Chapter IV

Basic Concepts of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in India: An Overview

Violence against women is a technical term used to collectively refer to violent acts that are primarily or exclusively committed against women. This type of violence is gender-based, meaning that the acts of violence are committed against women expressly because they are women, or as a result of patriarchal gender constructs. The UN statement on the abolition of Violence against Women defines as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life” and states that:

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”

Forms of VAW include sexual violence (including war rape, marital rape and child sexual abuse, the latter often in the context of child marriage), domestic violence, forced marriage, female genital mutilation, forced prostitution, sex trafficking, honor killings, dowry killings, acid attacks, stoning, flogging, forced sterilization, forced abortion, violence related to accusations of witchcraft, mistreatment of widows. Fighting against VAW is considered key issues for achieving gender equality. The Council of Europe adopted the principles on preventing and combating violent behavior against women and domestic aggression. Gender is not as straightforward a concept, as many believe. It is distinct from sex, the physical and physiological features that differentiate females and males, on biological differences. The personality traits of ‘masculinity’ or ‘femininity’ are also determined on the basis of cultural, psychological and behavioral differences in addition to the biological difference and is largely based on ideology.1 Gender is a social construction of the specific characteristics, norms and behaviors associated with being female or male in any specific social context. It is based on

1 Shoma A. Chatterji, Women In Perspective, Essays On Gender Issues, p. 40. It is natural that degrees and definitions of ‘masculinity’ or ‘femininity’ differ from time to time and from place to place and from group to group.
primarily two factors, genetic and social conditioning. So it cannot have a universal application.

1.1 Fair Employment Law

The Fair Employment Law made harassment in the workplace illegal under two circumstances.

“firstly when an employer, supervisor or co-worker singles a person out for harassment because of that person’s race, color, creed, ancestry, national origin, age (40 and up), disability, sex, arrest or conviction record, marital status, sexual orientation or military services; and secondly when the content of the harassment itself relates directly to any of these protected characteristics (i.e. sexual harassment, use of derogatory ethnic or religious terms, age or disability related comments, etc.).”

Harassment may include vocal exploitation, label, sexually explicit or derogatory words, display of unpleasant cartoons or materials, mimicry, lewd or offensive signs and telling of jokes offensive to the above protected class members. There must be such degree of behavioral transformation which must be more than a few remote episode or informal comments and contributes toward an unacceptable behavior norm. Every society has their own rules and regulations, which might be acceptable in one and non-acceptable in another. The human beings living in those societies need to follow those rules and regulation. A gist of improper behavior might result in form of harassment.

There is always a pattern of offensive and humiliating conduct directed against a person because of his or her protected class that is sufficient to interfere with work or creates an unpleasant and unfriendly work atmosphere.

Sexual harassment includes “unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when engaging in such conduct is made an implicit or explicit term or condition of employment or acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee; or The conduct interferes with an employee’s work or creates an intimidating, hostile or offensive work environment.”

The Act defines sexual pestering at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges. The definition of “aggrieved woman”, who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or

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2 Leena Chawla Rajan, Empower Women, An Awakening, Radha Soami Satsang Beas, Beas, 2010, p. 11
unorganized sectors, public or private and covers clients, customers and domestic workers as well.

Whereas the “workplace” in the Vishaka3 Guidelines is confined to the conventional office system where there is an apparent employer-employee association, the Act goes much further to include organizations, division, office, local office unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the line of employment including the transportation.

Sexual pestering in workplace is a serious annoying factor that renders women’s participation in works dangerous and affects right to work with self-respect. It is unwelcome oral, visual or physical conduct of a sexual character that is harsh or pervasive and affects operational conditions or creates an unfriendly work atmosphere.

In general sexual pestering is a sexually oriented behavior that may jeopardize the victim’s work, negatively influence the victim’s job performance or dent the victim’s own self-respect. It may visible itself physically or psychologically. Its milder and subtle forms may involve verbal innuendo, improper affectionate gestures or propositions for dates and sexual favoritism. However it may also think obvious and horrible forms like leering, physical grabbing and sexual assault or sexual molestation.

To fit in the notion of sexual pestering the relevant behavior must be undesirable. That is unwanted to the recipient of that behavior. Behavior is not sexual pestering if it is welcome. So in order to decide if the behavior was welcome or unwelcome, Courts would naturally look to the complainant’s response at the time the incident occurred and review whether the litigant specifically, or by his or her actions confirmed that the behavior was unwelcome. If the evidence shows that the litigant welcomed the behavior the grievance of sexual harassment would not succeed. For this reason, it is important to correspond (verbally, in writing, or by your own actions) to the harasser that the behavior makes you uncomfortable and that you want it to end.

The Apex Court, in absence of enacted law to provide for successful enforcement of necessary human rights of gender parity and promise against sexual pestering laid down the following guidelines:-

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3 AIR 1997 Supreme Court 3011, the Supreme Court
Every company or person in charge of work place whether in the public or private sector, should take proper steps to stop sexual pestering of women employees.

1. The rule or regulation of Government and Public Sector bodies relating to conduct a discipline should include rules prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender; 2. As regards private employers, steps should be taken to include the aforesaid provisions in the Standing Orders under the Industrial Employment Act, 1946; 3. Appropriate work conditions should be provided in respect of work leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment”.

Wherever such behavior amounts to particular offences under the Indian Penal Code or under any other regulation, the employer shall start proper action in agreement with law by making a grievance with the appropriate authority. The victims of sexual pestering should have the choice to look for transfer of the perpetrator or their own transfer.

Therefore working women who face sexual pestering now shall look for protection under Article 21 and other supporting Articles in Indian Constitution to live with self respect.

For the first time in 1994, National Crime Record Bureau categorized section 509 of IPC, as sexual harassment. It is important that this class was footnoted to explicitly say: ‘referred in the past as eve teasing’. Therefore the public contestations are read into the Legal class making eve teasing a matter of history.

In Rule 3C of the Civil Services (Conduct) Rules provides that “no government servant shall indulge in any act of sexual harassment of any woman at her workplace and they shall also take appropriate steps to prevent sexual harassment of women at work place.” Sarcastically, the infringement of this rule comes under the heading of ‘misconduct’ only. Though, the Apex Court in State of Rajasthan v. Vidhyawati⁴, held that “the Government will be vicariously liable for the tortuous act of its employees.”

1.2 The Apex Court prohibited Sexual Harassment of Women at Work Place:

The Apex Court in Vishaka v. State of Rajasthan⁵ for the first time accepted, approved and clearly explained sexual harassment as “unwelcome sexual gesture or behavior aimed or having a tendency to outrage the modesty of woman directly or indirectly.”

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⁴ AIR 1962 SC 933
⁵ ibid
It is an act meant towards sex based biasness that affects women’s right to life and work, the Apex Court has issued certain guidelines for employers, which are known as Vishaka guidelines and aimed towards resolution and prevention of sexual harassment. The Vishaka guidelines apply to all women whether students, working part time or full time, on contract or in voluntary/honorary capacity. Specifically eliminate sexual pestering at work place; these legally binding guiding principle put a lot of importance on appropriate precautionary and remedial measures.

1.2.1 Important guidelines:

The Following important guidelines issued by the apex court in the Vishaka Case –

In 1997, the Hon’ble Supreme Court of India, in Vishaka and Ors v. State of Rajasthan & Others6 (“Vishaka Judgment”) recognized the gravity of sexual pestering of the working women at the workplaces and laid down guidelines making it mandatory for employers to put a stop to the commission of acts of sexual pestering and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment. The guidelines issued by the Apex Court were treated as law declared by the Hon’ble Supreme Court under Article 141 of the Constitution of India. It was held by the Apex Court that the guidelines framed by the highest Court would be stringently observed in all work places for the prevention and enforcement of the right to gender parity of the working women. In 2013, after a span of 16 years, India finally enacted The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 that seeks to shield women from sexual harassment at their place of work. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters associated with or related to.

“The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps: 1. Employers must form a Complaints Committee; 2. Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings; 3. Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules; 4. Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers; 5. Provision of appropriate work conditions in respect of work, leisure, health, hygiene to further ensure that

6 AIR1997SC3011
there is no hostile environment towards women; 6. No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment; 7. Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer”.

Therefore the Vishaka guidelines predetermined that all organizations would form a complaints committee to come across into any such contention. It would be chaired by a woman member of staff and not less than half of its associates would be women. All grievance of sexual pester by any woman employee would be going to this committee. The committee would counsel the sufferer on further course of action and recommend to the management the course of action against the offender.

Though in *Medha Kotwal Lele v Union of India* 7 the women’s rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual pester and arguing that the Vishaka Guidelines were not being efficiently put into practice. The petitioners contended that, in spite of the guidelines, women continued to be beleaguered in the workplace as the Vishaka Guidelines were being infringed in both substance and spirit by state functionaries who pester women workers via legal and extra legal means, making them suffer and by insulting their pride.

The Apex Court stated that “the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women.”

The Apex Court further held that “a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines.”

**Vishaka Guidelines to comprehensive piece of legislation**

Madam Brinda Karat, serving in the Rajya Sabha as a Communist Party of India (Marxist) member for West Bengal had incorporated her view stating that the Bill does not

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7 2013 (1) SCC 311
cover women in the armed forces and excludes women agricultural workers, “a gross injustice to agricultural workers who are the single largest female component of work force in the country.”

Though, the concluding bill includes the clause “No woman shall be subjected to sexual harassment at any workplace” (clause 3.1), and is considered to have addressed those concerns.

On 23rd April 2013, the government at last brought into force a comprehensive legislation dealing with the safety and security of women against sexual harassment at workplace by passing “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.”

2. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

2.1 Main Provisions

It is well recognized that guarantying safe working environment for women show the way to a positive impact on their contribution in the workforce and increases their output, which in turn profit the entire nation. Economically, empowered women are solution to the nation’s overall growth and this can only be attained if it is guaranteed that women’s workspaces across all sectors and all over the nation have a safe and secure atmosphere for work. It is significant to make sure that the importance is on prevention rather than punitive action. This calls for extensive awareness on the Act among employers, managers and the workers themselves.

While sexual harassment results in contravention of the fundamental rights of a woman to parity under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on whichever occupation, trade or business which includes a right to a safe environment free from sexual harassment, and whereas the protection against sexual harassment and the right to work with dignity are universally recognized human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India, and whereas it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

It is highly required that women are protected against sexual harassment at all the workplaces, be it in public or private. This essentially will contribute to the understanding of their right to gender equality, liberty and moreover, equality in their working conditions. The sense
of security at the workplace/study place will improve women’s participation in overall progress, resulting in their economic empowerment and inclusive growth as whole.

The Act has adopted the definition of ‘sexual harassment’ from Vishaka Judgment and the term sexual harassment includes “any unwelcome acts or behaviour (whether directly or by implication) such as physical contact and advances, demand or request for sexual favours, making sexually coloured remarks, showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature”.

In Apparel Export Promotion Council v. A.K. Chopra\(^8\), the Apex Court while deciding an issue whether the act of a superior officer (wherein such superior officer tried to molest his junior woman employee) would amount to sexual harassment, the Court relied on the definition of the term ‘sexual harassment’ laid down by the Supreme Court in the Vishaka Judgment (which is similar to the definition of the Sexual Harassment provided in the Act) held that “the act of the respondent was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly amounted to sexual harassment...”.

The Act has in fact sought to widen the scope of the guidelines issued by the Supreme Court by bringing within its ambit (amongst other things) a “domestic worker”\(^9\) defined to mean a woman who is employed to do the household work in any household 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 consist of any member of the family of the employer.

The Act has defined “sexual harassment”\(^10\) to include any one or more of the following unwelcome acts or behavior namely:

(i) Physical touch and advances;

(ii) A demand for sexual favors;

(iii) Making sexually colored comments;

(iv) Showing porn videos; or

(v) Any other unwelcome corporal, spoken or non-verbal behavior of sexual nature.

Further, the following may also amount to sexual harassment:

(i) Implied or explicit promise of special treatment;

(ii) Implied or explicit threat of unfavorable treatment;

(iii) Implied or explicit threat about present or future employment status;

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\(^8\) AIR1999SC625

\(^9\) The Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (Act No. 14 of 2013).s. 2e

\(^10\) Ibid. s. 2n
(iv) Interference with work or creating an intimidating or offensive or hostile work environment; or

(v) Humiliating treatment likely to affect health or safety.

The term “employee”\textsuperscript{11} includes regular, temporary, ad hoc, daily wage employees and persons who are working on a voluntary basis i.e. without remuneration. The term also includes contract workers, probationers, and trainees.

The Act defines “aggrieved woman”\textsuperscript{12} to mean:

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house.

As per the Act, workplace includes\textsuperscript{13}:

(i) any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organization or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organization, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) Hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house.

The Act provides that no woman shall be subjected to sexual pestering at any workplace. This section further provides the circumstances which if present or connected with any act or behaviour of sexual harassment may amount to sexual harassment such as implied or expressed promise to preferential treatment or implied or explicit threat of unfavourable treatment in her employment, implied or explicit threat about her present or future employment,

\textsuperscript{11} Ibid. s. 2f
\textsuperscript{12} Ibid. s. 2a
\textsuperscript{13} Ibid. s. 2o
interference with work or creating an intimidating or offensive or hostile work environment, humiliating treatment likely to affect health or safety of a woman.\textsuperscript{14}

**Internal Complaints Committee**

The Act contemplates the establishment of Internal Complaints Committee\textsuperscript{15} ("ICC") at the work place and Local Complaints Committee\textsuperscript{16} ("LCC") at district and block levels. A District Officer i.e. District Collector or Deputy Collector shall be responsible for facilitating and monitoring the activities under the Act.\textsuperscript{17}

Every workplace employing ten or more employees is requisite to constitute an ICC. The ICC is required to consist of at least four members, and its presiding officer is required to be a woman employed at a senior level. Provisions have been made in case no senior woman employee is available, to nominate a woman presiding officer from another office, administrative unit, workplace, or organization. Further, one half of the members must be women. LCCs are to be set up by the appropriate government which shall receive complaints in respect of establishments that do not have ICCs on account of having fewer than 10 employees and to receive complaints from domestic workers.

**Steps involved in the Complaint Process**

1\textsuperscript{st} Step

A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. The time limit may be extended for a further period of 3 months if, on account of certain circumstances, the woman was prevented from filing the complaint. If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs may do so.

2\textsuperscript{nd} Step

Upon receipt of the complaint, the ICC or LCC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or in their absence, in accordance with rules framed under the Act.

3\textsuperscript{rd} Step

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if in the opinion of the LCC a prima facie case exists, the LCC is required to

\textsuperscript{14} Ibid. s. 3
\textsuperscript{15} Ibid. s. 4
\textsuperscript{16} Ibid. s. 6
\textsuperscript{17} Ibid. s. 5
forward the complaint to the police to file a case under the relevant provisions of the Indian Penal Code.

4th Step
Where the ICC finds that the allegations against the respondent are proven, it must submit a report to the employer to: (i) take action for sexual harassment as a misconduct in accordance with the provisions of the applicable service rules or where no service rules exist, in accordance with rules framed under the Act; (ii) to deduct from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.

5th Step
The employer must act on these recommendations within 50 days.

Scope for Conciliation and Settlement
Before initiating an inquiry, the ICC or LCC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation.

In case the ICC or LCC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules. However, an inquiry must be also made. Mere inability to substantiate a complaint will not attract action under this provision.

Penalties
Where the employer fails to abide by the provisions of the Act, he shall be likely to be punished with a fine which may extend to Rs. 50,000. In case of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his license or withdrawal of his registration.

3. Impact of Sexual Harassment:
The impact of sexual pestering at the workplace is far-reaching and is an injury to the equal right of women. Not only does it shock her, it has an undeviating attitude on the workplace output as well as the expansion of the civilization. The harassment in general affects a person both physiologically, personally, morally etc and as such the output of person in respect of its work reduces.

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18 Ibid. s. 10(1)
19 Ibid. s. 14
20 Ibid. s. 26
In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that 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.”

Behaviors that may amount to Sexual Harassment at workplace:

- Making sexually indicative remarks or hint.
- Grave or frequent insulting comments, such as banter related to a person’s body or appearance.
- Unpleasant comments or jokes.
- Improper query, suggestions or comments about a person’s sex life.
- Showing sexist or other unpleasant pictures, posters, mms, sms, whatsapp, or e-mails.
- Bullying, pressure, blackmail around sexual favors.
- Terrorization, threats or vengeance against a member of staff who speaks up about unwanted conduct with sexual overtones.
- Undesirable social request, with sexual suggestions commonly understand as flirting.
- Undesirable sexual advances which may or may not be accompanied by pledge or bullying, explicit or implicit.
- Bodily contact such as touching or pinching.
- Touching, kissing or fondling somebody against her will (could be considered assault).
- Assault of personal space.
- Tirelessly asking someone out, in spite of being turned down.
- Stalking an individual.
- Misuse of power or power to warn a person’s job or undermine her performance against sexual favors.

• Wrongly accusing and undermining an individual behind closed doors for sexual favors.
• Controlling a person’s character by rumor-mongering regarding her private life.

**Conduct that may specify underlying workplace sexual harassment and merit inquiry:**
• Condemning, offensive, charging, reprimanding or condemning an employee in public.
• Keeping out from group activities or assignments with no valid reason.
• Statements damaging a person’s character or profession.
• Removing areas of job, unreasonably.
• Improperly giving too little or too much job.
• Continuously intervening authority with no reason.
• Unreasonably monitoring the whole thing that is done.
• Holding responsible a person continuously for errors with no reason.
• Constantly singling out a worker by assigning her with humiliating and ridicules jobs that are not part of her usual job.
• Abuse or embarrassment, repetitive attempts to exclude or isolate a person.
• Systematically intrusive with normal work conditions, interfere with places or instruments of work.
• Embarrassing a person in front of colleagues, engaging in smear campaigns.
• Arbitrarily taking punitive action against an employee.
• Controlling the individual by withholding resources (time, budget, autonomy, and training) necessary to be successful.

**Conduct that may not constitute sexual harassment:**
• Following-up on work absences.
• Requiring performance to job standards.
• The normal exercise of organization rights.
• Work-related pressure e.g. meeting deadlines or quality standards.
• Conditions of works.
• Positive feedback about the work mistake and not the person.

One needs to examine the above behaviors considering the human Behavior. Person’s behavior is generally expected one might do something while the other might do unusual thing in a particular case. Whereas deciding or bringing out a result no Black and white causes might subsist.
To wrap up, any offence which means seeking sexual favors or advances in substitute for work benefits and it happens when permission to sexually explicit conduct or speech is made a provision for employment or rejection to comply with a ‘request’ is met with disciplinary action such as removal from office, downgrading, difficult work conditions or conduct that make the work atmosphere ‘hostile’ for the woman to be in. The places where such wrongs are committed shall comprise all government bodies, private and public sector organizations, non-governmental organizations, organizations carrying on profitable, occupational, learning, entertainment, trade, monetary activities, hospitals and nursing homes, educational establishment, sports institutions and stadiums used for training individuals. Further to it, the Sexual Harassment Act also cover up within its scope places visited by employees during the course of service or for reasons arising out of service - including transport provided by the employer for the purpose of commuting to and from the place of service.