Together,

Let's Counter

Sexual Harassment at Workplace

Martha Farrell FOUNDATION

Knowledge. Voice. Democracy.
PRIA

Together,

Let's Counter

Sexual Harassment at Workplace

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Contact Nandita Pradhan Bhatt at info@marthafarrellfoundation.org

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Introduction

"Men need to consider their behaviour, because what men consider natural may not be seen the same way by women. Drawing the line means being able to say 'No', because as women we have a choice." – Dr Martha Farrell (1959 - 2015)

When a male colleague at work happily comments to a woman co-worker that the green tea she is drinking is taking effect on her figure, many of us are left wondering how many words the definition of sexual harassment must contain for it to be clearly understood by all.

The first time the term sexual harassment emerged was in the mid-1970s when the New York Times in 1975 ran a story with the headline 'Women begin to speak out against sexual harassment at work'. In India, the Supreme Court first accepted that sexual harassment exists in the workplace in August 1997 and recognised the need to address this issue through legislative measures in its landmark judgement of Vishakha vs. State of Rajasthan. This means that legislative guidelines for prevention of sexual harassment have been in place for more than two decades in India and it is more than 5 years since the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.

This law is the legal tool to address sexual harassment in the workplace. Yet, how many of us are aware of the provisions under this Act? Did you know it mandates all employers or persons in charge of a workplace, whether in the public or private sector, to take appropriate steps to prohibit, prevent and redress sexual harassment? What is the role and responsibilities of an Internal Committee and Local Committee? In fact, what is sexual harassment and what is a workplace? What can we, as individuals, as employees and as employers, do to ensure safer workplaces?

Lack of complaints in no way implies there are no incidents of sexual harassment in the workplace. Training of female employees and orientation of Committee members is not sufficient action to raise awareness on the issue and ensure prevention of sexual harassment. Sexual harassment is behaviour, and adults – both men and women – are responsible for their own behaviour and its consequences. This booklet is designed to help you, and your organization, recognize these behaviours and its likely consequences. It is an aid in starting discussions, with both men and women, on the many meanings of what is sexual harassment and the actions you can take when you encounter sexual harassment at the workplace.

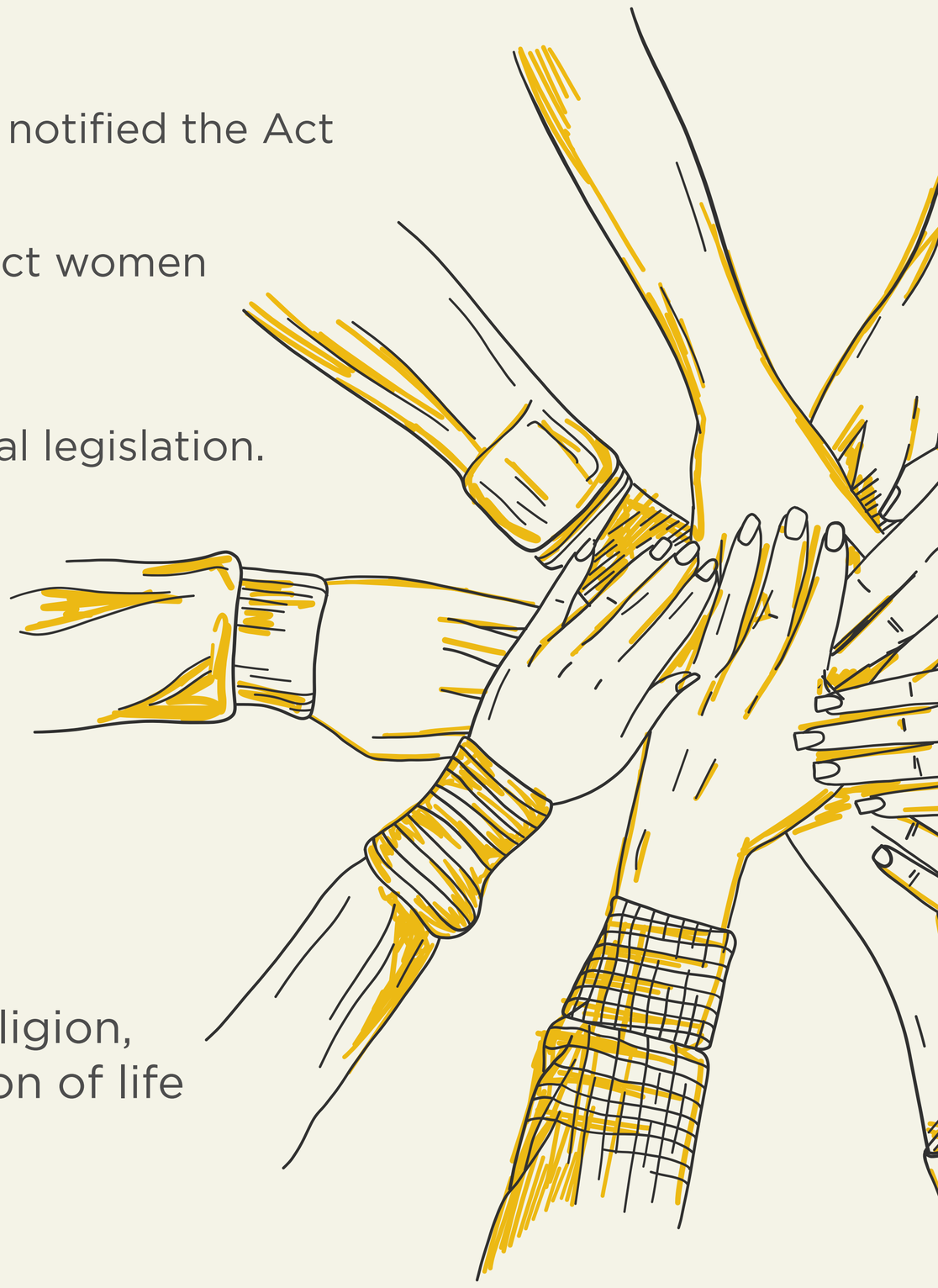
Everyone has the right to a work environment free from harassment. Each of us bears the responsibility of creating a supportive environment, where all employees feel safe to work and to report incidents. PRIA and Martha Farrell Foundation remain committed to ensuring safe workplaces for all employees. We hope this booklet will assist in your journey to ensure meaningful action to prevent, prohibit and redress sexual harassment at the workplace.

A

Act

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

- The Ministry of Women and Child Development notified the Act and its Rules on 9 December 2013
- The objective of the Act is to prevent and protect women from workplace sexual harassment and ensure effective redressal of complaints.
- Protects only women and is not a gender-neutral legislation.



It recognizes that sexual harassment results in the violation of a woman's fundamental right to equality under Articles 14, 15 and 21 of the Indian Constitution

which provide for equality under the law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and protection of life and personal liberty.

Provisions under the Act:

- The Act extends to the 'whole of India'.
- Any woman employee, worker, customer or even a client who may be sexually harassed at a workplace can claim protection under the Act.
- The Act applies to both the organized and unorganized sectors in India.
- Provide a civil remedy to women and is in addition to other laws that are currently in force.

Body Language

Are these safe workplaces?

C

Committee

Internal Committee

is to be set-up at each office or branch, of an organization employing 10 or more employees, to hear and redress grievances pertaining to sexual harassment.

It shall be constituted by the employer by an order in writing and shall consist of the following members

Presiding Officer

Woman employed at a senior level at the workplace

Members

Not less than two who are committed to the cause of women or have had experience in social work or legal knowledge

External Member

Appointed from among non-governmental organisations or associations committed to the cause of women

- Not less than half of the commitee members shall be women
- The term of the committee members shall not exceed 3 years
- A minimum of 3 members of the committee including the Presiding Officer and external member must be present for conducting the inquiry

Local Committee

Every District Officer shall constitute in their district, a committee known as the "Local Committee" to receive complaints of sexual harassment from establishments where the Internal Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

The District Officer shall designate one nodal officer in

- Every block, taluka and tehsil in rural areas
- Every ward or municipality in urban areas

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

Do you know where your district's Local Committee is located?

D

Definitions

- **“Aggrieved woman”** 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

- **“Employee”** means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent. It includes a co-worker, contract worker, probationer, trainee, apprentice, intern or a volunteer

- **“Employer”** in relation to any department, organization, institution, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office, branch or unit

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

- **“Sexual harassment”** includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication), namely, physical contact and advances; or a demand or request for sexual favours; or making sexually coloured remarks; or showing pornography; any other unwelcome physical, verbal or nonverbal conduct of sexual nature

- **“Sexual harassment at workplace”** is any act of sexual harassment, occuring or present in relation to the workplace, interfering with work or creating an intimidating, offensive or hostile work environment

Sexual harassment requires you to put yourself in the shoes of the aggrieved to understand its impact

Equal Opportunity

An example of a fair and unbiased workplace environment.

Favours

F

Asking for a favour that is not related to work is considered harassment.

Gender-based Harassment

Women often lose out on opportunities for career growth. A female co-worker is just as capable as a male worker.

H

Hostile Environment

Have you made repeated and unwelcome sexual advances?

NO

Do you repeatedly crack sexual and distasteful jokes aimed at an individual?

NO

Have you hindered another employee from freely moving from one place to another?

NO

Did you know about someone being harassed, yet did nothing to stop it?

NO

You help create safe workplaces

If **Yes** for any-

You have been party to creating a hostile work environment

Intent vs Impact

Intent

Sometimes an innocent remark can come off as unprofessional and inappropriate, making women employees uncomfortable and often powerless. It is the impact on the woman that matters; not the intent with which a male co-worker made a remark, or his behaviour.

Impact

Impact of sexual harassment can be far-reaching and affects productivity and work performance. It has a ripple and multiplier effect not just on one individual, but on rest of the workers as well.

- Difficulty in concentrating
- Loss of motivation
- Loss of confidence and self-esteem
- Feeling objectified
- Eating disorders
- Trouble sleeping
- Anxiety attacks
- Depression

Jargon

J

Sexy

Babe

Curvy

Kya cheez hai!

Hot

Pataka

Darling

Hasee toh phasee!

Kya maal hai, yaar!

Nice figure

Are you a virgin?

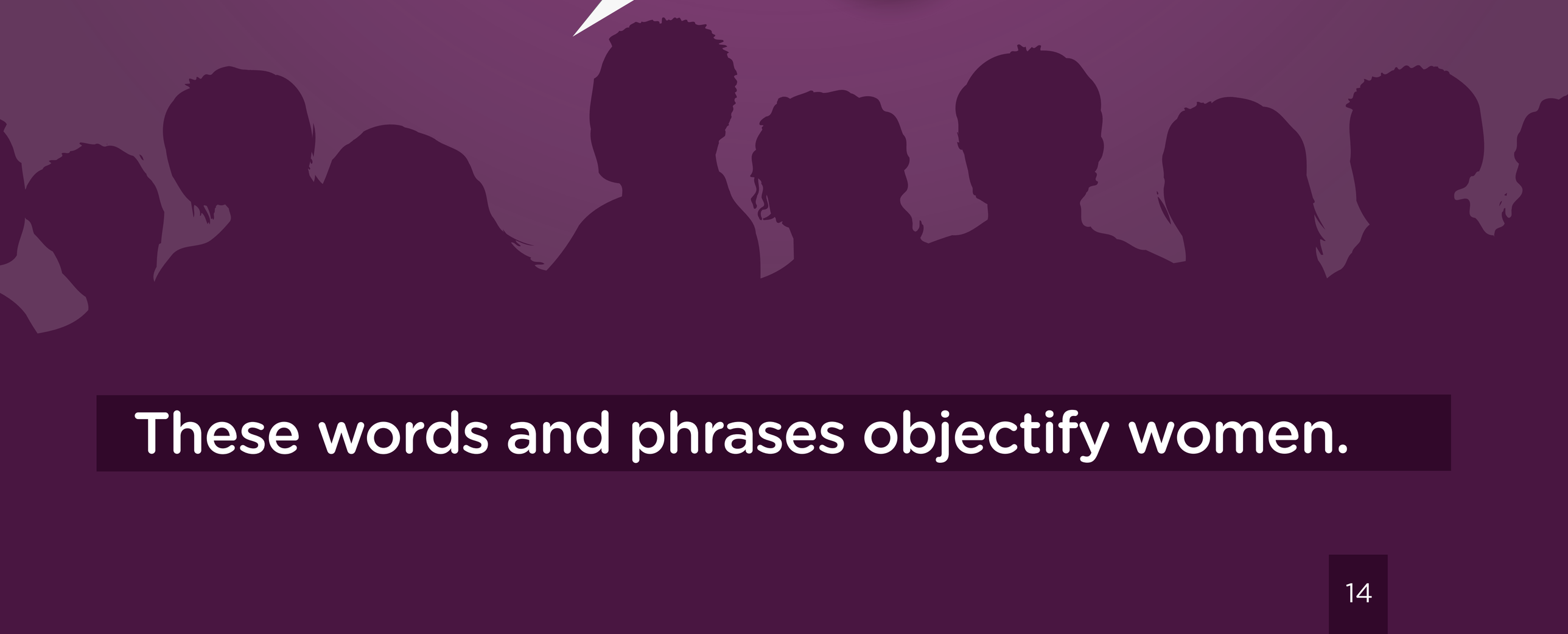
Mast dikh rahi hai

Bombshell

Slut

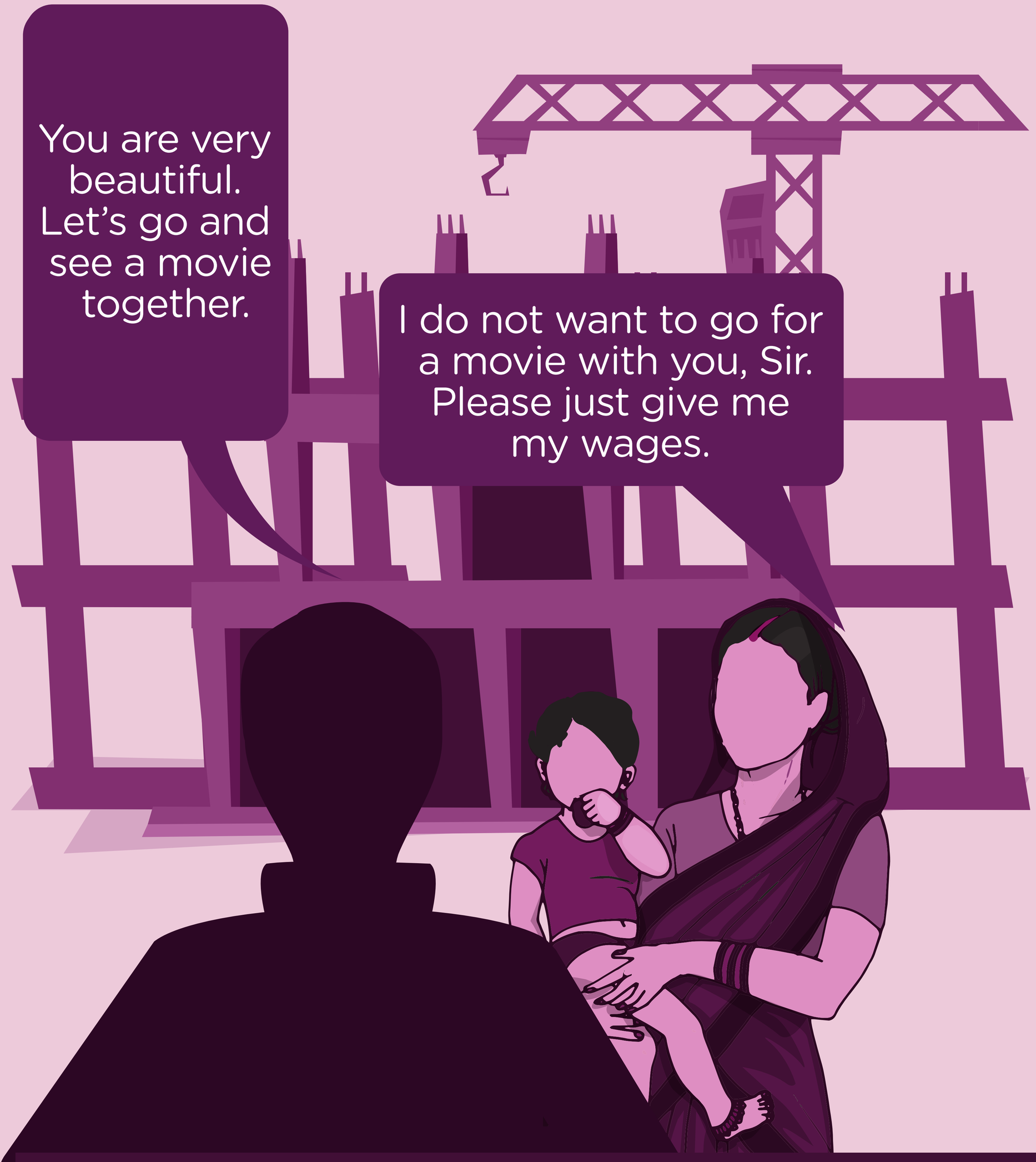
Chick

I can see your strap



These words and phrases objectify women.

Know Your Boundaries



Personal boundaries are important and need to be respected.

Legislative History of the Act

L

1997

In Vishaka vs. State of Rajasthan, the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution and the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

2007

Draft Protection of Women against Sexual Harassment at Workplace Bill, 2007 (“Bill”) approved by the Union Cabinet.

2010

The Bill 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 Act received the President's assent and was published in the Gazette of India as Act No. 14 of 2013.

December 09, 2013

The Ministry of Women and Child Development, Government of India notified the Act and its Rules.

Measures

M

As a fellow coworker

Don't

- Doubt her story
- Pass judgement
- Minimize the incident in an attempt to comfort

Do

- Let her know she is believed and supported
- Ask what she needs
- Encourage her to seek help
- Continue to be a support long after the incident has faded

.

As a member of the Internal Committee you may recommend to the employer to provide interim measures such as:

- Transfer of the aggrieved woman or the respondent to any other workplace
- Granting leave to the aggrieved woman up to a period of 3 months in addition to her regular statutory/contractual leave entitlement
- Restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, which duties may be transferred to other employees.

N

NO MEANS NO

When your female co-worker
says it, your friend, girlfriend,
or even your wife.

#TimesUp

Out-of-Office

Harassment outside the office also falls under the purview of the Act. This includes:

- Premises of other organizations
- Hotels, restaurants, and venues during official functions/events
- Work station of other employees
- Lifts in the building
- Restrooms/toilets
- Corridors
- Public transport used for official travel
- Canteens/cafeteria/ entertainment zone
- Official tours/field visits
- Construction sites
- Residential complexes, dwelling places or homes
- Farms and fields

Physical Sexual Harassment

Some forms of physical harassment are easier to recognize, such as

- Unwelcome hugging/physical touching
- Kissing
- Patting, stroking, grabbing, pinching a woman’s body
- Stalking
- Molestation, sexual assault and/or rape

But physical harassment can also be very subtle

- Blocking someone’s path with the purpose of sexual advances
- Leaning over/invading a person's space
- Frequently following or standing too close to a person on purpose

Quid Pro Quo

Quite literally it means “this for that”

It is the type of harassment that occurs when a sexual favour is asked for in return for some type of benefit. Usually, this type of sexual harassment, by its nature, occurs between someone in a position of power and a subordinate.

Employment benefits might include:

- Implied or explicit promise of preferential treatment
- Favourable performance reviews or recommendations
- Promotions
- Raises
- Sought-after work assignments or work shifts

Quid pro quo can also involve implied or express threat of negative work consequences about present or future employment status for refusing to confer sexual favours.

Rights and Responsibilities

RIGHTS OF THE AGGRIEVED

- An empathetic attitude from Complaints Committee
- A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent
- Confidentiality throughout the inquiry process
- Support to lodge FIR, if she chooses
- Right to appeal

RIGHTS OF THE RESPONDENT

- A patient, non-biased hearing
- A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- Confidentiality throughout the inquiry process
- Right to appeal

RESPONSIBILITIES OF AN EMPLOYER

- Maintain a safe working environment
- Set up a functional Internal Committee, whose members are trained and aware of their responsibilities
- Organize awareness and sensitization programmes for all employees
- Make available and disseminate relevant material like brochures, posters or notices, and information about the Act

RESPONSIBILITIES OF INTERNAL COMMITTEE AND LOCAL COMMITTEE

- Register a complaint immediately
- Be prepared when conducting an inquiry
- Know the Act thoroughly
- Know the relevant service rules of the organization
- Conduct a fair inquiry, within the mandated timelines
- Submit a written report to the disciplinary authority

Sanctions

What happens if an employer fails to constitute an Internal Committee or does not comply with the requirements prescribed under the Act?

- A monetary penalty of up to INR 50,000 may be imposed.
- A repeat offense could result in the penalty being doubled and/or de-registration of the entity or revocation of any statutory business licenses.

Timeline for Redressal

TIMELINES

- Written complaints (6 copies) along with supporting documents and names and addresses of witnesses have to be filed within 3 months of the date of the incident.
- Upon receipt of the complaint, 1 copy of the complaint is to be sent to the respondent within 7 days.
- Upon receipt of the copy of complaint, the respondent is required to reply to the complaint along with a list of supporting documents, and names and addresses of witnesses within 10 working days.
- The Inquiry has to be completed within a total of 90 days from the receipt of the complaint.
- The Inquiry report has to be issued within 10 days from the date of completion of inquiry.
- The employer is required to act on the recommendations of the Internal Committee / Local Committee within 60 days of receipt of the Inquiry report.
- Appeal against the decision of the Committee is allowed within 90 days from the date of recommendations.

A WELL DRAFTED COMPLAINT

- The complaint should be addressed to the Internal Committee/ Local Committee members and not the employer/HR representative.
- The complaint should be concise, i.e, it should be written in simple language which can be understood easily.
- Details of exact incident, date and time, witness, etc. to be included. Circumstances preceding and following the incident to be recorded.
- Append as many documents as possible in whatever format, i.e, relevant e-mails, screenshots of SMS's/Whatsapp messages, call details, photographs, recordings, etc.
- Details of the respondent including name, designation, reporting structure between complainant and respondent if any (whether subordinate, colleague or superior).
- Do not state any fact that is false or incorrect.
- The relief that is sought from the employer.

Understanding Repercussions

The Act prescribes the following **punishments** that may be imposed by an employer on an employee for indulging in an act of sexual harassment:

- Punishment prescribed under the service rules of the organization.
- If the organization does not have service rules, disciplinary action including written apology, warning, reprimand, censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service, undergoing a counseling session, or carrying out community service.
- Deduction of compensation payable to the aggrieved woman from the wages of the respondent.

The Act also envisages payment of **compensation** to the aggrieved woman. The compensation payable shall be determined based on:

- The mental trauma, pain, suffering and emotional distress caused to the aggrieved employee.
- The loss in career opportunity due to the incident of sexual harassment.
- Medical expenses incurred by the victim for physical/psychiatric treatment.
- The income and status of the alleged perpetrator.

If the allegation against the respondent is proved to be **false and malicious,** the Act provides for penalty according to Service Rules

V

Visual Sexual Harassment

- Wearing clothing with offensive or vulgar language
- Displaying posters or pictures of a sexual nature
- Showing sexually suggestive text messages or emails
- Watching pornographic or violent videos at the workplace
- Sexually suggestive knick-knacks displayed on the desk

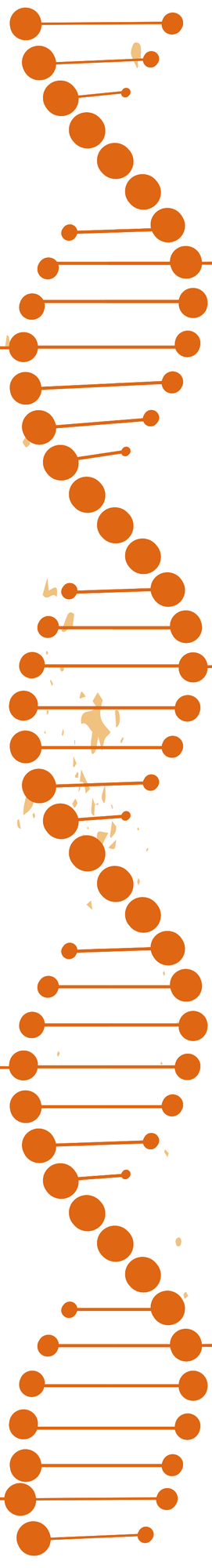
Workplace

The following fall under the definition of Workplace in the Act

- 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 cooperative society;
- 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;
- Hospitals or nursing homes;
- Any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- 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;
- A dwelling place or a house.

X-Factor

The DNA of a gender sensitive work environment



01

Build a workplace culture of equality and respect, for all genders

02

Bridge the wage gap by ensuring equal pay for equal work

03

Support women who are re-entering the workforce through flexible work options, baby care arrangements, etc.

04

Encourage men to take paternity leave, so that women can come back to the workforce quicker

05

Make gender equality part of an organisation's mission statement

06

Create safe spaces where everyone can speak up

Engendering organizations requires a new kind of leadership – one that creates a balanced approach, and sustains a culture that values equal participation and contribution of everyone, irrespective of gender

Y

Yes To Safe Workplaces

10 Ways to Know Your Workplace Is A Safe and Equal Environment for All Employees

- My organisation has an anti-sexual harassment policy
- The policy is easily accessible and periodically updated
- Sexual harassment is a misconduct under service rules
- A functional Internal Committee for redressal of complaints is in place
- The presiding officer of the Internal Committee is a senior female employee
- There is equal representation on the Committee (50% male and 50% female members)
- There is a third party representative on the Committee
- Adequate information on Internal Committee members, its role, and redressal procedures are displayed prominently
- All complaints are accepted in writing and if I am unable to do so, Committee members will help me write it
- My organization conducts regular workshops and trainings to raise awareness on prevention of sexual harassment

ZERO TOLERANCE

- **80%** of working women in metropolitan cities have been subjected to workplace sexual harassment, with **88%** women in IT sector subjected to sexual harassment at workplace.
- **91%** of women do not report it for fear of being victimised.
- In **72%** of the cases, the perpetrator was a superior.

Sexual harassment is also prevalent in the unorganized sector. The availability of a law and mere legal compliance is not sufficient protection of the rights of women.

Organizations need to be committed to ensuring safer workplaces for women.

Equally important, men need to support the cause of the rights of women to work without fear of being harassed.

If you are being harassed or know of someone being harassed, speak up!

*Data as per survey by Centre for Transforming India in 2010

About PRIA

Established in 1982, PRIA is a global centre for participatory research and training based in New Delhi. PRIA promotes ‘participation as empowerment’, by building capacities of citizens, communities and institutions, to enable vibrant, gender-equal societies. Its work is focused on empowerment of the excluded through capacity building, knowledge building and policy advocacy. PRIA’s professional knowledge and expertise in field-based participatory methodologies is utilised by other civil society groups, governments, donors, private business and academic institutions around the world. PRIA’s Founder-President, Dr. Rajesh Tandon, is an IIT-IIM alumnus.

Visit www.pria.org to know more.

About Martha Farrell Foundation

A passionate civil society leader, renowned and respected across the world for her work on gender equality, women’s rights and adult education, Dr. Martha Farrell was killed in a terrorist attack in Kabul (Afghanistan) in May 2015. She was leading a gender training workshop for the Aga Khan Foundation at the time.

Established in September 2015, the Martha Farrell Foundation takes forward the same values that Dr. Farrell lived for. It focusses on engaging youth to take action to prevent violence against women, ensuring compliance with the Sexual Harassment of Women at Workplace Act 2013, and conducting research on these issues. The Foundation supports practical interventions towards achieving a gender-just society.

Visit www.marthafarrellfoundation.org to know more.

About FrogIdeas

Multiple award winning digital marketing agency - FrogIdeas is a best in class content marketing company in India offering digital strategy and social media marketing, online reputation management, website design and development services.

Founded by Jatin Modi, FrogIdeas took the first leap in 2013 with a single vision in mind - to define The Future of Marketing. For five years, and counting, we have helped brands from diverse industries establish themselves as thought leaders and connect with the audience in ways they couldn't imagine.

Visit www.frogideas.com to know more.

Sexual harassment is a major form of discrimination that exists in workplaces. It creates an intimidating and hostile work environment.

"Together, Let's Counter" simplifies the Sexual Harassment of Women at Workplace (Prevention, Prohibition, Redressal) Act, 2013 for both employees and employers. This booklet is designed to help you recognize behaviours and likely consequences. Use it as an aid in starting discussions, with both men and women, on the many meanings of sexual harassment and the actions you can take when you encounter sexual harassment at the workplace.

Together, Let's Counter Sexual Harassment at Workplace – because everyone has the right to a work environment free from harassment.

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