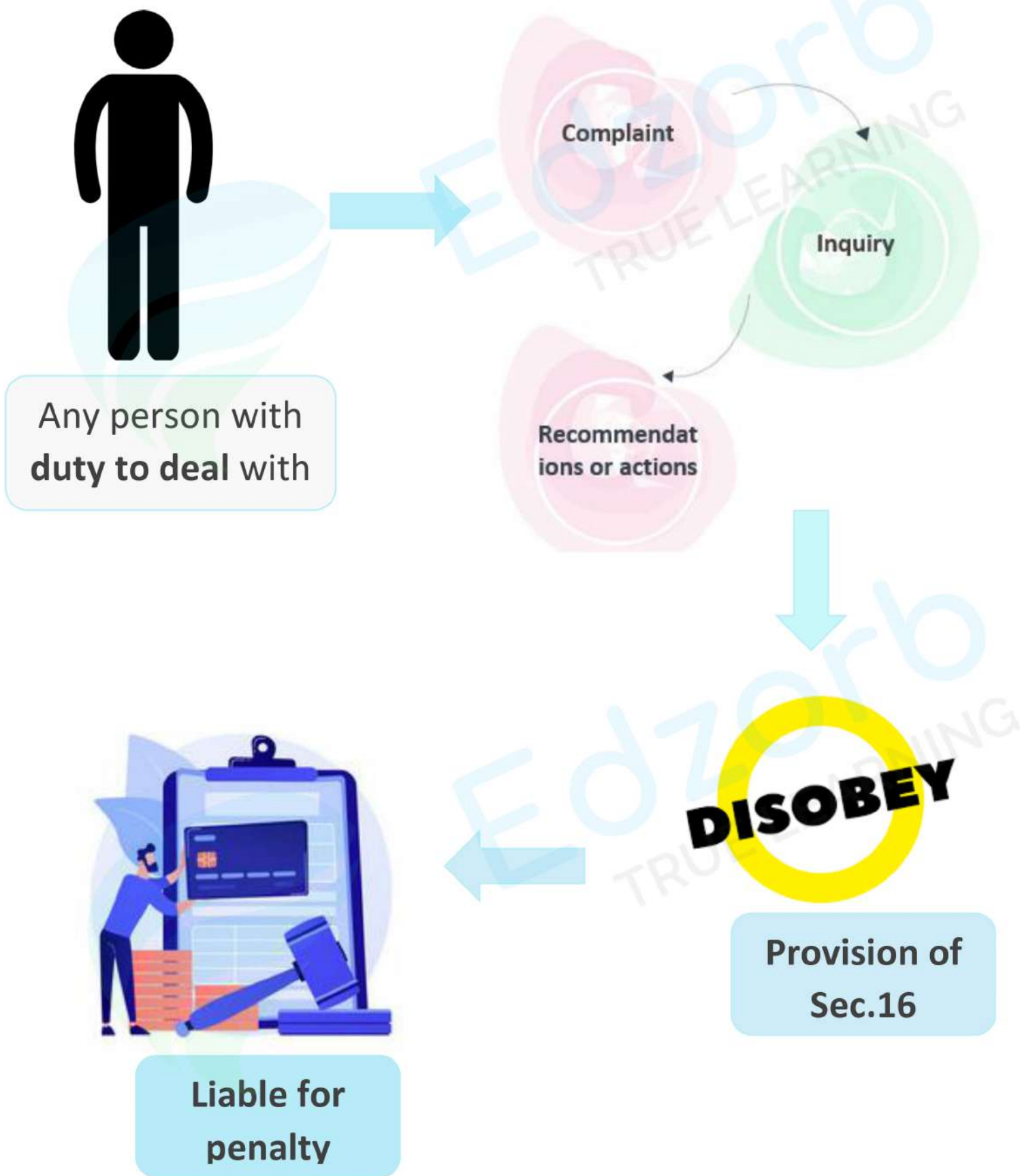
Provided...



Information may be **disseminated regarding justice** to any victim of sexual harassment

Without disclosing the **identity**, address of the aggrieved woman and witnesses

Section 17: Penalty for publication or making known contents of complaint and inquiry proceedings.



Section 18: Appeal.



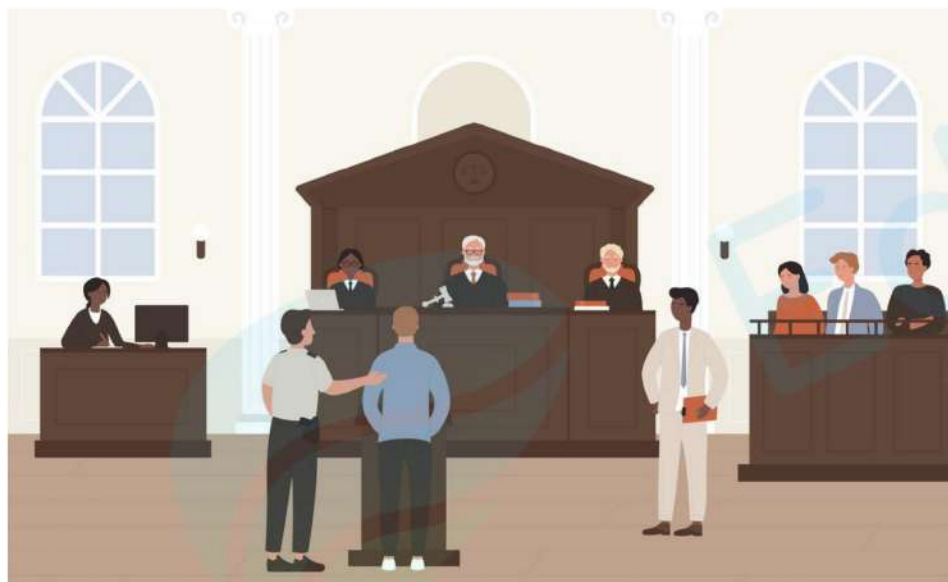
Any person aggrieved from recommendation

Sec.13 sub-section (2)

Sec.13 sub-section 3(i) & (ii)

Sec.14 & 17 subsection (2)

Non Implementation



Court or Tribunal without prejudice to any other law in force





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Chapter VI

Duties of Employer

Section 19: Duties of Employer.



CHAPTER VII

Duties and Power of District Officer

Section 20: Duties and powers of District officer.

- The District Officer shall, —



- Monitor the **timely submission of report** furnished by the Local Committee



Non-governmental organizations

- Measures for **engaging non-governmental organisations** for creation of **awareness**

on sexual harassment and the rights of the women.



CHAPTER VIII Miscellaneous

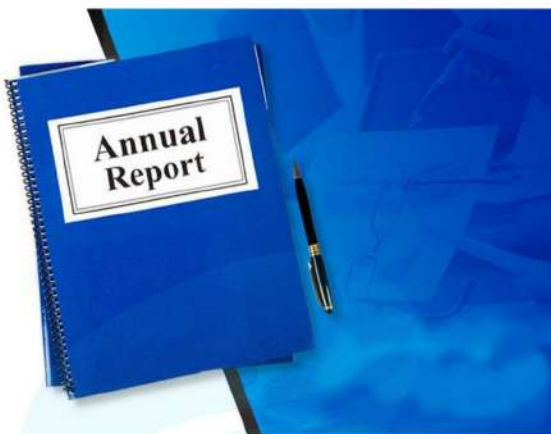
Section 21: Committee to submit annual report



IC or LC shall in each calendar year



Prepare



Submit to District officer or employer



DO to submit brief report to state government

1 out of 4



Employees in the workforce is a woman

2 out of 5



Women have experienced sexual harassment at workplace

2 out of 3



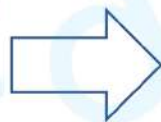
Organizations don't have a proper structure to address sexual harassment



Section 22: Employer to include information in annual report.



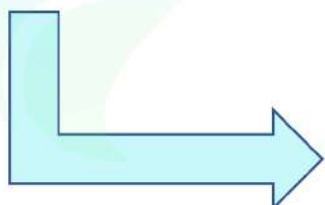
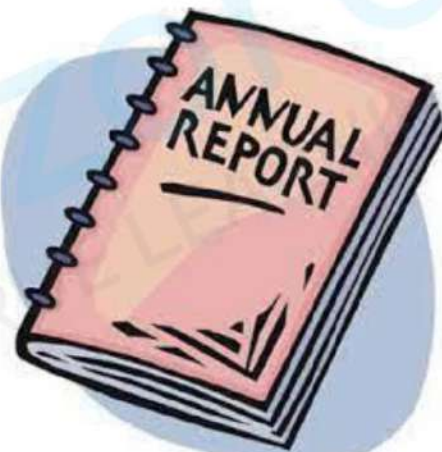
Employer shall include



The number of cases filed and their disposal



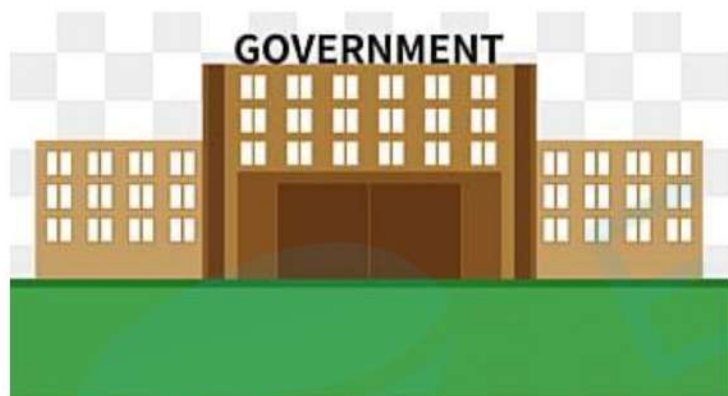
Or



Intimate to District officer



Section 23: Appropriate Government to monitor implementation and maintain data.



**Monitor
implementation of
act**



**Maintain date on
number of cases filed
and disposed of**



**Regarding sexual
harassment at
workplace**



NO SEXUAL HARASSMENT



Section 24: Appropriate Government to take measures to publicise the Act

- The **appropriate Government** with regard to availability of financial and other resources-



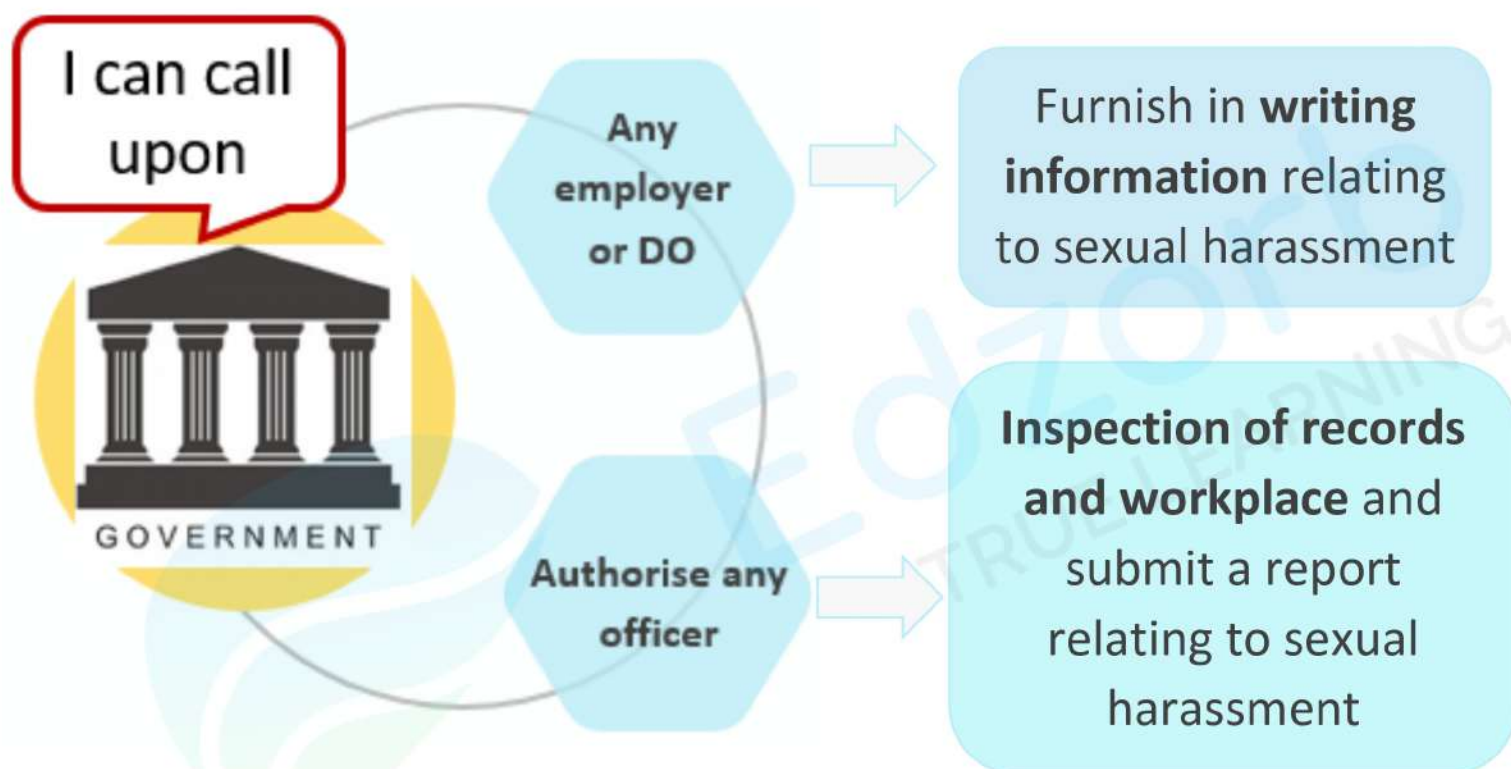
Benefits of a POSH Policy

1. Legal Compliance with the The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 - PoSH Act.
2. Safe working environment for women.
3. Improved brand value and competitive advantage.
4. Increased employee morale.
5. Increase profits and revenue.



Section 25: Power to call for information and inspection of records.

- The appropriate Government in the **public interest** or
- In the **interest of women employees** at a workplace by **order in writing**:-

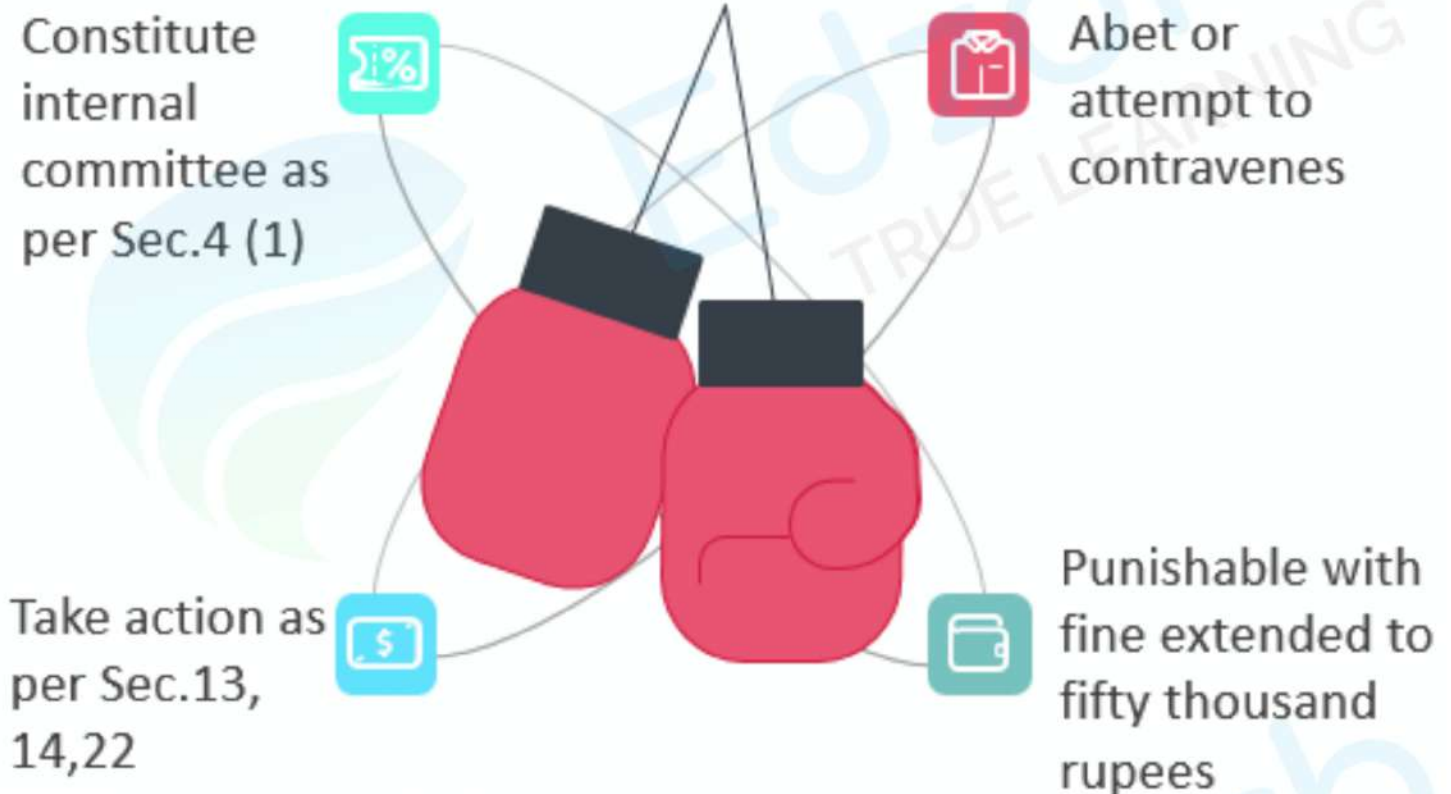


- **Employer or DO** to produce on demand the information, records and documents in relation to subject matter.



Section 26: Penalty for non-compliance with provisions of Act

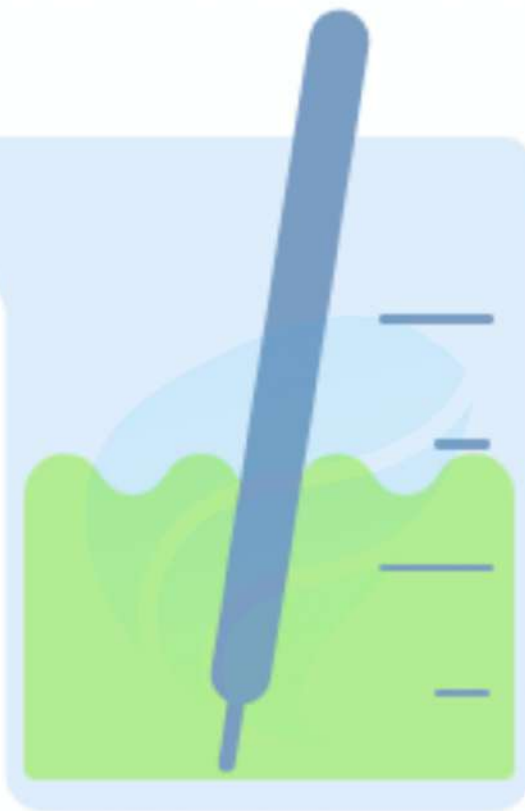
- Where the **employer fails to-**



- If **employer previously convicted** subsequently commits and is convicted of same offence, he **shall be liable to-**



Section 27: Cognizance of offence by courts.



No court to take cognizance of offence unless complaint by aggrieved woman



Metropolitan or Judicial magistrate of first class shall try any offence



Every offence to be non-cognizable

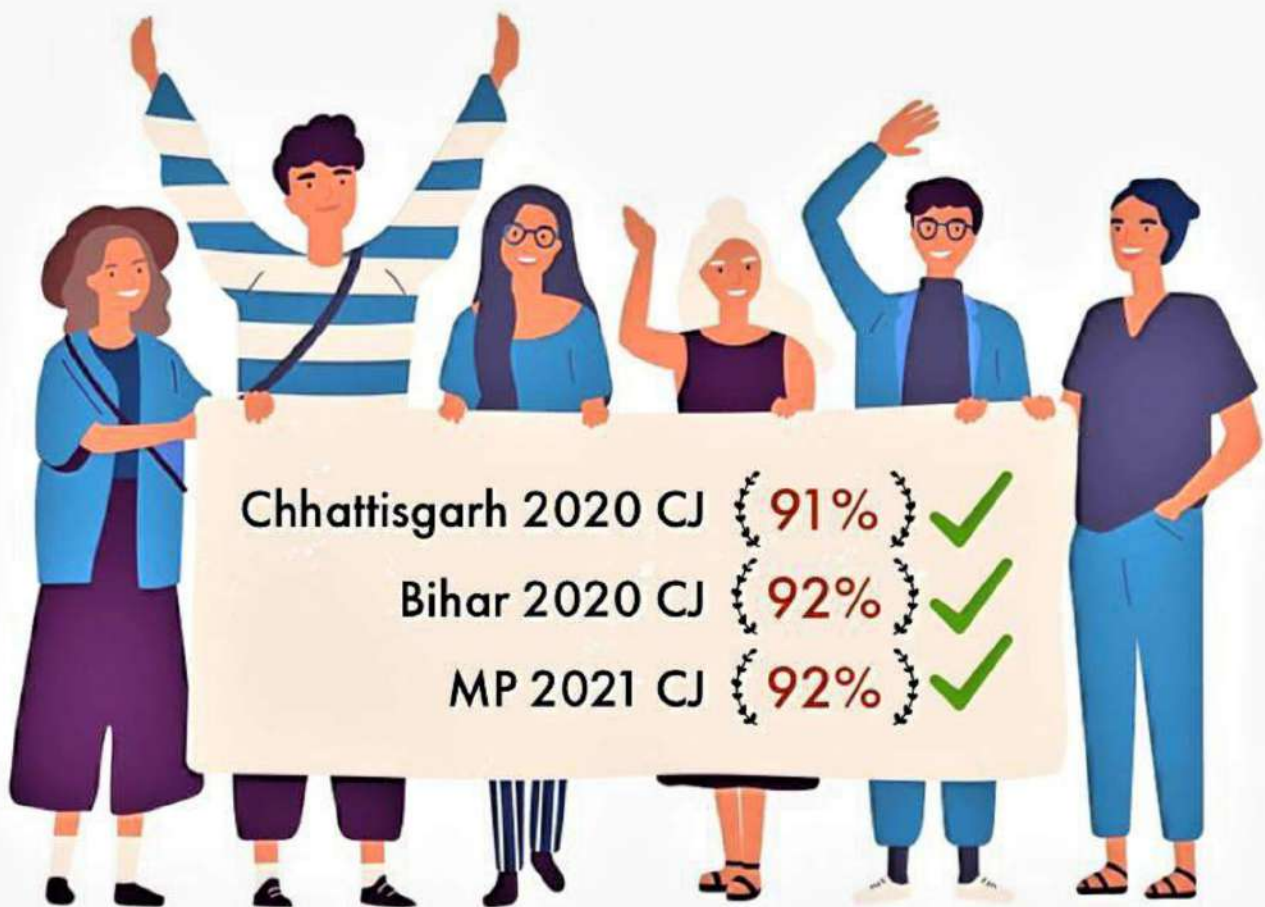
- **Complaint to be by aggrieved woman or any person** authorised by the internal committee or local committee in this behalf.

Male silence on
Sexual Harassment
of women at
the workplace



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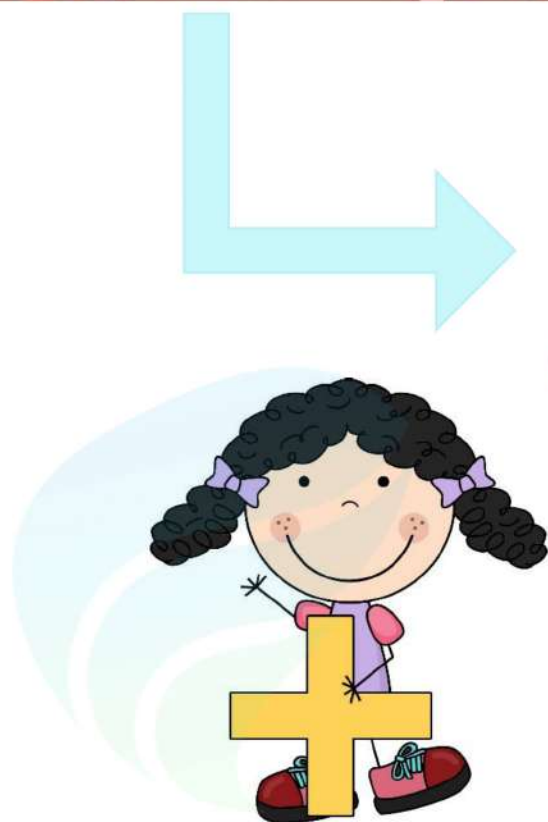


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Section 28: Act not in derogation of any other law.

- The provisions of this Act shall be **in addition** to and **not in derogation** of the provisions of



Any other law for the time being in force.

Section 29: Power of appropriate Government to make rules



Central Government may

Make rules by notification in official gazette

- **Rules provided** for the following matters are as follows-



Manner of action to be taken Sec.13

Rules made under Sec.8 by state govt. laid before each house of state legislature

Manner of action to be taken Sec.14

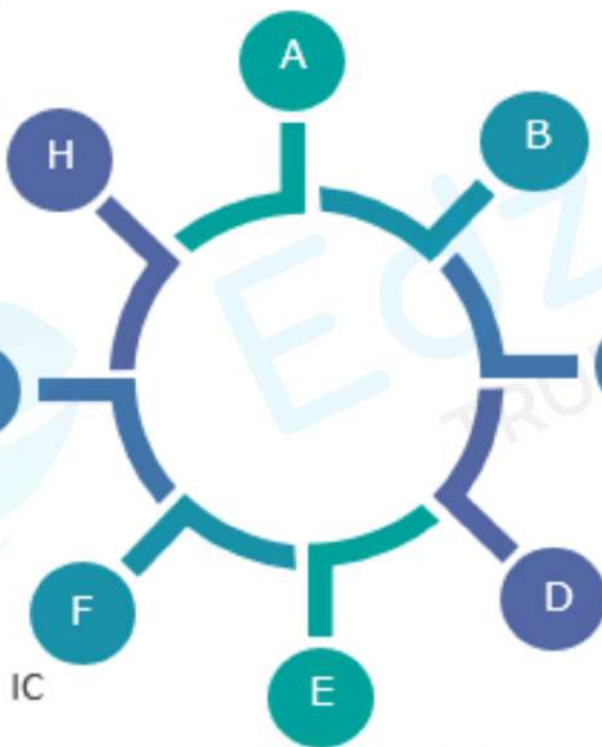
Form and time for preparation of annual report by IC & LC Sec.21

Manner of action to be taken Sec.17

Orientation programmes for IC members

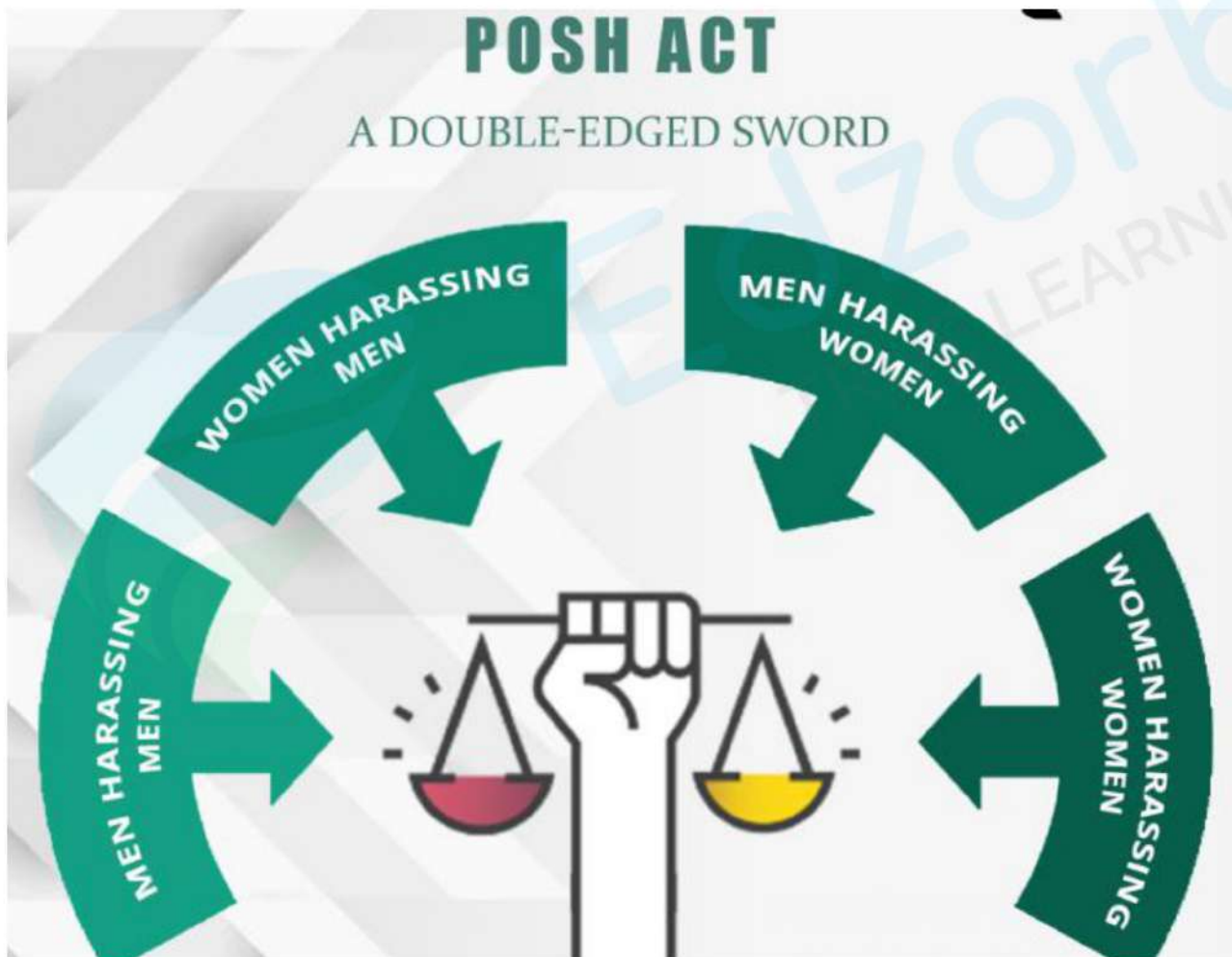
Manner of appeal Sec.18

Organizing workshop, awareness programmes Sec.19



POSH ACT

A DOUBLE-EDGED SWORD





Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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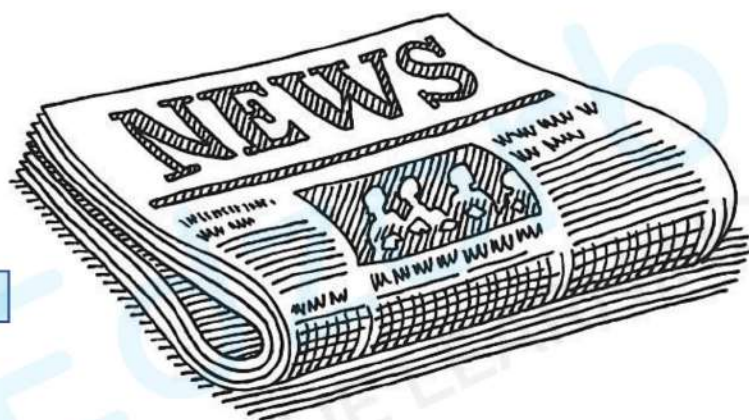
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Section 30: Power to remove difficulties.

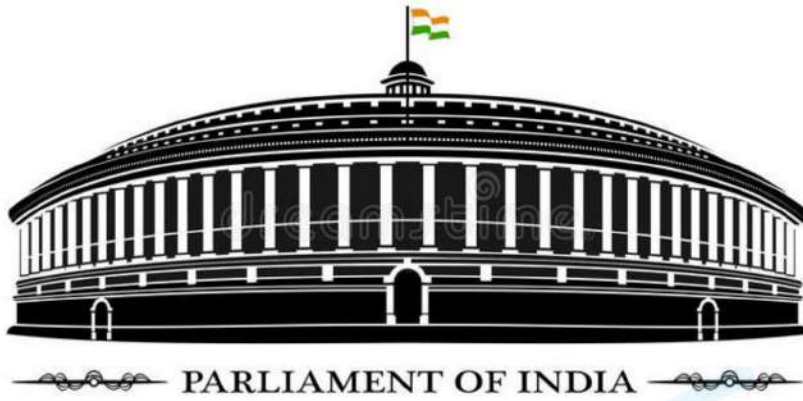
- Central Government may, **by order published** in the Official Gazette, make such provisions, **not inconsistent with the provisions** of this Act, as it appears to be necessary for removing the difficulty:



Provided...

- No such order shall be made** after the expiry of a **period of two years** from the commencement of this Act.





- Every order made under this section shall be laid after it is made, before each House of Parliament.

SEXUAL HARASSMENT

WHAT CONSTITUTES INAPPROPRIATE SEXUAL CONDUCT AT THE WORKPLACE



PHYSICAL

1. Touching or pinching
2. Caressing, kissing or fondling someone against their will (could be considered assault)
3. Invasion of personal space (getting too close for no reason, brushing against or cornering someone)

VERBAL

1. Sexually suggestive remarks, jokes, innuendos, offensive comments
2. Intimidation, threats and blackmail around sexual favours
3. Unwelcome social invitations, with sexual overtones commonly understood as flirting
4. Unwelcome sexual advances which may or may not be accompanied

by promises or threats, explicit or implicit.

5. Persistently asking someone out despite being turned down
7. Stalking
8. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours
9. Controlling a person's reputation by rumour-mongering about her private life

Source: Handbook of Sexual Harassment of Women at the Workplace Act, 2013; Own It- Leadership Lessons From Women Who Do by Aparna Jain, HarperCollins India



WATCH YOUR MOVES

Workplace sexual harassment is behaviour that is

1. Unwelcome
2. Sexual in nature
3. A subjective experience
4. Impact not intention is what matters
5. Often occurs within a matrix of power

NON-VERBAL

1. Displaying sexist or other offensive pictures, posters, MMS, SMS, WhatsApp or e-mails



MYTHS AND REALITIES: SEXUAL HARASSMENT AT THE WORKPLACE



This so-called harassment is just harmless flirting. Women enjoy this kind of attention.

When flirting is unwelcome, it is known to cause anxiety, depression and health problems in women. It often forces them to leave the workforce, and in extreme cases, even commit suicide.

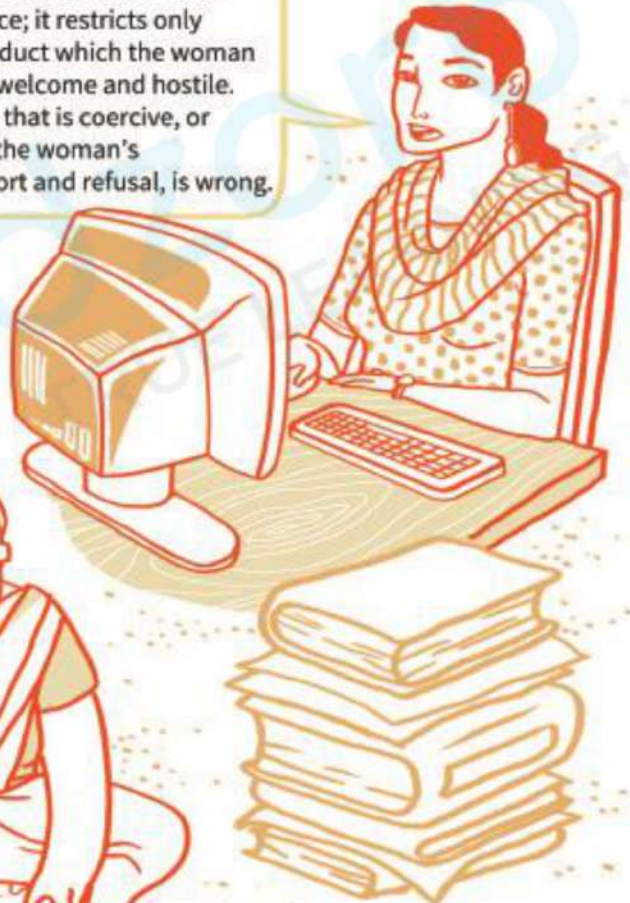
Women provoke sexual harassment by the way they behave and dress. Respectable women do not face sexual harassment.

All kinds of women, whether old or young, dressed in sarees or burqas, construction workers or bankers, report having faced harassment. It is not the conduct of a woman that matters. Rather, harassment occurs because women tend to get sexualised in a male-dominated society.



It is wrong for the law to restrict sexual expression/flirting among adults, only because they happen to work together.

The law does not restrict consensual sexual expression/flirting between adults at the workplace; it restricts only that conduct which the woman finds unwelcome and hostile. 'Flirting' that is coercive, or ignores the woman's discomfort and refusal, is wrong.



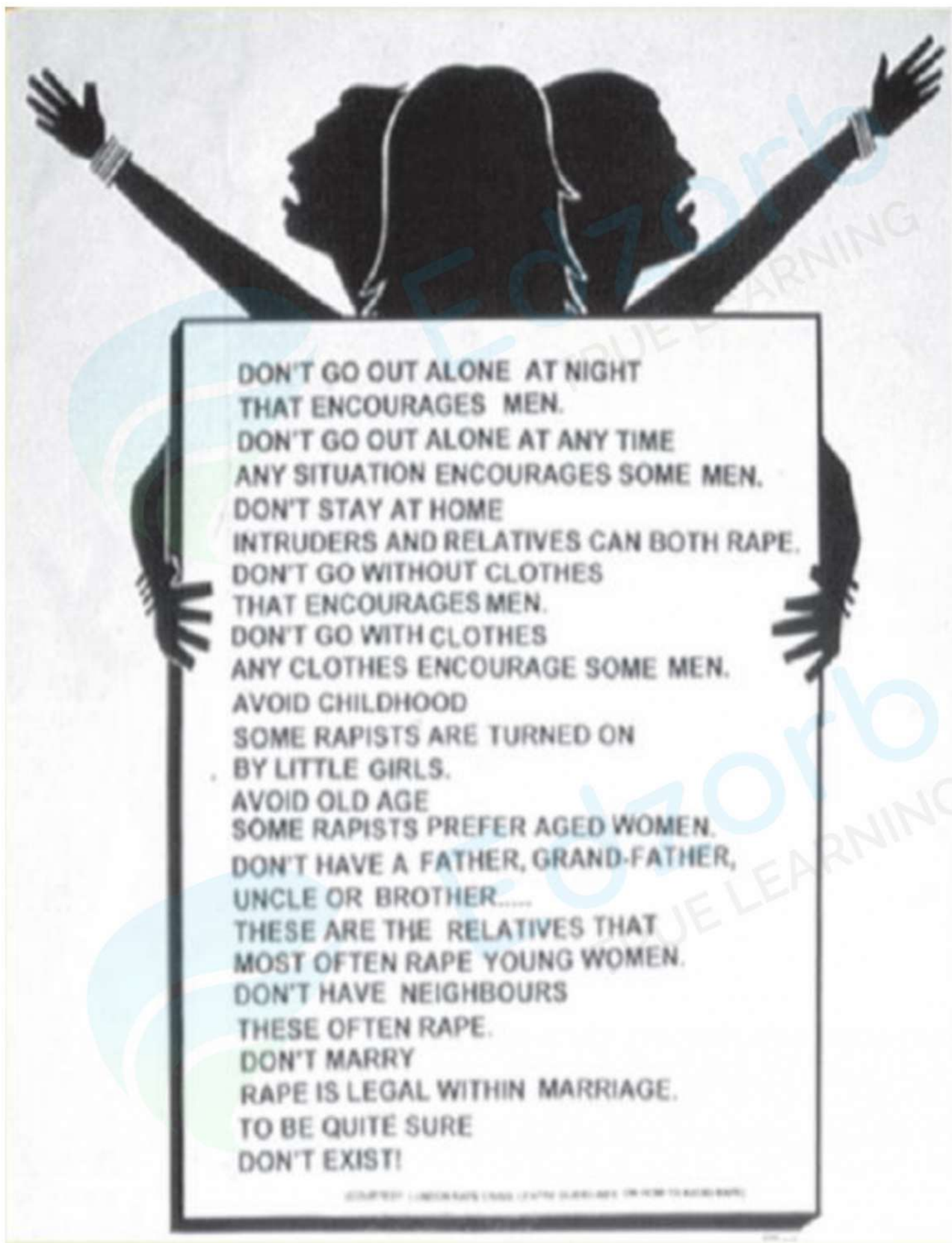
The best way to put an end to sexual harassment is to ignore it.

Silence never helps. It may be misconstrued as enjoyment, encouraging the harassment to continue. It is important to object to the unwelcome conduct, and if necessary, raise an alarm and complain.

Most charges of sexual harassment are a way to get back at bosses and colleagues.

Complaints are in fact under-reported because women fear stigma and possible loss of job for speaking out against sexual harassment. It is only in extremely rare instances that complaints are unsubstantiated.





Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013

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**Nazar Teri buri Aur
Burkha main
pehanu?**

Reference: Sexual Harassment of women at Workplace (Prevention, Prohibition and Redressal) Act 2013
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