

## Sexually coloured remarks - Defined

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What constitutes “Sexual Harassment” as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013? The definition states:

*Section 2(n). “Sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely*

- I. physical contact and advances; or*
- II. a demand or request for sexual favours; or*
- III. making sexually coloured remarks; or*
- IV. showing pornography; or*
- V. any other unwelcome physical, verbal, or non-verbal conduct of sexual nature*

Most of us know the meaning and description of 4 sub-clauses of the 5 listed under the Section provision of the Act.

The third definition is very specific, peculiar and description was not known to many. How to qualify an act which will come under the definition of “making sexually coloured remarks”? (It is not related to any colour – like Red light or Blue film etc, which many people usually answer, during my training programs....)

*Employees often fail to distinguish between whether the unwelcome conduct of the perpetrator was sexual in nature, or more a nature of misbehaviour*



Following few narratives will help the individual Woman and the Internal Committee members to recognize to proceed further.

1. A comment by an individual male on a woman
  - Making Innuendos (Inferences)
  - Passing snide (unkind) comments
    - “*You will be looking gorgeous if you are little fairer*”
    - “*Your ass looks small in this dress*”
  - Making unwelcome sexual connotations – like sexually explicit comments, cracking loud jokes, making sexist remarks

- Sexual jokes or comments about how someone looks, especially about parts of body or whistles and form of address like '*honey*', '*sweetheart*', '*darling*', etc.

2. Any conversation which may give entertainment to the viewers at the cost of humiliation of woman
3. Non-verbal gesture by an individual male on a woman
  - Showing Hearts symbol with your fingers of both hands, to a woman
  - Hugging or kissing fellow male while a woman is passing

Few Judicial References of the definition:

*In Jishu Sengupta & Others vs. The State of West Bengal & Anr.*, Hon'ble High Court of Calcutta, has expressed that

*"statements with sexual connotations and sexual innuendos are "sexually coloured remarks" fall within the definition of sexual harassment"*



The case was pertaining to a Male respondent in Talk Show, who made few remarks which is directed towards a specific individual. He used innuendos directing towards specific individual namely the aggrieved woman whose personal life was disclosed (a woman who was in love with 2 persons).

The respondent was actually speaking in metaphor – (*means the use of words and phrases in an imaginative way to describe something else in order to show that the two things have the same qualities and to make the description more powerful*)

They used metaphors and described how they enjoyed '***playing cricket in the playground of Eden though the playground Eden did not allow them to play cricket at a time, while one played in the morning, another played in the evening.***'

Again, with the use of metaphors, Petitioner explained ***how he entered the bus knowing that the bus is crowded with passengers and that there is no place to sit in that bus.***

*In the case, Albert David Limited vs. Anuradha Chowdhary and Ors. (2004)*, 'the Honble Calcutta High Court, mentioned the remark –

***with respect to a COLD Environment being treated due to an air conditioner, the comment "..... come close to me, you will start feeling hot",***

*and held to be a sexually coloured remark.*

*In another specific case in B. R. Tanwar vs Union Of India Through Secretary, on 9 September, 2011,*

***it is described that the respondent indulged in indecent and vulgar behaviour with male members, causing embarrassment to lady members present and using unparliamentary & double meaning words in the presence of ladies in the office.***

In a particular case, [the Hon'ble Madras High Court](#) had observed that the remark made by the respondent that "***he will stigmatize them (petitioners) as having been sexually assaulted***" was considered as Sexually coloured remark. ([M.Kavya vs The Chairman, UGC](#))

Hope the above narratives will help the individual woman and the Internal committee to effectively distinguish, what is sexual harassment and what is not.

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