



## **Sexual Harassment Law in India: Redefining Workplace Dynamics**

**Compliance and Ethics**



Sexual harassment has long been a concern for legal departments all over the world, including those in India, especially following the passing of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act in 2013. However, the [Delhi High Court's recent decision](#) in

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the *Shanta Kumar v. Council of Scientific and Industrial Research (CSIR)* case seems to raise more questions.

The court's ruling that "not all unwanted physical contact is sexual harassment" has set the tone for the aforementioned sexual harassment law, thereby determining it to be pure welfare legislation. The law can be interpreted to imply that only behaviour that has sexual undertones is considered to be sexual harassment.

However, that decision seems to contrast that of the *Gaurav Jain v Hindustan Latex Family Planning Promotion Trust (HLFPPT) & Others Delhi High Court, 2015 LLR 1195* case. In this ruling, the [Delhi High Court pronounced](#) that sexual harassment covers myriad inappropriate behaviour, ranging from smoking in a female colleague's presence to forcing her to stay in a male colleague's hotel room for a work trip.

So what constitutes sexual harassment? It depends on the country.

The [European Union's sexual harassment laws](#) are similar to India's 2013 decision. Consisting of 33 member states, the European Council met for the Istanbul Convention of 2011 to create laws to prevent violence against women. In [Article 40](#), they defined sexual harassment as:

*"Any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person."*

In the United States, [sexual harassment](#) is considered "unwelcomed sexual conduct." The US Equal Employment Opportunity Commission (EEOC) further categorizes harassment as demanding quid pro quo sexual favours or creating a hostile environment in case those demands are not met.

As for the prevention of sexual harassment, both the European Union and United States require employees to [undergo training](#), with US requirements varying by state.

Likewise, India's 2013 decision has established detailed requirements in order to build a safe and welcoming work environment. They include:

1. Creating an Internal Complaints Committee, as a collective authority that is independent of the management in order to investigate sexual harassment cases;
2. Requiring a specific mandate on the membership of the committee to ensure equal and fair representation and participation by female employees/ representatives;
3. Appointing an external member, with an authority to veto the decision of the internal committee, if there is no consensus in the decision;
4. Rotating the members of the committee every three years for renewed wherewithal of the committee;
5. Making details and decision of the proceedings of the committee public, by filing annual returns; and,
6. Awarding compensation to the victim.

Requiring an Internal Complaints Committee is the foundation of the Act, as pronounced by Madras High Court in the [ISG Novasoft Technologies case](#). This ruling directed the company to pay 16 million rupees for not establishing the Internal Complaints Committee and, as a result, failing to create an

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environment that could adequately prevent sexual harassment. The emphasis on mandatory training and communication in Indian law needs equal mention, as enforcement requires the collective responsibility of the organization.

Having vested the Internal Complaints Committee, with the powers of the civil court, there is also a commitment to protect its powers as upheld by the Mumbai High Court in the case of [Vidya Akhave v. Union of India and Ors](#). This ruling determined that it would not interfere with an order of punishment passed by the Internal Complaints Committee regarding a sexual harassment complaint, unless the order is disproportionate.

As the boundaries of the statute are refined and redefined in their legal interpretations, preventing sexual harassment continues to be the crux of Indian legal departments in order to maintain the social equilibrium that is necessary to be considered an equal opportunity employer. In-house counsel must stay informed to see how these changes could impact company policies.

## [Mahalakshmi Ravisankar](#)



Mahalakshmi Ravisankar is a seasoned compliance professional, with over 30 years of corporate experience in leading multinationals, such as Unilever, Diageo India, and ABB India, and has earned her LLB and CS degrees. She has a diverse experience in setting up compliance and governance framework in companies, such as Marico India, *Times of India*, and Beiersdorf India. She is currently working on a project COMVERVE, a prototype for implementing compliance programs through effective communication and community initiatives.

