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Course
On

Gender Justice and Workplace Security

by

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Lecture 12: Women at Workplace (Contd.)

Hello everybody I welcome you back to the course on gender justice and workplace security. In the last lecture we tried to understand the contours of the concept of sexual harassment, the development with regard to sexual harassment in India and what can be the role of the victim in this regard, how she has to stand for her right and to ensure that appropriate actions are taken in case she is subject to any form of sexual harassment at workplace.

What we understand that sexual harassment is a very humiliating and traumatic experience so far as a women is concerned in the workplace. It involves different types of activities or different types of acts which are perpetuated by her colleagues or by the employer involving physical advances, sexually colored remarks or any other type of unwelcomed behavior having a sexual connotation.

Such sexual harassment has the effect of affecting the physical and mental well being of the women and it hinders the performance of the women at the workplace. And many times there are economic consequences as well which results because the women refuses to comply with the demands of the employer. In this regard following the Vishaka guidelines subsequently in 2013 the act, the sexual harassment, prevention, protection and redressal act 2013 was passed by the government.

And since then it is an obligation on the part of every organization to establish appropriate committees to ensure that there is a safe and secure working environment for women at the

workplace. Now in this regard the things which are important for a victim to know which we try to address in the previous lecture is she must protest and speak up against the harassment. Silence defeats the purpose of law and justice.

So it is very important that as soon as there is an instance or an incident of harassment or which she believes is an attempt to sexually harass the women, she must immediately lodge her complaint with the appropriate committee or the internal complaints committee which has been setup within the organization. Such complaint must be done at the earliest, and not later than three months after the incident in question.

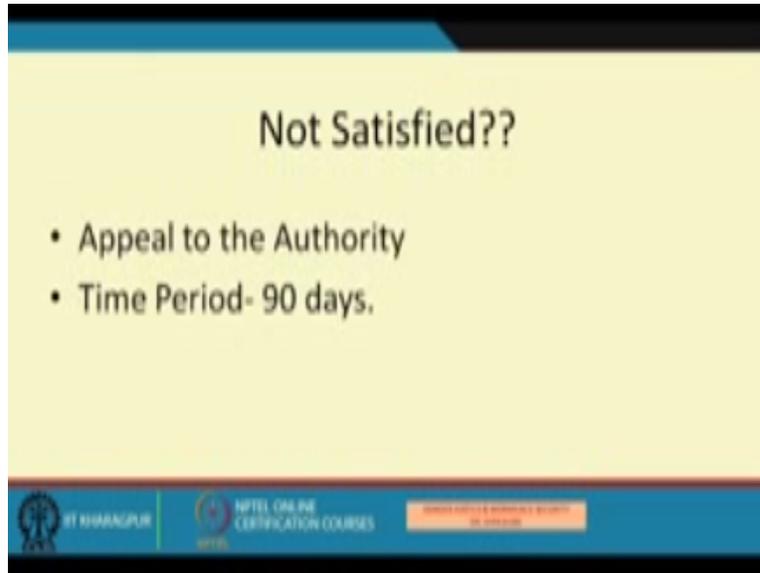
Though in case of further delay it is up to the committee to condone the delay based on reasonable explanation given by the women. Next it is for her to see that whatever measures she intends to get that she is afforded that protection by the internal complaints committee. So in if she wants to go for leave or if she wants the harasser transferred she must be granted the necessary protection in order to ensure that she is not further victimized in the process and her safety is the at most concern of the organization in question.

If she wants to go for informal mechanism such as conciliation, then it is on her request that the internal complaints committee can initiate such a process and then it is up to the victim and the other party that is the harasser to discuss and decide as to what are the measures, or steps, or conditions which are to be laid down for that purpose. If no such conciliation is possible or the women does not hope for any such conciliation in those cases there as to be an enquiry which as to start and in that enquiry the women must defend herself the victim must put forward the necessary witness the necessary evidences in form of documents or any other forms before the community, in order to support the allegation that she has brought against the other person and on the basis of that she can ask for appropriate remedies including compensation for the mental trauma.

And other losses that she has sustained in these processes so therefore the victim it is very important that the victim must stand for her rights she must fight for her rights and she must do it with all determination and confidence and no point of time is there any shame attached to this entire process and it is the responsibility of the organization to give her the necessary assurance to show that they are by her side and will assist her in all processes.

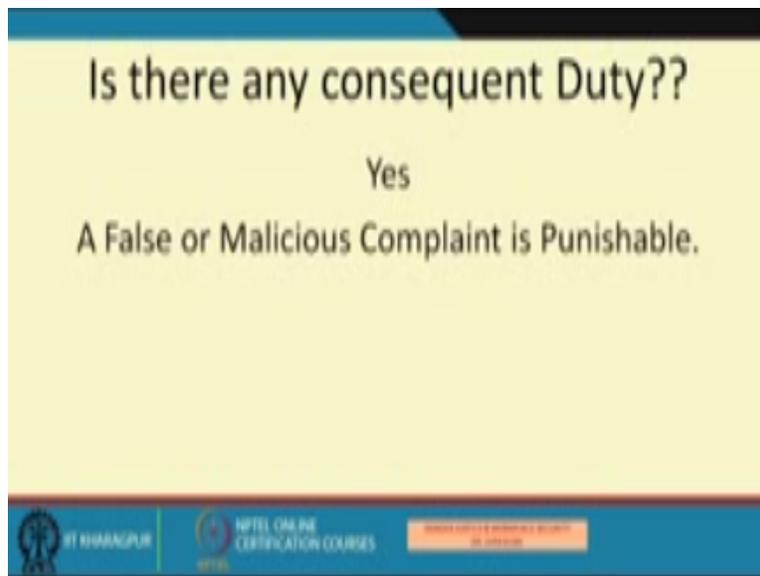
In this regard another thing another two things which are important before we move head is there is a probation for appeal.

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From the decision of the authority so therefore if the community or whatever decision the community reaches if the victim or even the respondent is not satisfied with the decision then there is a proportion made in the 2013c cat to appeal against the decision of the authority and the time period which has been laid for that propose is such appeal must be with 90 days since the decision has been given by the internal complaints community.

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The other most important things which is there is with regard to the responsibility or duty on the part of the victim I call it duty or a responsibility this provision to speak of as also been criticized at many quarters because this provision tends to punish the victim for having launched a complain in case it is found out that such complaint was false or on malicious grounds it as been criticized because it may restrict may women or discourage many women from coming forward with complaints if they have any sort of apprehensions with regard to the nature of the act or behavior.

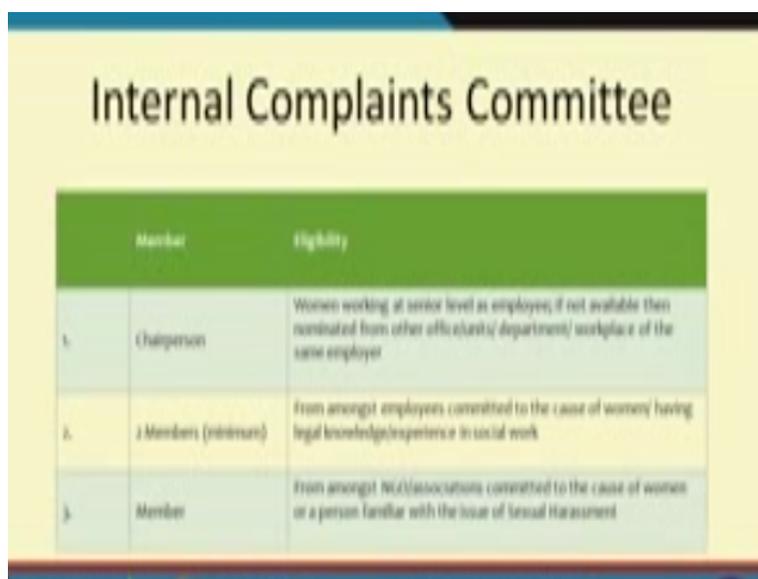
Which they are aligning as being an act of sexual arrestment now mealy because something is not provide does not mean it is falls falsity is where someone deliberately an intentionally brings in a false compliant against other person or against the harriers in order to teach the person a lesson or to settle some personal course against the person or because of some personal animosity or hate rate against the person it is in those situations where this provision of law can be invoked where it says that a false and malicious compliant is punishable under the law and therefore it is the at most duty of the victim to see that the law is not utilized for any purpose other than the purpose for which it has been in activated it is for the protection of women and to ensure their safety and security of women.

So it should not be satiation that the cat is unitized for her own personal gains or settling her own personal issue with another person and it is in this situation that this provision become very important and it make it imperative on the part of the women to see that if there is a genuine case

there is a genuine allegation then she must definitely bring in a complaint and pursue it to ensure that she get the appropriate relief and remedies under the act in question.

So once we have understood as to what is the role or of the victim or how the victim should conduct herself in terms of the act which has been laid down, now we will shift to the other side as trying to understand the authority which has been established under the act and the procedure which has been laid down laid therein whereby they have to conduct the necessary enquiry or investigation.

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	Member	Eligibility
1.	Chairperson	Women working at senior level as employees; if not available then nominated from other officials/ 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 NCA/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

Under the law, now if one sees under the act there has been two authorities which have been established one is the internal complaints comity which has to be set up in every organization within the organization by the employer with the following constitution, the other authority which has been spoken of under the act is the local complaints comity now foreign organization which has less than 10 women employs within the organization.

For such organization it would be the place or the graven mechanics redressal body to look into any complaints of sexual harassment would be the local complaints committee but for any other organization where there are 10 or more women employees which have been organized which have been employed by the organization in all such organizations mandatorily the internal complaints committee has to be established.

Now so far as the local complaints committee is concerned it is the responsibility of the appropriate government that is the state government to notify such complaints committee which shall be established in every district, now in that regard one can look into section 5, 6, 7 etc of the sexual harassment act 2013. We will try to restrict ourselves to the internal complaints committees which are to be set up in every organization with 10 or more employees.

Now the internal complaints committee has this particular composition there must be a cheer person now the cheer person must be a women working at a senior level as an employee of that organization in some cases if it is not available it may be nominated or the cheer person can be nominated from any other office unit department or work place of the same employer. But what is important is the cheer person or the preceding officer must necessarily be a women at this senior level.

So a senior employee a senior women employee must essentially be the presiding officer of that internal complaints committee. The next it must have two members minimum from amongst employees who are committed to the cause of women having legal knowledge or experience in social work, so this is a very important that there must be this is a committee which is specifically dedicated to the cause of women.

Because we are speaking of a situation where the act essentially looks into the issues and concerns of women, so therefore the presence of employs nearly women being there is probably serves half the purpose it is equally important that there must be persons as members within the committee who are well versed with women issues, social issues and therefore they have one or the other experiences of working, knowledge in those areas.

Or they must one must have at least a legal knowledge because there is a large aspect in the legal domain and application of the law in this particular regard so one who must have necessary legal knowledge in this regard and there must be an one at least one independent member now that is very important in order to maintain the independence of the committee which is sort to be established under the act.

Since it is the employer which is constituting the internal complaints committee in no way should the internal complaints committee be influenced by or be affected by the decisions of the employer or the directions of the employer and therefore there must be the presence of a

independent member. Now such member can be from amongst NGOs non-governmental organizations or organizations or associations committed to the cause of women or a person familiar with issues of sexual harassment.

It is also important that at least one half of the total members of the committee must be women so essentially it is a committee which is headed by a women and at least one half of the total members are women and out of those members there must be two members dedicated to the cause of women with legal knowledge and one independent member who must ensure the independence of the committee for that matter.

Now so this is the internal complaints committee the composition of it and it is as I said the responsibility of the employer to ensure that after the act has come into affect every organization must have the internal complaints committee setup so that it can look into the issues which face women within the organization.

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Responsibilities of ICC

Effectively Address Complaints

Know the Act, Policy and/or relevant Service Rules
Know the procedure

- Be thoroughly prepared
- Ensure parties are made aware of the process and their rights/responsibilities within it
- Understand the main issues in the complaint
- Gather and record all relevant information
- Propose relevant interview questions
- Conduct necessary interviews
- Analyse information gathered
- Prepare the report with findings/ recommendations

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Now what is the internal complaints committee to do, now the internal complaints committee must look into issues which are facing the women and in looking into the issues the main fact is the internal complaints committee has to determine the complaints which come before it and to

make necessary investigation in that regard and to act as an enquiry committee in order to give to come to a conclusion and give appropriate recommendations to the employer with regard to the action that can be taken against the person in case an allegation of sexual harassment is said to be established.

Now in that regard the prime responsibility of the internal complaints committee how in the doing in the conducting of the investigation in the carrying out the enquiry it is very important that they must be clear on certain aspects. Now what happens is under the act and the rules frame their under that is in 2013 act and the rules frame their under every organization laid down are detailed procedure as to the manner in which the complaints are to be decided.

Now though that procedure must be in tune with the act and the rules, but they can lay down an elaborate procedure and such procedure must be well circulated and known to all the people within the organization. So once a complaint comes they must lay down, they must go or proceed in accordance with the procedure which has been laid down for the purpose of proceeding with the complaint.

Now sometimes it may be the central service rules which may be applicable sometimes it may be general rules which are formulated as I said in line with the sexual harassment act and its rules and these rules basically or the procedure what we say are not strictly to be governed by the procedural laws which are in existence in the country, because in that sense these are not you know civil proceedings or criminal proceedings whereby the CrPC or the CPC extra can come into application.

So therefore, the procedural law or the law of evidence as such strictly speaking do not apply to these proceedings. But what lies at the core of it is these proceedings must be in line with the principles of natural justice which are in existence and which must be followed in all proceedings in which appropriate action has to be taken against an employee or against a person working in an organization and impose certain penalties on that person. So therefore the procedure which is to be laid down must be in line with the principles of natural justice which is a concept which is well known in law some of the basic indicators or some of the basic issues which come in principles of natural justice is the rule against bias no person should be a judge in his own cause the next is audi alteram partem both parties must be heard a right to notice there must be adequate notice given to the parties etc.

These are some of the basic principles of natural justice which has to be incorporated within the procedure which led down in the organization. So therefore when the ICC is conducting its activities what is very important on its part is first to know the act the policy and the relevant service rules, so it is very, very important that internal complaints committee must be well aware and well adapt to the entire legality the legal rule and procedure which is there and they must know how to proceed and there should not be any sort of ambiguity in the entire process.

So they should thoroughly prepared and they must know that as soon as the complaint comes how they are suppose to proceed and how They are suppose to move and what are the interest they are to protect and to see that principles of natural justice are maintain so therefore in all this matters they should be thoroughly prepare. ensure parties are made aware of the process and their rights and responsibilities within it that is very, very important it is the responsibility of the committee which is set up to ensure that before they proceed the parties who are involved in the complaint they are all aware of the act the rules and the procedures which is in place why and by which they will be governed in the process of proceeding with the complaint.

They must determine the main issues in the complaint gather and record all relevant information prepare relevant interview questions conduct necessary interviews analyze information gathered prepare the report with findings recommendations. So in the process of proceeding with the complaint these are some of the responsibilities or tasks which the ICC is expected to fulfill. As they have to proceed with the complaint in the very beginning to determine the complaint to determine the issues gather all information with regard to that conduct necessary interview or as we say questioning of the parties who are involved in the process analyze the information which has appeared before it and then finally to prepare a report and give necessary recommendations, as I said there is a sort of dual role it is both investigative as well as a disciplinary authority.

So in terms of investigation it has to find out the necessary elicit the necessary information from the parties get the necessary evidence or documents etc from the parties and then it has to determine the truth and falsity of the allegations which have been made by way of examining those documents by way of questioning the parties and finally it has to apply its mind as to whether there a case is made out or is not made out and accordingly the recommendations which

it once to put forward. So that is a very crucial responsibility on the part of the internal complaints committee.

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DO'S	DON'TS
<ul style="list-style-type: none">• Create an enabling meeting environment.• Use body language that communicates complete attention to the parties.• Treat the parties with respect.• Discard pre-determined ideas.• Determine the harm.	<ul style="list-style-type: none">• Get aggressive.• Insist on a graphic description of the sexual harassment.• Interrupt.• Discuss the complaint in the presence of the complainant or the respondent.

And therefore there are certain do's and don'ts which they have to abide by, now in this regard one may actually look in to the hand book which has been prepared by the ministry of women and child development a very detail document which has been prepared by the ministry as to how the entire procedure should take place the responsibilities of the committee and how they have to discharge that responsibility so it is very helpful and well prepared document which one can really visit the website and see for the further details and information.

Now therefore to say that what is permissible and what is not permissible in a sense what how the ICC being the both investigate the body and enquiry body what is expected of them and what are the things they should refrained from is something very, very important first is in do's you have create an enabling meeting environment.

So it is very important to create the right environment, the right ambiance where the complainant and the respondent can meet the members of ICC and the same is to for other party or the respondent as well use body language that communicates complete attention to the parties it is very, very important specially for the victim when the victim faces an issue of sexual harassment.

She is often in a verge of read down she is often in mental chromo many times what has been seen specifically in legal situations that women prefers not to come up so therefore there has to be assurance there has to be confidence which has to be shown which has to be created among the women so therefore the members or the ICC as an committee must ensure they must communicate properly and must give necessary attention to the parties.

Next come treat the parties with respect that is something very, very important and both the parties whether the victim or the harasser in question they should be given necessary respect so that they repose faith in the internal compliance committee and they are ready to cooperate with the committee in all matters.

This discard pre determining ideas so that is something which I have said is the basic principle of natural justice their cannot be any buyers only part of the internal committees in case there is an allegation of buyers responsibility of an employers to see that such allegation is first enquired into and remove and then only the internal compliance committee can further proceed with the compliances.

So therefore any sort of predetermined ideas any sort of prejudices must be completely done away with also most important thing is what is allegation and whether allegation is amongst to the sexual harassment so determining the harm which has to be perpetrated is something which is to be established so in the next lecture I will continue with the responsibilities of the internal compliances committee in terms with the sexual harassment act 2013.