प्रधान महालेखाकार (ले एवं हक़) का कार्यालय, मणिपुर, इम्फाल – ७९५००१
OFFICE OF THE PRINCIPAL ACCOUNTANT GENERAL (A&E)
MANIPUR, IMPHAL – 795001
SUPREME AUDIT INSTITUTION OF INDIA
लोकहितार्थ सत्यनिष्ठा
Dedicated to Truth in Public Interest
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सत्यमेव जयते

स्था(ले.व ह.)/आदेश सं.151

दिनांक: 22-08-2024

The Principal Accountant General (A&E), Manipur is pleased to constitute the Complaints Committee on Prevention of Sexual Harassment of Working Women in this office as under:

Sl. No.	Name and Designation	Role	Contact Details
1	Prof. O. Ratnabala Devi, Dept. of Mathematics, Manipur University	Presiding Officer	Mob: 8730882807, 9774565063 Email: ratnabala@manipuruniv.ac.in
2	Smt. Salam Menaka Devi, AAO, O/o the Pr.AG(A&E), Manipur	Member	Mob: 8285729073 Email: salamm.man.ae@cag.gov.in
3	Ms. Pukhrambam Renubala, AAO, O/o the Pr.AG(A&E), Manipur	Member	Mob: 9774245341 Email: pukhrambamr.asm.ae@cag.gov.in

2. Consolidated guidelines issued by DoPT vide O.M. No. DOPT-1667566576557 dated 04/11/2022 in this regard is attached herewith for reference.

3. Further, in pursuance of DoPT O.M. No. 11013/2/2014-Estt.A-III dated 02.02.2015, it is advisable that the Committee members meet once a quarter, even it there is no live case, and review preparedness to fulfil all requirements of the Vishakha judgment.

[Auth: Pr.AG(A&E)'s order dated 21/08/2024 at Note No.55 in e-office File No. Estt(A&E)/Report-D12/SHWW]

संलग्नक/Encl: यथोपरि/As above.

Signed by Robert Moirangthem
Date: 22-08-2024 16:28:23
वरि. उप महालेखाकार (ले. व ह.)

Memo No.Estt(A&E)/Report-D12/SHWW/908-12 दिनांक: 22-08-2024

प्रतिलिपि/Copy for information to :

1. P.S. to Pr.AG (A&E), Manipur,
2. P.A. to Sr.DAG (A&E), Manipur,
3. The Registrar, Manipur University, Canchipur, Imphal - 795003.
4. All Members,
5. Notice Board.

Signed by Tajuddin Choudhury
Date: 22-08-2024 16:58:04
वरि लेखा अधिकारी (प्र॰)

No.DOPT-1667566576557
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
ESTT.(Estt. A-III)
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(Dated 04 November, 2022)

OFFICE MEMORANDUM

Prevention of sexual harassment of working women at workplace

In the case of Vishaka and Ors Vs State of Rajasthan and Ors (JT 1997 (7) SC 384), the Hon'ble Supreme Court had laid down the guidelines and norms to be observed to prevent sexual harassment of working women. In pursuance to the pronouncement of this judgement, Department of Personnel and Training took the following steps:

(i) Guidelines/ Norms of the Hon'ble Supreme Court were circulated by Department of Personnel & Training vide OM No. 11013/10/97-Estt.(A) dated 13.02.1998 for strict compliance by the Ministries/ Departments.

(ii) Amendments in Central Civil Services (Conduct) Rules, 1964 were also carried out by inserting the Rule 3-C declaring Sexual Harassment of Working Women as a misconduct, vide Notification No. 11013/10/97-Estt.(A) dated 13.02.1998 published in Gazette of India as G.S.R. 49 dated 07.03.1998

(iii) Subsequently, Central Civil Services (Classification, Control & Appeal) Rules, 1965 were also amended by inserting a provision below sub-rule 2 of Rule 14 in connection with treatment of the Complaint Committee as Inquiring Authority and to follow the procedure as laid down in these Rules to hold inquiry into the complaints of Sexual Harassment. This was notified vide Notification No. 11012/5/2001-Estt.A dated 01.07.2004 published in Gazette of India vide G.S.R. No. 225 dated 10.07.2004

2. Later on, the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' {SHWW (PPR) Act} was promulgated on 22.04.2013. The 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013' were notified on 09.12.2013. The Act and the Rules framed thereunder provide a redressal mechanism for handling cases of sexual harassment of women at workplace.

3. Thus, the provisions relating to handling cases of sexual harassment of women at workplace are scattered across SHWW (PPR) Act, Central Civil Services (Conduct) Rules, 1964, Central Civil Services (Classification, Control and Appeal) Rules, 1965, etc. In addition, a number ofexecutive instructions covering different aspects of this issue have been issued from time to time. Now, with a view to facilitate the Ministries/Departments and other stake holders in proper implementation of these provisions, a need has been felt to consolidate these provisions and place the same in the public domain for easy access as and when required.Accordingly, the relevant provisions of the Act/Rules/executive instructions have been compiled as under:

(A) DEFINITION OF "SEXUAL HARASSMENT" AND "WORKPLACE"

Section 2(n) and 2(o) of the SHWW (PPR) Actdefines "Sexual Harassment" and "Workplace" respectively. The same have been incorporated through an amendment in the CCS (Conduct) Rules, 1964 as under:

"*Rule 3C - Prohibition of sexual harassment of working women*

(1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation- 1 For the purpose of this rule,

(a) "sexual harassment" includes any one or more of the following acts or behaviour, (whether directly or by implication), namely:—

(i) physical contact and advances; or
(ii) demand or request for sexual favours; or
(iii) sexually coloured remarks; or
(iv) showing any pornography; or
(v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: -

(i) implied or explicit promise of preferential treatment in employment; or
(ii) implied or explicit threat of detrimental treatment in employment; or
(iii) implied or explicit threat about her present or future employment status; or
(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
(v) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes, -

(i) any department, organisation, 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 Central Government;
(ii) hospitals or nursing homes;

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

(iv) 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;

(v) a dwelling place or a house."

(Rule 3-C of the CCS (Conduct) Rules, 1964)

(B) COMPLAINTS COMMITTEE:

❖ Complaints Committees have been set up in all Ministries/Department and organizations under them in pursuance to the judgement of the Hon'ble Supreme Court in the *Vishakha* case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act"), the Internal Complaints Committee (referred to as "Complaints Committee" hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman and at least half of its members should be women. In case a woman officer of sufficiently senior level is not available in a particular office, an officer from another office may be so appointed. To prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committees should involve a third party, either an NGO or some other body which is familiar with the issue of sexual harassment.

[Para 1 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015**]**

❖ Section 4 of the SHWW (PPR) Act-

"4. Constitution of Internal Complaints Committee.— (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer

shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; or
(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section."

[Section 4 of the SHWW (PPR) Act]

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❖ **Seniority of the Chairperson of the Complaint Committee**-

There is no bar either in the CCS (CCA) Rules or under the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* to the Chairperson of the Complaints Committee being junior to the suspect officer or the charged officer. Hon'ble Allahabad High Court has in *Smt. Shobha Goswami vs State of U.P. and 2 Ors*, in WRIT – A No. – 31659 of 2015 observed as follows:

"In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual harassment are brought. The language of Section 4 of the Act only requires the lady member to the Senior Level".

This also does not in any way cause any prejudice to the charged officer.

[Para 2 of OM No. 11013/2/2014-Estt.A-III dated 09.09.2016]

❖ **Complaints Committee to be Inquiring Authority**

As per Proviso to Rule 14(2) of CCS (CCA) Rules, 1965, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

[Para 6 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015**]**

❖ **Proviso to Rule 14(2) of the CCS (CCA) Rules, 1965-**

"Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

[Proviso to Rule 14(2) of the CCS (CCA) Rules, 1965]

(C) INQUIRY INTO COMPLAINT [FIRST STAGE]

- The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per **Section 9 (1) of the Act**, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

- As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

[Para 7 and 8 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

➢ **Section 9 of the the SHWW (PPR) Act**

"***9. Complaint of sexual harassment***.— *(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:*

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

[Section 9 of the SHWW (PPR) Act]

➢ **Rule 6 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**

"*6. Complainant of Sexual Harassment.- For the purpose of sub-Section (2) of Section 9,-*

(i) Where the aggrieved women is unable to make a complaint on account of her physical incapacity, a complaint may be filed by –

(a) her relative or friend; or
(b) her co-worker; or
(c) an officer of the National Commission for Women or State Women's Commission; or
(d) any person who has knowledge of the incident, with the written consent of the aggrieved women;

(ii) where the aggrieved women is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-

(a) her relative or friend; or

(b) a special educator; or
(c) a qualified psychiatrist or psychologist; or
(d) the guardian or authority under whose care she is receiving treatment or care; or
(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

(iii) where the aggrieved women for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;

(iv) where the aggrieved women is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir."

- **Section 11 of the the SHWW (PPR) Act**

"***11. Inquiry into complaint***.— *(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents; and
(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

- **Rule 7 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**

*"7. **Manner of Inquiry into complaint.-** (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witness.*

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule(1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule(1).

(4) The Complaints Committee shall make inquiry into the complaint accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an exparte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present."

- On the completion of an inquiry under this Act, the Complaints Committee shall provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

[Section 13(1) of the SHWW (PPR) Act]

- Where the Complaints Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.

[Section 13(2) of the SHWW (PPR) Act]

- Where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent.

[Section 13(3)(i) of the SHWW (PPR) Act]

(D) INQUIRY UNDER CCS (CCA) RULES, 1965 [SECOND STAGE]

❖ Dual Role

- In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

- As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

- In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

[Para 9 to 11 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Decision to issue Charge sheet. and conducting Inquiry

- On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14 (5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.

- If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS (CCA) Rules.

[Para 12 and 13 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ The Inquiry-stages

- In case the Charged Officer denies the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 14 (6) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

  (a) summoning and enforcing the attendance of any person and examining him on oath;
  (b) requiring the discovery and production of documents; and
  (c) any other matter which may be prescribed.

- The Disciplinary Authority shall also in terms of Rule 14(5)(c) appoint a Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/ Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. As a first step, the charged officer would be formally asked as to whether he admits the charges. As mentioned above, in case of any clear and unconditional admission of any Article of Charge, no inquiry would be held in respect of that Article and the admission of the Charged Officer would be taken on record. The inquiry would be held, thereafter, in respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 14(8).

- The Inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such documents, if not only given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. TheInquiringAuthority would consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed. Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.

- When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

[Para 14 to 17 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Examination of Witnesses

- Summons would, thereafter, be sent to the witnesses listed in the Charge sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions of the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.

- The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appears as a witness, she would also be examined and cross-examined. The Inquiry Officer may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.

- If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

[Para 18 to 20 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Daily Order Sheet

The Inquiring Authority would also maintain a document called Daily Order Sheet in which all the main events of the inquiry and including requests/representations by the Charged Officer or the Presenting Officer, and decisions thereon would be recorded. For example (i) if the Charged Officer refuses to cross-examine the witnesses, this should be recorded in the Daily Order Sheet (ii) the Daily Order Sheet should record that the Charged Officer had been advised that he has the right to engage a Defense Assistant (iii) it should also be clearly mentioned that the Charged Officer was also informed as to who are eligible to assist him as Defense Assistant. (iv) the Daily Order Sheet should also record in case request of the Charged Officer for engaging a particular person as Defense Assistant is disallowed in the light of the existing instructions. Daily Order Sheet should be signed by the Inquiring Authority, Presenting Officer and the Charged Officer/Defence Assistant.

[Para 21 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Defence Evidence

After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross-examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

[Para 22 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ General Examination of the Charged Officer

After the Defense evidence is over, the Inquiring Authority shall ask Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defense witness. In case however, he declines to do so, the Inquiring Authority is required to generally question him. At this stage due care is required to be exercised that as per Rule 14(18) the purpose of this stage is to apprise Charged Officer of the circumstances which appear to be against him. This is to enable the Charged Officer to explain them to the Inquiring Authority. Presenting Officer and the Defence Assistant do not take any part in the General Examination. Charged Officer may not be compelled to answer questions during examination by the Inquiring Authority.

[Para 23 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Brief

- After this, the Presenting Officer would be asked to submit his brief. A copy of this brief would be given to the Charged Officer. Both the Presenting Officer and the Charged Officer may be allowed reasonable time for submission of their brief.

- The Inquiring Authority then writes the Inquiry Report in which the evidence in support of the charges and against them will be examined. The Report should be a speaking one clearly bringing out as to the evidence on the basis of which any particular conclusion has been reached. Based on this analysis, the Inquiring Authority will give its findings on the Articles as proved or not proved. In case any Article of charge is proved only partially, then the Inquiring Authority should record the extent to which that Article has been proved.

[Para 24 and 25 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Powers of the Committee to make recommendations

- Normally, the Inquiry Officer is not allowed to make any recommendations in his report. Here the function of the Complaints Committee acting as the Inquiring Authority differs.

The Complaints Committee will also have the powers to recommend:-

(a) to transfer the aggrieved woman or the charged officer to any other workplace; or

(b) to grant leave to the aggrieved woman up to a period of three months. (The leave will not be deducted from her leave account).

(c) to grant such other relief to the aggrieved woman as may be prescribed; or

(d) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs.Such compensation will not amount to penalty under Rule 11 of CCS (CCA) Rules in terms of the Explanation (ix) to Rule 11.

(e) to take actionagainst complainant, if the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.

(f) to take actionagainst any witness if such witness has given false evidence or produced any forged or misleading document.

[Para 6 and 7 of the OM No. 11013/2/2014-Estt.A-III dated 27.11.2014]
[Para 5 and 26 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

(g) The Complaints Committee at the written request of the aggrieved women may recommend to the employer to-

i. restrain the respondent from reporting on the work performance of the aggrieved women or written her confidential report, and assign the same to another officer;

ii. restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved women.

[Rule 8 of the SHWW (PPR) Rules, 2013]

- Rule 48 of CCS (Leave) Rules, 1972 [Special Leave connected with inquiry on sexual harassment]:

"48. Special Leave connected to inquiry of sexual harassment - Leave upto a period of 90 days may be granted to an aggrieved female Government Servant on the recommendation of the Internal Committee or the Local Committee, as the case may be, during the pendency of inquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the leave granted to the

aggrieved female Government Servant under this rule shall not be debited against the leave account".

[Rule 48 of CCS (Leave) Rules, 1972]

➢ Explanation (ix) to Rule 11 of the CCS (CCA) Rules, 1965

"*Explanation.—The following shall not amount to a penalty within the meaning of this rule, namely:—*

(ix) Any compensation awarded on the recommendation of the Complaints Committee referred to in the proviso to sub-rule (2) of rule 14 and established in the Department of the Government of India for inquiring into any complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964"

❖ Prohibition of publication or making known contents of complaint and inquiry proceedings.—

➢ The Complaints Committee should also remember that as per the Section 16 of the Act, notwithstanding the RTI Act, 2005, information as regards identity and addresses of the aggrieved woman, respondent and witnesses, Inquiry proceedings, Recommendations of the Committee, shall not be published or communicated or made known to public, press or media in any manner. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

[Para 27 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

➢ **Section 16 and 17 of the the SHWW (PPR) Act**

"***16.Prohibition of publication or making known contents of complaint and inquiry proceedings****.—Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:*

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses."

➢ ***17. Penalty for publication or making known contents of complaint and inquiry proceedings.****— Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.*

❖ With the above stage, the inquiry would be formally over. The Inquiring Authority should prepare separate folders containing the documents mentioned in Rule 14(23) ((ii) of CCS (CCA) Rules, 1965

[Para 28 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Suspension of the Charged Officer

A Government servant may also be placed under suspension before or after issue of a Charge Sheet where his continuance in office will prejudice the investigation, for example if there is an apprehension that he may tamper with witnesses or documents. Suspension may also be resorted to where continuance of the Government servant in office will be against wider public interest such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals. It may be desirable to resort to suspension in case of misdemeanor involving acts of moral turpitude.

[Para 29 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Transfer of Charged Officer:

To ensure fair inquiry, Ministries/ Departments may also consider transferring the suspect officer/ charged officer to another office to obviate any risk of that officer using the authority of his office to influence the proceedings of the Complaints Committee.

[Para 3 of OM No. 11013/2/2014-Estt.(A-III) dated 09.09.2016]

❖ Special provisions to deal with threats or intimidation

Disciplinary Authority may also dispense with inquiry under Rule 19(ii), and action may be taken without the inquiry when the Disciplinary Authority concludes that it is not reasonably practicable to hold such an inquiry. The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. Such situation would be deemed to have arisen:

(i) where the Government servant, through or together with his associates terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(ii) where the Government servant himself or with or through others threatens, intimidates and terrorizes the Disciplinary Authority, Members of the Committee, the Presenting Officer or members of their family.

[Para 30 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Disciplinary Authority is not expected to dispense with the inquiry lightly, arbitrarily or with ulterior motive or merely because the case against the Government servant is weak.

[Last Para of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

(E) APPEAL UNDER SECTION 18(1) OF THE SHWW (PPR) ACT, 2013 BY THE COMPLAINANT

- Where a Complaint Committee has not recommended any action against the employee against whom the allegation have been made in a case of involving allegations of sexual harassment, the Disciplinary Authority shall supply a copy of the Report of the Complaints Committee to the complainant and shall consider her representation, if any submitted, before coming to a final conclusion. The representation shall be deemed to be an appeal under section 18(1) of the Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

[Para 3 of OM No. 11012/5/2016-Estt.A-III dated 02.08.2016]

- **Section 18 of the the SHWW (PPR) Act [Appeal]**

"*18 Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.*

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."

(F) Sexual Harassment electronic-Box (She-Box)

- Ministry of Women & Child Development launched an online complaint management system titled Sexual Harassment electronic-Box (She-Box) on 24th July, 2017 for registering complaints related to sexual harassment at workplace. The She-Box is an initiative to provide a platform to the women working or visiting any office of Central Government (Central Ministries, Departments, Public Sector Undertakings, Autonomous Bodies and Institutions etc.) to file complaints related to sexual harassment at workplace under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- Once a complaint is submitted to She-Box, it will be directly sent to the Internal Complaint Committee (ICC) of the concerned Ministry/ Department/ PSU/ Autonomous Body etc. having jurisdiction to inquire into the complaint. The She-Box also provides an opportunity to both the complainant and nodal administrative authority to monitor the progress of inquiry conducted by the ICCs. The She-Box portal can be accessed at the link given below:

http://www.shebox.nic.in/

- Features of the She-Box are as under:

(i) She-Box is an online Complaint Management System for lodging complaints related to sexual harassment of women at workplace. The steps required for filing of complaint through She-Box can be downloaded from the link: http://www.shebox.nic.in/assets/site/downloads/manual.pdf

(ii) Any woman working or visiting any office of Central Government (Central Ministries, Departments, Public Sector Undertakings, Autonomous Bodies and Institutions etc.) can file complaint related to sexual harassment at workplace through this She-Box.

(iii) Once a complaint is submitted to the She-Box, it will directly send the complaint to the Internal Complaints Committee (ICC) of the concerned Ministry/ Department/ PSU/ Autonomous Body etc. having jurisdiction to inquire into the complaint. The Internal Complaints Committee will take action as prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and update the status of the complaint through '**Administrator Login'**.

(iv) The status of complaint can be viewed at any time by pressing the tab '**View Status of Your Complaint'** within She-Box.

- The complaint registered in the She-Box contains only a brief description of the incident of sexual harassment at workplace. The Internal Complaints Committee (ICC) is required to initiate inquiry as prescribed under Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with Department of Personnel & Training's O.M. No.11013/2/2014-Estt.(A-III) dated 16th July, 2015 by calling upon the complainant to provide detailed complaint along with all the relevant evidences (documentary or otherwise).

(G) Duties of the employer-

- **Rule 3C(2) of the CCS (Conduct) Rules, 1964**

Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.

- **Section 19 of the the SHWW (PPR) Act [Duties of employer]**

"*19. Duties of employer.— Every employer shall—*

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) *monitor the timely submission of reports by the Internal Committee*"

[Section 19 of the SHWW (PPR) Act]

- It should be ensured that Complaints Committee shall at all time be in existence and changes in its composition, whenever necessary, should be made promptly and adequately publicized. The composition of the Complaint Committee should also be posted on the website of the concerned Ministries/ Departments/ Office concerned. It would also be desirable for the Committees to meet once a quarter, even if there is no live case, and review preparedness to fulfil all requirements of the Vishakha judgment in the Department/ Ministry/ organization concerned.

[OM No. 11013/2/2014-Estt.A-III dated 02.02.2015]

- It should be ensured that the aggrieved women are not victimized in connection with the complaints filed by them. For a period of five years after a decision in a proven case of sexual harassment, a watch should be kept to ensure that she is not subjected to vendetta. She should not be posted under the Respondent, or any other person where there may be a reasonable ground to believe that she may be subjected to harassment on this account. In case of any victimization the complainant may submit a representation to the Secretary in the case of Ministries/Departments and Head of the Organization in other cases. These representations should be dealt with sensitivity, in consultation with the Complaints Committee, Ministries/Department and Head of the Organization in other cases. These representations should be dealt with sensitivity, in consultation with the Complaints Committee, and a decision taken within 15 days of the submission of the same.

[*Para 3 of the OM No 11013/7/2016-Estt.A-III dated 22.12.2016*]

- All Ministries/Department shall furnish a **monthly report** to the Ministry of Women and Child Development giving details of number of complaints received, disposed of and action taken in the case.

[*Para 4 of the OM No 11013/7/2016-Estt.A-III dated 22.12.2016*]

(H) Provisions regarding preparation of Annual Report by Complaints Committee

➢ **Section 21 of the the SHWW (PPR) Act**

"*21. Committee to submit annual report.— (1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.*
(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government."

➢ **Rule 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**

"*14. Preparation of annual report.- The annual report which the Complainants Committee shall prepare under Section 21, shall have the following details:-*
(a) number of complaints of sexual harassment received in the year;
(b) number of complaints disposedoff during the year;
(c) number of cases pending for more than ninety days;
(d) number of workshops or awareness programme against sexual harassment carried out;
(e) *nature of action taken by the employer or District Officers*."

(I) Provisions regarding preparation of Annual Report by Employer

➢ Attention of all Ministries is invited to Section 22 of the Act relating to including information in Annual Report, and to request that information relating to number of cases filed, if any, and their disposal may be included in the Annual Report of the Ministry/ Department.

[Para 6 of the OM No. 11013/2/2014-Estt.A-III dated 02.02.2015]

➢ **Section 22 of the the SHWW (PPR) Act**

"*22. Employer to include information in annual report.—The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer*"

(J) Miscellaneous-

- Fees or allowance for Member of the Complaints Committee is mentioned in Sexual Harassment of Women at Workplace (Prevention, Prohibition or Redressal) Rules, 2013

Note: In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink or from the DOPT's website.

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रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—13 REGISTERED NO. DL—(N)04/0007/2003—13

भारत का राजपत्र
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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23*rd April*, 2013/*Vaisakha* 3, 1935 (*Saka*)

The following Act of Parliament received the assent of the President on the 22nd April, 2013, and is hereby published for general information:—

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

(No. 14 OF 2013)

[22*nd April*, 2013.]

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality 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 any 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 recognised 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.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title, extent and commencement

1. (*1*) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(*2*) It extends to the whole of India.

(*3*) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,—

(*a*) "aggrieved woman" means—

(*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;

(*b*) "appropriate Government" means—

(*i*) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—

(*A*) by the Central Government or the Union territory administration, the Central Government;

(*B*) by the State Government, the State Government;

(*ii*) in relation to any workplace not covered under sub-clause (*i*) and falling within its territory, the State Government;

(*c*) "Chairperson" means the Chairperson of the Local Complaints Committee nominated under sub-section (*1*) of section 7;

(*d*) "District Officer" means an officer notified under section 5;

(*e*) "domestic worker" means 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 include any member of the family of the employer;

(*f*) "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, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(*g*) "employer" means—

(*i*) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(*ii*) in any workplace not covered under sub-clause (*i*), any person responsible for the management, supervision and control of the workplace.

Explanation.—For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of polices for such organisation;

(*iii*) in relation to workplace covered under sub-clauses (*i*) and (*ii*), the person discharging contractual obligations with respect to his or her employees;

(*iv*) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(*h*) "Internal Committee" means an Internal Complaints Committee constituted under section 4;

(*i*) "Local Committee" means the Local Complaints Committee constituted under section 6;

(*j*) "Member" means a Member of the Internal Committee or the Local Committee, as the case may be;

(*k*) "prescribed" means prescribed by rules made under this Act;

(*l*) "Presiding Officer" means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (*2*) of section 4;

(*m*) "respondent" means a person against whom the aggrieved woman has made a complaint under section 9;

(*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;

(*o*) "workplace" includes –

(*i*) any department, organisation, 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 organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainmental, 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;

(*p*) "unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Prevention of sexual harassment

3. (*1*) No woman shall be subjected to sexual harassment at any workplace.

(*2*) The following circumstances, among other circumstances, if it occurs or is persent in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—

(*i*) implied or explicit promise of preferential treatment in her employment; or

(*ii*) implied or explicit threat of detrimental treatment in her employment; or

(*iii*) implied or explicit threat about her present or future employment status; or

(*iv*) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(*v*) humiliating treatment likely to affect her health or safety.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

Constitution of Internal Complaints Committee.

4. (*1*) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(*2*) The Internal Committee shall consist of the following members to be nominated by the employer, namely:—

(*a*) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (*1*):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(*b*) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(*c*) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(*3*) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(*4*) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(*5*) Where the Presiding Officer or any Member of the Internal Committee,—

(*a*) contravenes the provisions of section 16; or

(*b*) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(*c*) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(*d*) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

Notification of District Officer.

5. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Constitution and jurisdiction of Local Complaints Committee

6. (*1*) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

(*2*) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

(*3*) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

Composition, tenure and other terms and conditions of Local Complaints Committee

7. (*1*) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:—

(*a*) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(*b*) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(*c*) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(*d*) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member *ex officio*.

(*2*) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(*3*) Where the Chairperson or any Member of the Local Complaints Committee —

(*a*) contravenes the provisions of section 16; or

(*b*) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(*c*) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(*d*) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(*4*) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (*b*) and (*d*) of sub-section (*1*) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Grants and audit

8. (*1*) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (*4*) of section 7.

(*2*) The State Government may set up an agency and transfer the grants made under sub-section (*1*) to that agency.

(*3*) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (*4*) of section 7.

(*4*) The accounts of the agency referred to in sub-section (*2*) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

Complaint of sexual harassment

9. (*1*) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(*2*) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Conciliation

10. (*1*) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

(*2*) Where a settlement has been arrived at under sub-section (*1*), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(*3*) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (*2*) to the aggrieved woman and the respondent.

(*4*) Where a settlement is arrived at under sub-section (*1*), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

Inquiry into complaint

11. (*1*) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

45 of 1860.

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (*2*) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

45 of 1860.

(*2*) Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(*3*) For the purpose of making an inquiry under sub-section (*1*), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

5 of 1908

(*a*) summoning and enforcing the attendance of any person and examining him on oath;

(*b*) requiring the discovery and production of documents; and

(*c*) any other matter which may be prescribed.

(*4*) The inquiry under sub-section (*1*) shall be completed within a period of ninety days.

CHAPTER V

INQUIRY INTO COMPLAINT

Action during pendency of inquiry

12. (*1*) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

(*a*) transfer the aggrieved woman or the respondent to any other workplace; or

(*b*) grant leave to the aggrieved woman up to a period of three months; or

(*c*) grant such other relief to the aggrieved woman as may be prescribed.

(*2*) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(*3*) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (*1*), the employer shall implement the recommendations made under sub-section (*1*) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Inquiry report

13. (*1*) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(*2*) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(*3*) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(*i*) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(*ii*) to deduct, notwithstanding anything in the service rules applicable to the respondent, 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, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (*ii*), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(*4*) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Punishment for false or malicious complaint and false evidence

14. (*1*) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (*1*) or sub-section (*2*) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(*2*) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

Determination of compensation

15. For the purpose of determining the sums to be paid to the aggrieved woman under clause (*ii*) of sub-section (*3*) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to --

(*a*) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;

(*b*) the loss in the career opportunity due to the incident of sexual harassment;

(*c*) medical expenses incurred by the victim for physical or psychiatric treatment;

(*d*) the income and financial status of the respondent;

(*e*) feasibility of such payment in lump sum or in instalments.

22 of 2005

Prohibition of publication or making known contents of complaint and inquiry proceedings

16. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

Penalty for publication or making known contents of complaint and inquiry proceedings

17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Appeal

18. (*1*) Any person aggrieved from the recommendations made under sub-section (*2*) of section 13 or under clause (*i*) or clause (*ii*) of sub-section (*3*) of section 13 or sub-section (*1*) or sub-section (*2*) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

(*2*) The appeal under sub-section (*1*) shall be preferred within a period of ninety days of the recommendations.

CHAPTER VI

DUTIES OF EMPLOYER

Duties of employer.

19. Every employer shall --

(*a*) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(*b*) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (*1*) of section 4;

(*c*) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(*d*) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(*e*) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(*f*) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (*1*) of section 9;

(*g*) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; 45 of 1860.

(*h*) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 45 of 1860.

(*i*) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(*j*) monitor the timely submission of reports by the Internal Committee.

CHAPTER VII

DUTIES AND POWERS OF DISTRICT OFFICER

Duties and powers of District Officer.

20. The District Officer shall,—

(*a*) monitor the timely submission of reports furnished by the Local Committee;

(*b*) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

CHAPTER VIII

MISCELLANEOUS

Committee to submit annual report

21. (*1*) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(*2*) The District Officer shall forward a brief report on the annual reports received under sub-section (*1*) to the State Government.

Employer to include information in annual report

22. The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data

23. The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Appropriate Government to take measures to publicise the Act

24. The appropriate Government may, subject to the availability of financial and other resources,—

(*a*) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace,

(*b*) formulate orientation and training programmes for the members of the Local Complaints Committee.

Power to call for information and inspection of records

25. (*1*) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,---

(*a*) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

(*b*) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(*2*) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

Penalty for non-compliance with provisions of Act.

26. (*1*) Where the employer fails to---

(*a*) constitute an Internal Committee under sub-section (*1*) of section 4;

(*b*) take action under sections 13, 14 and 22; and

(*c*) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

he shall be punishable with fine which may extend to fifty thousand rupees.

(*2*)If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to---

(*i*) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(*ii*) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

Cognizance of offence by courts

27. (*1*) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

(*2*) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(*3*) Every offence under this Act shall be non-cognizable.

Act not in derogation of any other law.

28. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Power of appropriate Government to make rules.

29. (*1*) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:–

(*a*) the fees or allowances to be paid to the Members under sub-section (*4*) of section 4;

(*b*) nomination of members under clause (*c*) of sub-section (*1*) of section 7;

(*c*) the fees or allowances to be paid to the Chairperson, and Members under sub-section (*4*) of section 7;

(*d*) the person who may make complaint under sub-section (*2*) of section 9;

(*e*) the manner of inquiry under sub-section (*1*) of section 11;

(*f*) the powers for making an inquiry under clause (*c*) of sub-section (*2*) of section 11;

(*g*) the relief to be recommended under clause (*c*) of sub-section (*1*) of section 12;

(*h*) the manner of action to be taken under clause (*i*) of sub-section (*3*) of section 13;

(*i*) the manner of action to be taken under sub-sections (*1*) and (*2*) of section 14;

(*j*) the manner of action to be taken under section 17;

(*k*) the manner of appeal under sub-section (*1*) of section 18;

(*l*) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (*c*) of section 19; and

(*m*) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (*1*) of section 21.

(*3*) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(*4*) Any rule made under sub-section (*4*) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to remove difficulties.

30. (*1*) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(*2*) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

P.K. MALHOTRA,
Secy. to the Govt. of India.

CORRIGENDA

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) ACT, 2012

(2 of 2013)

At page 18, in line 2, *for* "Arts", *read* "Art".

At page 21, in line 14, *for* "Protection", *read* "(Protection)".

CORRIGENDUM

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2012

(3 of 2013)

At page 6, in line 22, *for* "clause", *read* "clause".

CORRIGENDUM

THE BANKING LAWS (AMENDMENT) ACT, 2012

(4 of 2013)

At page 8, in line 29, *for* 'sections 30",' *read* 'section 30,",'.

CORRIGENDUM

THE APPROPRIATION ACT, 2013

(9 of 2013)

At page 1, in the marginal heading to section 2, *for* "4715,54,00,000", *read* "49715,54,00,000".

GMGIPMRND—354GI(S4)—23-04-2013.

सत्यमेव जयते



HANDBOOK

On

Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013

for Employers / Institutions / Organisations/
Internal Complaints Committee / Local Complaints Committee



Government of India
Ministry of Women and Child Development

November 2015

सत्यमेव जयते

HANDBOOK

on

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

for Employers / Institutions / Organisations/
Internal Complaints Committee / Local Complaints Committee

Towards a new dawn

Government of India
Ministry of Women and Child Development

November 2015

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मेनका संजय गांधी
Maneka Sanjay Gandhi

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MESSAGE

With improved access to education and employment, millions of Indian women are entering the country's workforce today. Many working women face sexual harassment at the workplace on a daily basis. It is crucial therefore that as a country, we strive to eliminate work-place sexual harassment since women have the right to work in safe and secure environment. It is the responsibility of every employer to ensure safety of women in a work environment and improve their participation. This will contribute to realization of their right to gender equality and result in economic empowerment and inclusive growth and benefit the nation as a whole.

I am pleased to present this Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It provides key information about the provisions of the Act in an easy-to-use and practical manner. The Handbook has been developed with the aim to ensure that the citizens of India are aware of their rights and obligations in terms of creating safe workplace environment for women.

Government of India is committed to promote gender equality and women's empowerment across every sector. This Handbook reflects our commitment to empower women as economic agents and improve their ability to access markets on competitive and equitable terms. I am confident that this Handbook which advocates and enforces the rules as laid out in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, will be beneficial to everyone. The practical and user-friendly procedures outlined in the Handbook will be useful for actual implementation of the Act.

Maneka Sanjay Gandhi

(Smt. Maneka Sanjay Gandhi)

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सत्यमेव जयते

Secretary
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Shastri Bhawan, New Delhi-110001
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18th November 2015

FOREWORD

I am pleased to share with you this Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This Handbook is of immense importance because combating sexual harassment involves developing deeper understanding of what is sexual harassment and change of attitudes in all - be it employer, employees, colleagues, friends, or the policy makers.

Sexual Harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative, as it affects women's right to life and livelihood. In India, for the first time in 1997, a petition was filed in the Supreme Court to enforce the fundamental rights of working women, after the brutal gang rape of Bhanwari Devi a social worker from Rajasthan. As an outcome of the landmark judgment of the Vishaka and Others v State of Rajasthan the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was enacted wherein it was made mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women. The Act is also unique for its wide ambit as it is applicable to the organized sector as well as the unorganized sector.

The legislation, however, requires the support and commitment of all stakeholders for its effective and successful implementation in preventing workplace sexual harassment. It casts an obligation upon the employer to address the grievances in respect of sexual harassment at workplace in a time bound manner. It is in this context that this Handbook would be very useful as it provides clear definition of what constitutes sexual harassment and explains how the complaint process works.

I am sure that the Handbook will be extremely useful to all agencies concerned and help them in taking pro-active measures to eradicate the problem/menace of workplace sexual harassment in the country.

(V. Somasundaran)

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Dated: 17th November, 2015

PREFACE

The Government of India is committed to ending all forms of violence against women that negatively impact society, hamper gender equality and constricts the social and economic development of the country.

Since, sexual harassment results in violation of the fundamental rights of a woman to equality as per Articles 14 and 15 and her right to live with dignity as mentioned under Article 21 of the Constitution, the Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act is an extension of the Vishaka Guidelines issued by the Supreme Court in 1997. The Supreme Court of India, for the first time in the Vishaka Guidelines, acknowledged Sexual Harassment at the workplace as a human rights violation. Further, the Act also reflects the commitment of the Government to the ratification of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on July 09, 1993. This new legislation makes every effort to be a user friendly tool in the hands of the employers and employees, to create safe and secure workplaces for all women.

With the enactment of the Act, India is now a part of a select group of countries to have prohibited sexual harassment at workplace through national legislation. The Act is unique in its broad coverage which includes all working women from organised and unorganised sectors alike, as also public and private sectors, regardless of hierarchy. Effective implementation of the Act is a challenge. The Handbook is designed to be a Ready Reckoner for organisations vested with responsibility to enforce the law.

The Handbook is structured into six sections. The first section is an introduction and detail regarding the genesis of the Act, the second sets the context by defining the workplace and sexual harassment and impact of such behaviour, the third focuses on the key individuals and institutions involved in prohibition and prevention processes and their responsibilities, section four discusses the redressal mechanism followed by monitoring requirement in section five and important international frameworks and best practices on sexual harassment at the workplace in the concluding section.

It is the hope of the Ministry that this Handbook will be of considerable value for employers, employees and complaint committees alike, as it provides guidance with regard to the steps to be taken and the processes to be followed, in line with the requirements of the law. It will prove useful to all women workers particularly and be a step forward in promoting their independence as well as the right to work with dignity as equal partners in an environment that is free from violence.

(Preeti Sudan)

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ACKNOWLEDGEMENTS

In our journey towards preparing this Handbook, which required a lot of guidance and assistance from many people, whose names may not be enumerated, I am thankful to all of them for their contributions towards the completion of the task.

I would like to express my sincere thanks to the UN Women (United Nations Entity for Gender Equality and Empowerment of Women) for their valuable contributions with their experience in women's movement and expertise in gender rights in supporting the Ministry to prepare the Handbook with key information on the Act in an easy-to-use practical manner and designing with appropriate illustrations.

I would like acknowledge the important contributions made by Ms. Risha Syed, Legal Consultant for the hardwork put by her coupled with her experience and expertise as a legal professional and commitment to gender issues in bringing out the Handbook.

I am also thankful to Dr. Paramita Majumdar, Senior Consultant, Gender Budgeting for reviewing the manuscript with meticulous scrutiny and scholarly advice. I would like to mention with appreciation for Shri Samuel Paul, Assistant Secretary for showing not only his keen interest on the subject, but assisting us in the review work.

We hope that this Handbook will be a guide and inspiration to all of us in creating an enabling environment of women in the workplaces.

(Lopamudra Mohanty)

"The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality…."

Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan

Introduction

> *"Whereas sexual harassment results in violation of the fundamental rights of a Woman to equality....."*
>
> [Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act]

As enshrined in the Preamble to the Constitution of India, "equality of status and opportunity" must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution.

A safe workplace is therefore a woman's legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person's right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women's dignity violate the principle of equality of rights.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as 'natural' male behaviour or 'harmless flirtation' which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India "to practice any profession or to carry out any occupation, trade or business"; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large.

Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

Across the globe today, workplace sexual harassment is increasingly understood as a violation of women's rights and a form of violence against women. Indeed, the social construct of male privileges in society continues to be used to justify violence against women in the private and public sphere. In essence, sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations. In a society where violence against women, both subtle and direct, is borne out of the patriarchal values, women are forced to conform to traditional gender roles. These patriarchal values and attitudes of both women and men pose the greatest challenge in resolution and prevention of sexual harassment. Workplace sexual harassment, like other forms of violence, is not harmless. It involves serious health, human, economic and social costs, which manifests themselves in the overall development indices of a nation.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The full scale of the problem is not known given the difficulties in documenting the experience of those who have experienced workplace sexual harassment. However, available studies on sexual harassment show that it is certainly prevalent in India today. This is why the legislation is an important step forward within the larger architecture of women's rights, as it tackles this issue to secure the rights of women workers across the country.

While the official figures for women's work participation are low, much of the work that women do is not captured in official data accounts. It is argued[1] that where this is to be captured, women's overall work participation would be 86.2 per cent. While the official data[2] shows that women's work participation rate is around 25.3 per cent in rural areas and 14.7 per cent in the urban areas, estimates indicate that there is a huge workforce of women, therefore there is a need to secure their workplace and entitlements. Given, that 93 per cent of women workers are employed in the informal sector, they remain unprotected by laws. With no laws or mechanisms to protect them, proactive measures are required to make their workplaces safe.

[1] Professor Jayati Ghosh, Paper on 'What Exactly is Work? http://www.macroscan.org/cur/oct14/pdf/Exactly_Work.pdf
[2] NSSO 2011-12

It is well established that ensuring safe working conditions for women leads to a positive impact on their participation in the workforce and increases their productivity, which in turn benefits the nation as a whole. Economically, empowered women are key to the nation's overall development and this can only be achieved if it is ensured that women's workspaces across all sectors and all over the country have a safe and secure environment for work.

It is important as well to ensure that the emphasis is on prevention rather than punitive action. This calls for widespread awareness on the Act among employers, managers and the workers themselves. Frequently, women workers may face sexual harassment but may not be aware that it is a breach of their rights and that there is something they can do about it. They need to know that they can do something about it. Then there are others, who may believe that it is a personal matter that needs to be resolved by the people involved. In order to change this order of things, it is urgent that measures are taken to change mind-sets and attitudes by creating awareness about what constitutes sexual harassment and the steps that can be taken to address it.

This handbook will serve as an important tool to make workplaces safe and benefit both workers and employers alike, leading to mutual gains.

1.1 THE MANDATE

Today, all workplaces in India are mandated by law to provide a safe and secure working environment free from sexual harassment for all women.

1.2 THE GENESIS

In 1992, a rural level change agent, Bhanwari Devi, was engaged by the state of Rajasthan as a *Sathin*[3] to work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a one-year old girl in the community. Her work was met with resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority but no action was taken. That omission came at great cost – Bhanwari was subsequently gang raped by those very men.

The Bhanwari Devi case revealed the ever-present sexual harm to which millions of working women are exposed across the country, everywhere and everyday irrespective of their location. It also shows the extent to which that harm can escalate if nothing is done to check sexually offensive behaviour in the workplace.

Based on the facts of Bhanwari Devi's case, a Public Interest Litigation (PIL) was filed by Vishaka and other women groups against the State of Rajasthan and Union of India before the Supreme Court of India. It proposed that sexual harassment be recognized as a violation of women`s fundamental right to equality and that all workplaces/establishments/institutions be made accountable and responsible to uphold these rights.

[3] *Sathin*' means a friend

In a landmark judgment, *Vishaka vs. State of Rajasthan (1997)*[4], the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- A definition of sexual harassment
- Shifting accountability from individuals to institutions
- Prioritizing prevention
- Provision of an innovative redress mechanism

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.

It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a third party person/NGO expert on the issue, to prevent any undue pressure on the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors.

Vishaka established that international standards/law could serve to expand the scope of India's Constitutional guarantees and fill in the gaps wherever they exist. India's innovative history in tackling workplace sexual harassment beginning with the *Vishaka* Guidelines and subsequent legislation has given critical visibility to the issue. Workplaces must now own their responsibility within this context and ensure that women can work in safe and secure spaces.

1.3 THE ACT

Having raised the bar of responsibility and accountability in the Vishaka Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

[4] (AIR 1997 Supreme Court 3011)

- Prohibition
- Prevention
- Redress



In 2013, the Government of India notified the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (referred to as Act hereinafter). Consistent with the Vishaka judgment, the Act aspires to ensure women's right to workplace equality, free from sexual harassment through compliance with the above mentioned three elements.

It is important to note that the Act provides a civil remedy to women and is in addition to other laws that are currently in force. Consequently, any woman who wishes to report instances of sexual harassment at the workplace has the right to take recourse of both civil and criminal proceedings.

1.4 PURPOSE OF THIS HANDBOOK

This handbook is meant for all workplaces/institutions/organizations to provide a basic understanding of sexual harassment at places of work. Additionally, it is designed to offer Internal Complaints Committee/s and Local Complaints Committee/s (Complaints Committee/s) established under the Act, with simple, user friendly information on sexual harassment; what is expected of Complaints Committee/s to redress a complaint; and what the inquiry process and outcome should include.

1.5 WHO IS THIS HANDBOOK FOR

This handbook informs the end user (an employee/worker) about workplace sexual harassment and their right to an informed complaint process in seeking redress as provided under the Act and Rules framed thereunder.

1.6 STRUCTURE OF THE HANDBOOK

This Handbook has 6 sections, with each containing information for women, male co-workers as well as their employers, on how to deal with sexual harassment at the workplace in the context of the Act.

Section 1 serves as an introduction, as it details the genesis of the Act and the history behind it, as well as provides a brief description of the Act itself. This section also describes the purpose of this handbook and who it is designed for.

Section 2 sets the context by defining a workplace and sexual harassment. It provides the reader with key elements, such as examples of sexual harassment as well as scenarios and the impact of such behaviour.

Section 3 focuses on the key individuals and institutions involved in the prohibition and prevention processes and their responsibilities.

Section 4 is about redress. This section identifies and defines the key players involved in the complaint mechanism (including the complainant and the respondent). It details the stages of the complaint process. Particular attention is paid to the complaints committee which plays a very important role in this process.

Section 5 describes the monitoring requirements as per the Act.

Section 6 lists the important international frameworks and select best practices on sexual harassment at the workplace.

Workplace Sexual Harassment- What Is It?

> *"No woman shall be subjected to sexual harassment at any workplace."*
>
> Section 3(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

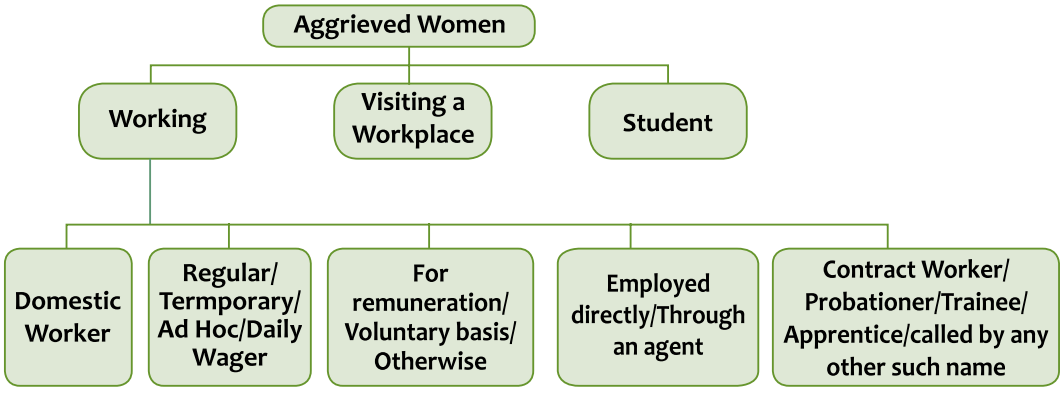
This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviours through which a woman can experience possible professional and personal harm. It presents the user with scenarios from across-section of work contexts to build clarity on different forms of sexual harassment as identified under the Act.

2.1 WHO IS AN AGGRIEVED WOMAN?

The Act recognizes the right of every woman to a safe and secure workplace environment irrespective of her age or employment/work status. Hence, the right of all women working or visiting any workplace whether in the capacity of regular, temporary, adhoc, or daily wages basis is protected under the Act.

It includes all women whether engaged directly or through an agent including a contractor, with or without the knowledge of the principal employer. They may be working for remuneration, on a voluntary basis or otherwise. Their terms of employment can be express or implied.

Further, she could be a co-worker, a contract worker, probationer, trainee, apprentice, or called by any other such name. The Act also covers a woman, who is working in a dwelling place or house.



2.2 WHAT IS A WORKPLACE?

A workplace is defined as "any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey." As per this definition, a workplace covers both the organised and un-organised sectors.

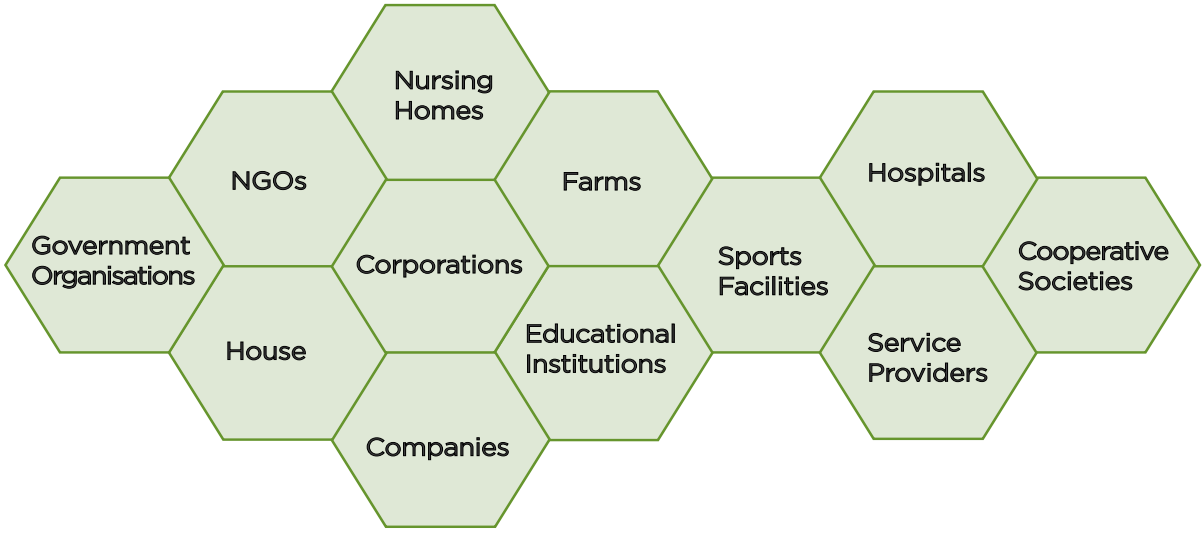
It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes:

- Government organizations, including Government company, corporations and cooperative societies;
- Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;
- Hospitals/Nursing Homes;
- Sports Institutes/Facilities;
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

The Act defines the Unorganised Sector as:

- Any enterprise owned by an individual or self-employed workers engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.

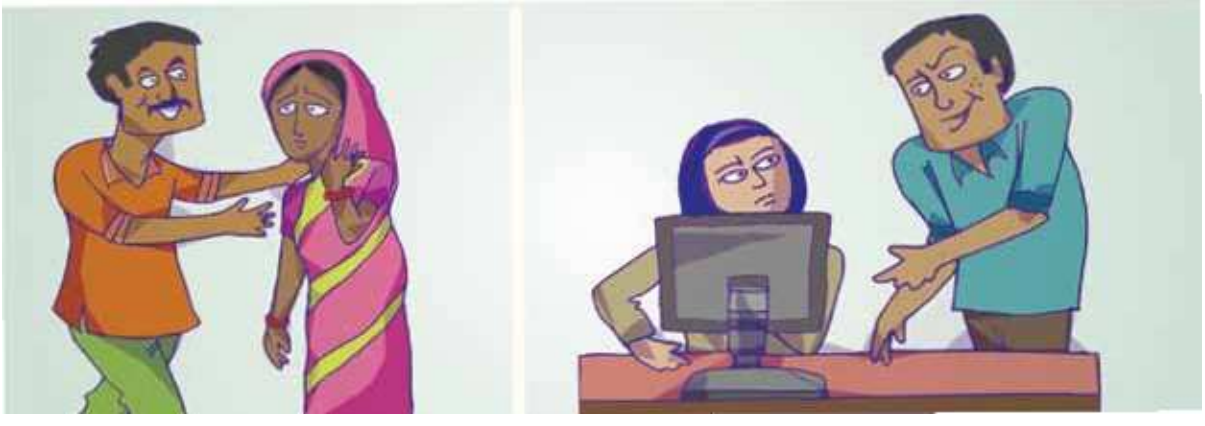
All women working or visiting workplaces, for example:



2.3 WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?

"Sexual Harassment" includes anyone or more of the following unwelcome acts or behaviour (whether directly or by implication), namely:

1. Physical contact or advances;
2. A demand or request for sexual favours;
3. Making sexually coloured remarks;
4. Showing pornography;
5. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature



2.4 KEY ELEMENTS OF WORKPLACE SEXUAL HARASSMENT

Very often situations that start off innocently end up in inappropriate and unprofessional behaviours. It is important to remember that **workplace sexual harassment** is **sexual, unwelcome** and the experience is **subjective.** It is the **impact** and not the intent that matters and it almost always occurs in a matrix of **power**. It is possible that a woman may experience a single instance of sexual harassment or a series of incidents over a period of time. It is important also to remember that each case is unique and should be examined in its own context and according to the surrounding circumstances as a whole.

The following table highlights the subjective nature of the experience and the impact it may have on the person involved, irrespective of the intent of such behaviour.

To enable prevention of sexual harassment at the workplace, it is critical to recognize and differentiate between welcome and unwelcome sexual behaviour. Listed are some examples of how "unwelcome" and "welcome" behaviour is experienced.

THE FIRST STEP TO PREVENTION IS RECOGNITION

Workplace Sexual Harassment is behaviour that is

UNWELCOME

SEXUAL in nature

A **SUBJECTIVE** experience

IMPACT not intent is what matters

Often occurs in a matrix of **POWER**

UNWELCOME	WELCOME
Feels bad	Feels good
One-sided	Reciprocal
Feels powerless	In-control
Power-based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Causes anger/sadness	Happy
Causes negative self-esteem	Positive self-esteem

Impact of inappropriate behaviour

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts.





Professional	Personal
• Decreased work performance • Increased absenteeism, loss of pay • Loss of promotional opportunities • Retaliation from the respondent, or colleagues/ friends of the respondent • Subjected to gossip and scrutiny at work • Being objectified • Becoming publicly sexualized • Defamation • Being ostracized • Having to relocate • Job and career consequences • Weakened support network	• Depression • Anxiety, panic attacks • Traumatic stress • Sleeplessness • Shame, guilt, self-blame • Difficulty in concentrating • Headaches • Fatigue, loss of motivation • Personal Difficulties with time • Eating disorders (weight loss or gain) • Feeling betrayed and/or violated • Feeling angry or violent towards the respondent • Feeling powerless • Loss of confidence and self esteem • Over all loss of trust in people • Problems with intimacy • Withdrawal and isolation

SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE

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."

Dr. Punita K. Sodhi v. Union of India & Ors. W.P. (C) 367/2009 & CMS 828, 11426/2009
On 9 September, 2010, in the High Court of Delhi

2.5 EXAMPLES OF BEHAVIOURS AND SCENARIOS THAT CONSTITUE SEXUAL HARASSMENT



Below are examples of behaviour that may or may not constitute workplace sexual harassment in isolation. At the same time, it is important to remember that more often than not, such behaviour occurs in cluster. Distinguishing between these different possibilities is not an easy task and requires essential training and skill building.

Some examples of behaviour that constitute sexual harassment at the workplace:

1. Making sexually suggestive remarks or innuendos.
2. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
3. Offensive comments or jokes.
4. Inappropriate questions, suggestions or remarks about a person's sex life.
5. Displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or e-mails.
6. Intimidation, threats, blackmail around sexual favours.
7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.





10. Physical contact such as touching or pinching.
11. Caressing, kissing or fondling someone against her will (could be considered assault).
12. Invasion of personal space (getting too close for no reason, brushing against or cornering someone).
13. Persistently asking someone out, despite being turned down.
14. Stalking an individual.
15. Abuse of authority or power to threaten a person's job or undermine her performance against sexual favours.
16. Falsely accusing and undermining a person behind closed doors for sexual favours.
17. Controlling a person's reputation by rumour-mongering about her private life.

Some examples of behaviour that may indicate underlying workplace sexual harassment and merit inquiry:

1. Criticizing, insulting, blaming, reprimanding or condemning an employee in public.
2. Exclusion from group activities or assignments without a valid reason.
3. Statements damaging a person's reputation or career.
4. Removing areas of responsibility, unjustifiably.
5. Inappropriately giving too little or too much work.
6. Constantly overruling authority without just cause.
7. Unjustifiably monitoring everything that is done.
8. Blaming an individual constantly for errors without just cause.
9. Repeatedly singling out an employee by assigning her with demeaning and belittling jobs that are not part of her regular duties.
10. Insults or humiliations, repeated attempts to exclude or isolate a person.
11. Systematically interfering with normal work conditions, sabotaging places or instruments of work.
12. Humiliating a person in front of colleagues, engaging in smear campaigns.
13. Arbitrarily taking disciplinary action against an employee.
14. Controlling the person by withholding resources (time, budget, autonomy, and training) necessary to succeed.

Some examples of workplace behaviours that may not constitute sexual harassment:

1. Following-up on work absences.
2. Requiring performance to job standards.

3. The normal exercise of management rights.
4. Work-related stress e.g. meeting deadlines or quality standards.
5. Conditions of works.
6. Constructive feedback about the work mistake and not the person.

2.6 FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally workplace sexual harassment refers to two common forms of ***inappropriate behaviour:***

- Quid Pro Quo (literally 'this for that')
  - Implied or explicit promise of preferential/detrimental treatment in employment
  - Implied or express threat about her present or future employment status
- Hostile Work Environment
  - Creating a hostile, intimidating or an offensive work environment
  - Humiliating treatment likely to affect her health or safety

2.7 SCENARIOS

The following scenarios have been constructed as examples based on real life experiences of women at workplaces. The scenarios attempt to build an understanding of the two types of workplace sexual harassment as prescribed by the Act i.e. quid pro quo and hostile environment.

The names in the following examples are fictional and in no way refer to any individual alive or dead.

A. Examples of scenarios that constitute quid pro quo or 'this for that' type of sexual harassment at the workplace:

SCENARIO EXAMPLE 1

Kamini is a bright young team leader working in a call centre. Known to be forthright, she is dedicated, hardworking and is a perfectionist.

Kamini stays back at work late one evening with her colleague Ravi to complete work for an important presentation. Ravi offers to buy Kamini dinner and later drop her home since it's been a long day. After dinner, Ravi proposes to Kamini that he would like her to spend the night with him. Kamini refuses politely but firmly and goes home. Next evening, Ravi repeats his request and on Kamini's refusal, threatens her that ***if she doesn't give-in, he will tell everyone*** that she made a pass at him.

What is Workplace 'this for that' Sexual Harassment?

In the above example, Ravi's threat to Kamini that if she does not agree to his 'request' for a sexual favour, he will in return smear her character at the workplace as a person who wants to use sexual

favours to her advantage constitutes quid pro quo form of sexual harassment. Ravi's behaviour is unwelcome, sexual, and has a negative impact on Kamini.

SCENARIO EXAMPLE 2

Renuka is employed as a domestic worker where she is expected to take care of all the household activities, other than cooking. Most of the days, the lady of the house leaves early. Renuka is therefore left alone in the house with a male member of the household.



Renuka finds the male member constantly leering at her when he is at home and often walks around the house wrapped in nothing but a towel which makes her very uncomfortable. On one occasion, while she was sweeping, he pinched her bottom. When she protested that she will complain to the lady of the house, he ***threatened to accuse*** her of stealing, and that he will ensure that she ***loses*** her job.

What is Workplace Sexual Harassment?

In the above example, the male member by threatening Renuka to keep quiet about the unwelcome physical contact if she wants to continue with her employment commits quid pro quo form of sexual harassment. His behaviour occurring in a matrix of power, is unwelcome, sexual and has a negative impact on Renuka.

SCENARIO EXAMPLE 3

Shamima is a lawyer who works as a researcher at an NGO in Delhi since 2013. Dr. Bhavan is the director of the organisation and has always advocated for the cause of human rights.

During an official field visit to Shimla for 2 days, Dr. Bhavan finds an opportunity to be alone with Shamima and makes a physical advance. Despite her protests, he forces himself on her while giving lurid and sexually explicit details of his relationships, both past and present, with women. When she chastises him and threatens to make his behaviour public, he ***threatens to destroy her career***.

What is Workplace Sexual Harassment?

In the above example, by threatening Shamima with the destruction of her career, Dr. Bhavan commits quid pro quo sexual harassment. His physical advances and sexual conversation are unwelcome for Shamima and occur in a matrix of power.

B. Examples of scenarios that constitute a 'hostile work environment' type of sexual harassment at the workplace:

SCENARIO EXAMPLE 1

Jayanthi works in a garment factory in Bangalore.



Varghese, Jayanthi's supervisor, often tries to touch her on one or the other pretext. For example, he adjusts her *dupatta* while she is sewing at her workstation on the pretext of covering her back. Jayanthi is very uncomfortable with his behaviour. Her colleagues at the workplace ridicule Jayanthi and mock her for the 'special treatment' by her supervisor. They often gossip about her and Varghese.

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, the physical touching by Varghese is unwelcome and sexual in nature. The gossip, which is based on Varghese's behaviour towards Jayanthi at the workplace, is creating a hostile work environment for Jayanthi.

SCENARIO EXAMPLE 2

Sukhi is a daily wage labourer working at a construction site. Every day at lunch time, Sukhi sits under the shade of the tree to feed her 16-month old baby. She finds Jaswinder, a worker, staring at her from the distance. Sukhi feels uncomfortable and asks Jaswinder to stay away from her while she's feeding the baby. However, Jaswinder persists and always finds a place near her. The group of fellow construction workers now ***constantly catcall and whistle*** at Sukhi every time she walks their way to refill the cement or mortar. When she questions them, they tell her they are only joking amongst themselves.

What is a Hostile Workplace Environment Sexual Harassment?

Ogling, stalking and gossiping against Sukhi in the above example constitute a hostile work environment, a form of workplace sexual harassment.

SCENARIO EXAMPLE 3

Sumedha is a Captain with the Indian Army. She has refused an offer made by a Senior Officer for a relationship. Sumedha has kept quiet about this experience, but thanks to the rumour-mongering by the Senior Officer, she has acquired a reputation of being a woman of 'easy virtue'. Now she is being *subjected to repeated advances* by three of her senior officer colleagues. When she turns around and protests, *she is singled out for additional physical training.*

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, Sumedha's refusal to the sexual advances of her Senior Officer, leads to her being subjected to rumours, gossip, character assassination, unwelcome sexual advances by other officers, and arbitrary disciplinary action. This constitutes Hostile Work Environment form of workplace Sexual Harassment.

SCENARIO EXAMPLE 4

Asha is a researcher at a media agency led by Dr. Purshottam, a well-known journalist.

In the first few months of Asha's employment, Dr. Purshottam is very pleased with her work and publicly appreciates her. Soon after, Dr. Purshottam frequently summons Asha to his office on the pretext of work and makes verbal sexual advances and sexually coloured remarks to her. He brushes aside her protests by saying that they would not be able to work as a team unless she interacted closely with him and they both got to know each other well. However, once she categorically rebuffed his sexual advances, he has stopped. Now he ***ridicules her work*** and ***humiliates*** her in the presence of colleagues and the staff. He ***discriminates*** against her by allotting projects to her and then arbitrarily withdrawing the work.

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, the workplace actions are a result of Asha rebuffing the unwelcome, sexual advances of Dr. Purshottam and this constitutes hostile work environment form of workplace sexual harassment.

This section has listed and illustrated some of the behaviours that constitute the five parameters of workplace sexual harassment, viz., sexual, subjective, unwelcome, impact and power. This becomes the basis of the key elements of the Act, Prevention, Prohibition and Redress.

Prevention and Prohibition

> *"The meaning and content of fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality…"*
>
> Late Justice J.S. Verma

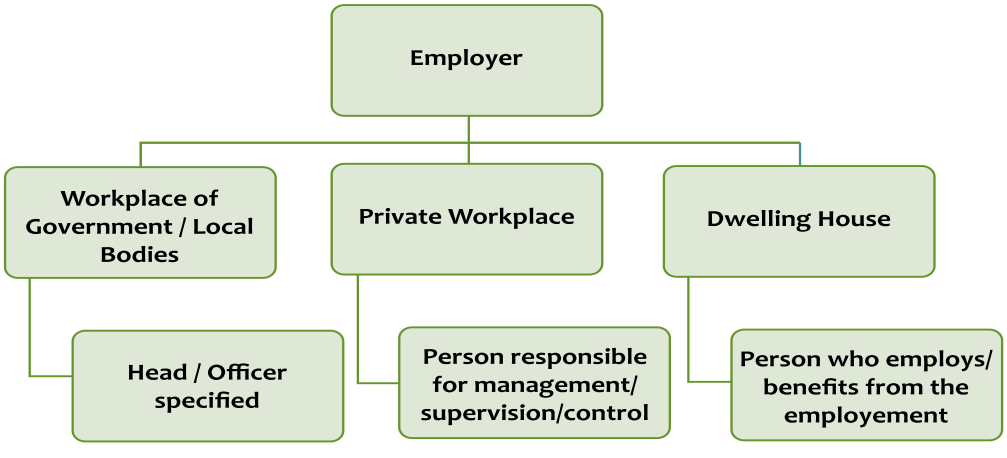
This section describes those who are both responsible and accountable to prevent workplace sexual harassment in compliance with the Act. It also highlights the role of workplaces in prohibiting workplace sexual harassment through an effectively communicated policy.

3.1 PREVENTIVE AUTHORITIES

3.1.1 WHO IS AN EMPLOYER?

An employer refers to:

1. The head of the department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the Appropriate Government or local authority or such officer specified in this behalf.
2. Any person (whether contractual or not) responsible for the management, supervision and control of a designated workplace not covered under clause (i).
3. A person or a household who employs or benefits from the employment of domestic worker or women employees.



3.1.2 WHO IS AN APPROPROATE GOVERNMENT?

As per the Act, Appropriate Government means:

i. In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—
   a. By the Central Government or the Union Territory administration, the Central Government;
   b. By the State Government, the State Government;

ii. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government.

3.2 WHO IS A DISTRICT OFFICER (DO)?

State Governments will notify a District Magistrate/Additional District Magistrate/ Collector/ Deputy Collector as a District Officer at the local level. The District Officer will be responsible for carrying out the powers and functions under the Act at the district levels (including every block, taluka, tehsil, ward, and municipality).

3.3 RESPONSIBILITIES OF THE AFOREMENTIONED AUTHORITIES

Under the law the employer/DO is obliged to create a workplace free of sexual harassment. It is the responsibility of the Employer/District Officer in general to:

1. Create and communicate a detailed policy;
2. Ensure awareness and orientation on the issue;
3. Constitute Complaints Committee/s in every workplace and district so that every working woman is provided with a mechanism for redress of her complaint(s);
4. Ensure Complaints Committees are trained in both skill and capacity;
5. Prepare an annual report and report to the respective state government;
6. District Officer will also appoint a nodal officer to receive complaints at the local level.

3.2.1 Complaints Committee/s

The Act provides for two kinds of complaints mechanisms: Internal Complaints Committee (ICC) and Local Complaints Committee (LCC). All Complaints Committees must have 50 per cent representation of women. ICC or LCC members will hold their position not exceeding three years from the date of their nomination or appointment.

1) Internal Complaints Committee (ICC)

Every employer is obliged to constitute an ICC through a written order. The ICC will be composed of the following members:

No	Member	Eligibility
1.	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ 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 NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

Where the office or administrative units of a workplace are located in different places, division or sub-division, an ICC has to be set up at every administrative unit and office.

ICC/LCC ARE MANDATORY

The employee who had a fundamental right to a workplace free of sexual harassment, had complained about sexual harassment. According to the Court, had the organisation complied with the Vishaka Guidelines and set up such a Complaints Committee, the preventative benefit would have been three-fold:

1. Ensured a place where women employees could seek redress;
2. Sent a clear message to the workplace that such complaints would be enquired into by a specially designated committee with external expertise;
3. Prevented a series of litigation that followed.

Hence, the Madras High Court awarded Rs. 1.68 crores in damages to an employee for the non-constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).

Ms. G v. ISG Novasoft Technologies Ltd. Madras High Court (Crl.R.C.No.370 of *2014 order dated 02.09. 2014.* Original Petition No.463 of 2012

2) Local Complaints Committee (LCC)

The District Officer will constitute an LCC in every district so as to enable women in the unorganised sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

1. From women working in an organisation having less than 10 workers;
2. When the complaint is against the employer himself;
3. From domestic workers.

No	Member	Eligibility
1.	Chairperson	Nominated from amongst the eminent women in the field of social work and committed to the cause of women
2.	Member	Nominated from amongst the women working in the block, taluka or tehsil or ward or municipality in the district
3.	2 Members	Nominated from amongst such NGO/associations/persons committed to the cause of women or familiar with the issues relating to sexual harassment, provided that: • *At least one must be a woman* • *At least one must have a background of law or legal knowledge*
4.	Ex Officio member	The concerned officer dealing with social welfare or women and child development in the district

*One of the nominees shall be a woman belonging to the SC/ST/OBC/Minority community notified by the Central Government.

3) External Members on the Complaints Committee/s

The Act refers to external members, which generally means persons who have expertise with the issue of sexual harassment. Given the largely intangible nature of workplace sexual harassment, there are a range of complexities involved in responding effectively to workplace sexual harassment complaints. For this reason, external third party/ members on the Complaints Committee/s (from civil society or legal background) should possess the following attributes:

1. Demonstrated knowledge, skill and capacity in dealing with workplace sexual harassment issues/complaints;
2. Sound grasp and practice of the legal aspects/implications.

Such expertise will greatly benefit Complaints Committees in terms of fair and informed handling of complaints to lead to sound outcomes. These external third party members shall be paid for their services on the Complaints Committees as prescribed.

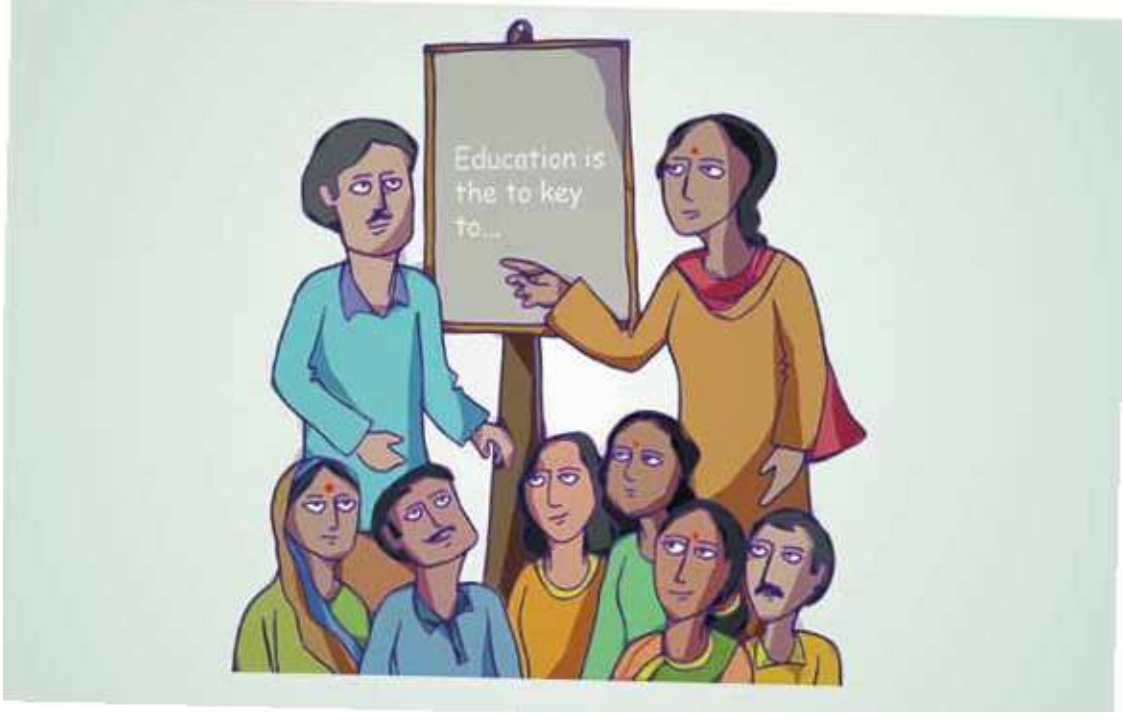
Criteria for the External Member

A 'person familiar with issues relating to women' would mean such persons who have expertise in issues related to sexual harassment and may include any of the following:

- At least 5 years of experience as a social worker, working towards women's empowerment and in particular, addressing workplace sexual harassment;
- Familiarity with labour, service, civil or criminal law.

3.2.2 Sexual Harassment at Workplace Policy

Employers/District Officers are responsible for complying with prohibition, prevention and redress of workplace sexual harassment. In practice, this means having a policy that: (1) prohibits unwelcome behaviour that constitutes workplace sexual harassment; (2) champions prevention of workplace sexual harassment through orientation, awareness and sensitization sessions; and (3) provides a detailed framework for redress.



3.2.3 Dissemination of Information and Awareness Generation

Employers/ District Officers have a legal responsibility to:

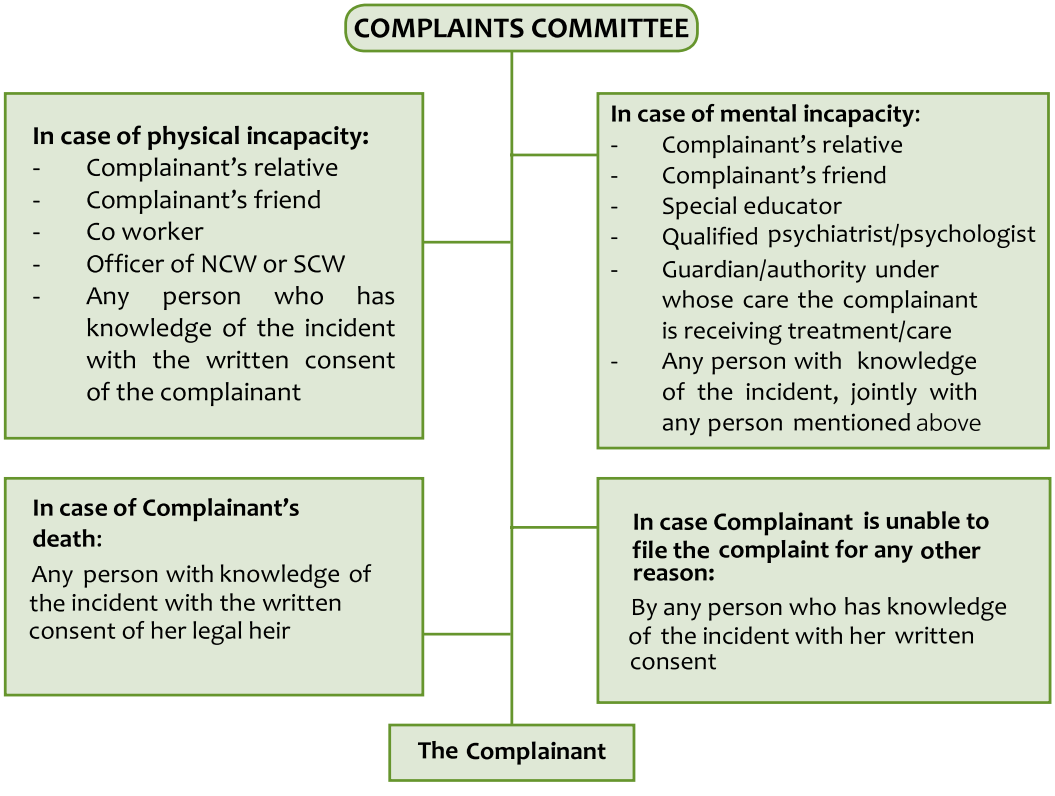
1. Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes.
2. Carry out awareness and orientation for all employees.
3. Create forums for dialogue i.e. Panchayati Raj Institutions, Gram Sabhas, Women's Groups, Urban Local Bodies or like bodies, as appropriate.
4. Ensure capacity and skill building of Complaints Committees.
5. Widely publicize names and contact details of Complaints Committee members.

Redress

> *"...the time has come when women must be able to feel liberated and emancipated from what could be fundamentally oppressive conditions against which an autonomous choice of freedom can be exercised and made available by women. This is sexual autonomy in the fullest degree"*
>
> Late Chief Justice J.S. Verma, Justice Verma Committee Report, 2013

This section is about Redress. It provides helpful information on who can complain, to whom, and what a complaint should contain. It also gives information and lays out the steps involved when a complaint has reached the Complaints Committee, in terms of the process, findings and recommendations.

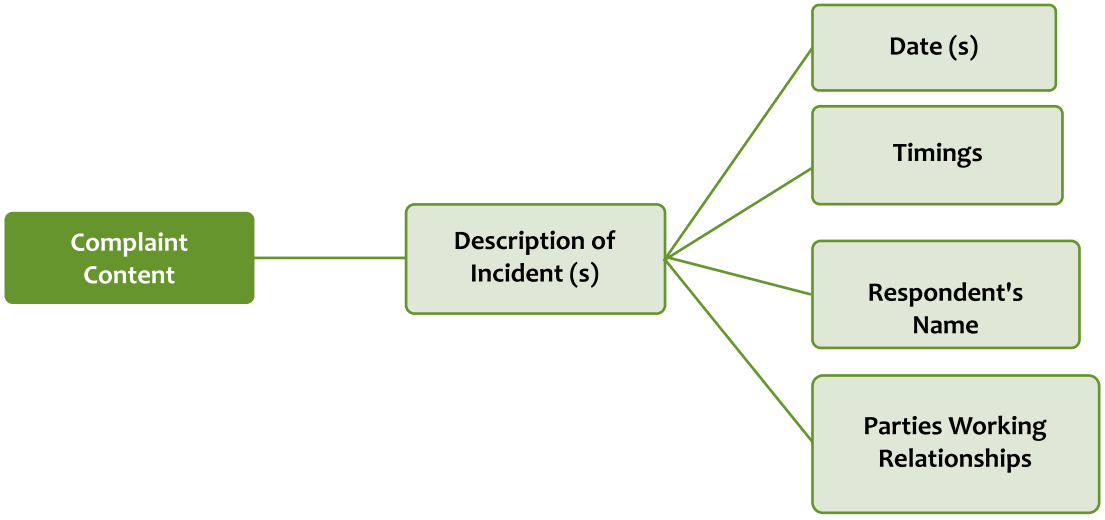
4.1 WHO CAN COMPLAIN AND WHERE?



Generally, where there are less than ten workers, any woman employee can complain to the Local Complaints Committee with the support of the Nodal Officer, when required. It is the responsibility of the District Officer to designate a person as the Nodal Officer in every block, taluka and tehsil in rural or tribal areas and wards or municipalities in the urban areas, to receive the complaints of workplace sexual harassment from women. The Nodal Officer will forward all such complaints within seven days of its receipt to the concerned Complaints Committee for appropriate action. In most other workplaces, a woman employee can make a complaint to the Internal Complaints Committee.

4.2 WHAT SHOULD THE COMPLAINT CONTAIN?

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.



4.3 WHAT CAN AN EMPLOYEE/WORKER EXPECT?

When it comes to redress for workplace sexual harassment, employee/worker has a right to expect -a ***trained***, ***skilled*** and ***competent*** Complaints Committee, a time bound process, information confidentiality, assurance of non-retaliation, counselling or other enabling support where needed and assistance if the complainant opts for criminal proceedings.

4.3 A. RIGHTS OF THE COMPLAINANT

- An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment
- A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent

- Keeping her identity confidential throughout the process
- Support, in lodging FIR in case she chooses to lodge criminal proceedings
- In case of fear of intimidation from the respondent, her statement can be recorded in absence of the respondent
- Right to appeal, in case, not satisfied with the recommendations/findings of the Complaints Committee

4.3 B. RIGHTS OF THE RESPONDENT

- A patient hearing to present his case in a non-biased manner
- A copy of the statement along with all the evidence and a list of witnesses submitted by the complainant
- Keeping his identity confidential throughout the process
- Right to appeal in case not satisfied with the recommendations/findings of the Complaints Committee

4.4 KEY RESPONSIBILITIES

To effectively address workplace sexual harassment complaints, a Complaints Committees must first be aware of their key responsibilities, some of which are highlighted below:

1. Be thoroughly prepared
2. Know the Act, Policy and/or relevant Service Rules
3. Gather and record all relevant information
4. Determine the main issues in the complaint
5. Prepare relevant interview questions
6. Conduct necessary interviews
7. Ensure parties are made aware of the process and their rights/responsibilities within it
8. Analyse information gathered
9. Prepare the report with findings/recommendations

4.5 KNOWLEDGE, SKILLS, TRAINING

Dealing with workplace sexual harassment complaints is often complex. Hence Complaints Committee/s must possess critical skills/capacity to effectively carry out their role. That includes a sound grasp of the Act, Vishaka Guidelines, applicable Service Rules, relevant laws and an understanding of workplace sexual harassment and related issues. Complaints Committee skills must include an ability to synthesise information i.e. relevant documents, the law and interviews. They should also be able to communicate effectively, write clearly, listen actively and conduct interviews. They should be competent at showing empathy, being impartial and being thorough. They should be able to identify sexual harassment and its impact.

A Complaints Committee/s is required to be trained in both **skill** and **capacity** to carry out a fair and informed inquiry into a complaint of workplace sexual harassment. An absence of such training will lead to unequal and unfair results, which can cost employers, employees, complainants as well as respondents.

FAIR AND INFORMED INQUIRY

Within 6 months of joining The Statesman newspaper, Rina Mukerhjee lost her job. While the company alleged that her work was "tardy" and "lacking in quality" it suppressed Rina's complaint of sexual harassment against the news coordinator, Ishan Joshi. Within her first month of work, Rina had taken her complaint directly to the Managing Director, Ravinder Kumar. Time passed, nothing happened and Rina was fired. In a rare display of social context insight and clarity, the Industrial Tribunal (West Bengal) rejected the Statesman's claim that Rina only referred to "professional" harassment in her complaint to Mr. Kumar. In the Tribunal's view, Mr. Kumar's failure to dig deeper was clearly suspect- "... it becomes clear that there was no Committee on Sexual Harassment, as per the Honb'le Supreme Court's direction in Vishaka vs State of Rajasthan, existing in The Statesman, at that relevant time. ...to expect-the lady workman to file a written complaint and not to believe the same, when it has been filed 'at a later date' is sheer bias." The Statesman was ordered to reinstate Rina and grant her full back wages.

M/s The Statesmen Ltd. and Smt. Rina Mukherjee. Order of K.K. Kumai, Judge, dated 06.02.2013, Fourth Industrial Labour Tribunal (West Bengal)

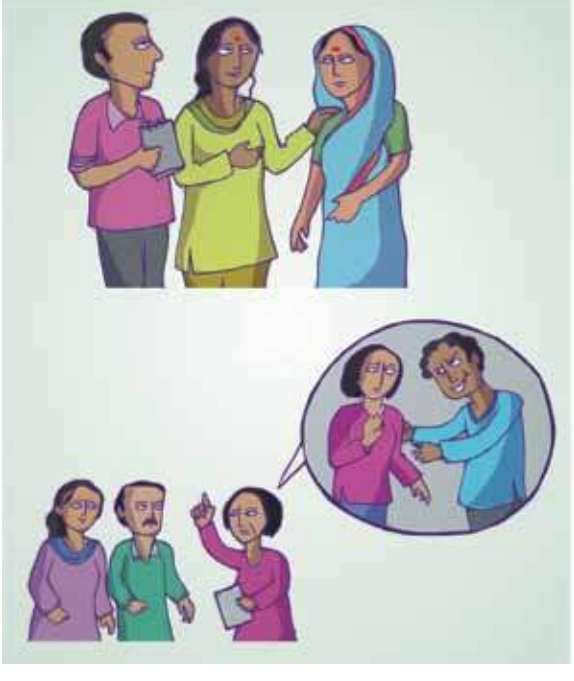
4.6 DO'S AND DON'TS FOR COMPLAINTS COMMITEE

DO'S

1. Create an enabling meeting environment.
2. Use body language that communicates complete attention to the parties.
3. Treat the complainant with respect.
4. Discard pre-determined ideas.
5. Determine the harm.

DON'TS

1. Get aggressive.
2. Insist on a graphic description of the sexual harassment.
3. Interrupt.
4. Discuss the complaint in the presence of the complainant or the respondent.

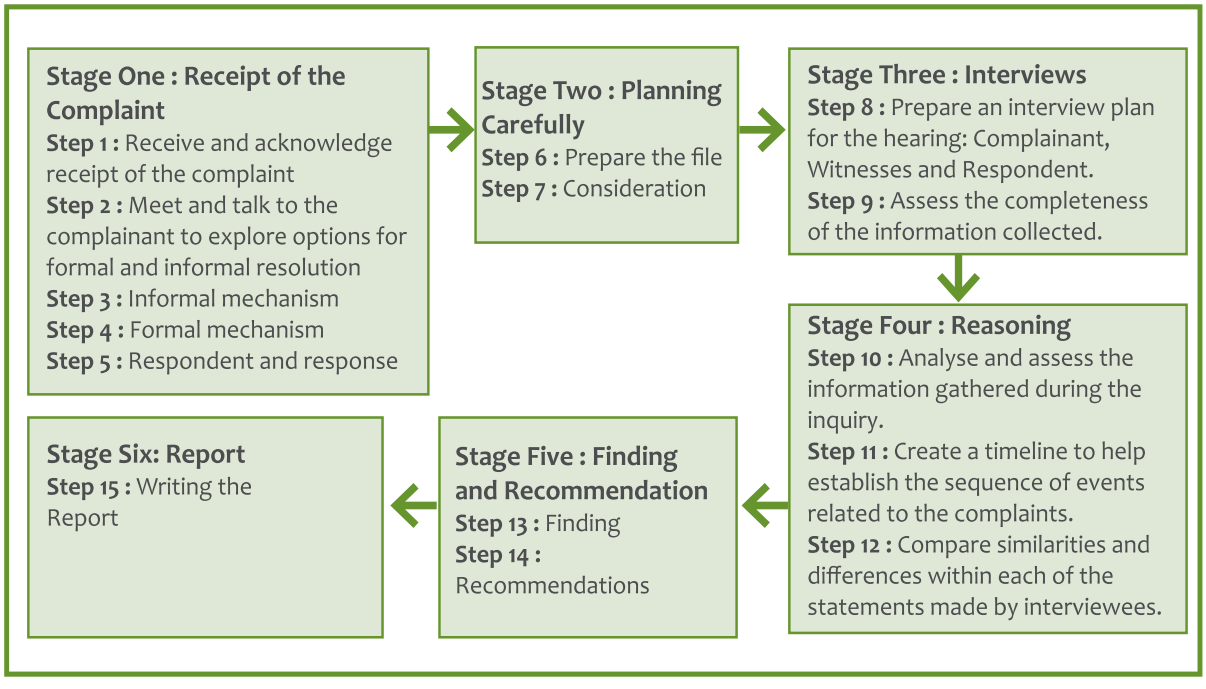


4.7 NON-NEGOTIABLES DURING THE INQUIRY PROCESS

During a redress process the Complaints Committee/s are required to assure confidentiality, non-retaliation and recommend interim measures as needed to conduct a fair inquiry.

4.8 THE SEXUAL HARASSMENT COMPLAINT PROCESS

The Complaints Committee/s needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.



STAGE ONE: RECEIPT OF THE COMPLAINT

A fair, prompt, and impartial inquiry process starts with a Complaints Committee capable of creating an environment of trust and confidence throughout the inquiry.

Step 1 : Receive and Acknowledge Receipt of the Complaint

The complainant submits a sexual harassment complaint in writing within three months of the last alleged incident to the Complaints Committee or any other person designated by the organization/ District Officer (i.e. Nodal Officer) to receive and manage complaints of sexual harassment.

Training and Skill Building : An Institutional Responsibility

It is important that both the Committee and any other person designated by the organization/ District Officer to receive or otherwise handle a sexual harassment complaint has there quired competency and skill building training formanaging a complaint and/or any concern related to workplace sexual harassment.

Upon receipt, the complaint should be reviewed for:

1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
2. Clarity in the complaint.
3. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

Elements of the Behaviour

The complaint needs to satisfy the following elements:

1. The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment;
2. The behaviour was directed at the complainant;
3. The complainant experienced harm.
4. The behavior occurred in the workplace or at any location/any event related to work

Step 2: Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

However, before recommending conciliation, the Committee must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the Complaints Committee will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICC/LCC who in turn will forward the same to the employer/District Officer for further action based on the resolution. Employers/District Officers are responsible for taking steps to ensure that the complainant is not subject to any backlash.

The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

Step 4: Formal Mechanism

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.

2. Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
3. Ensure that the independent third party member has sound knowledge, skill, and experience in dealing with workplace sexual harassment complaints.

Step 5: Respondent and Response

1. As per the procedure provided in the Service Rule; or in absence of the same
2. Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.
3. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

STAGE TWO: PLANNING CAREFULLY

Step 6: Prepare the File

A sound inquiry relies on sound preparation. This includes taking into account the following steps:

1. Documentation

Create an independent confidential file of the complaint and all subsequent related documentation.

2. Review Law & Policy

Have a clear knowledge and understanding of the Act/Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.

3. Make a List

Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable.

Relevant Witnesses

The complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. In addition, the Complaints Committee also has the discretion to call any person as a witness, who it believes, has something to contribute to the inquiry process.

4. Supporting Documents

Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.

5. **Act Quickly**

Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes:

a. The names of the parties and witnesses to be interviewed

b. Any documentary support that needs to be examined

c. Timeline

Preparing the Plan - Key Elements to Consider

1. **Defining the Issues**

   What is the complaint

   Questions or points that require clarification

2. **Determining a violation of the Policy/Act**

   What information is needed to determine that there has been a violation

3. **Logistics**

   Venue for conducting the interviews. Are special logistics required

   Creating timelines for each

4. **Critical Information**

   What documents need to be looked at

   Witnesses to be questioned and in what order

5. **Areas of Questioning**

   Questions for each specific incident and party/witness

   Questions for each particular issue

   Issues likely to require follow-up

Step 7: Consideration

1. Interim Measures

While a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (upto 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment.*

2. Support

Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.

STAGE THREE: INTERVIEWS

Step 8: Prepare an Interview Plan for the Hearing: Complainant, Witnesses, Respondent

1. Based on the results of the previous steps and before conducting interviews, the Complaints Committee should decide which issues need to be pursued for questioning.
2. Interviews are meant to obtain information that is relevant to the complaint from individuals.
3. Interviews should be conducted with each *person separately and in confidence. The complainant and the respondent should not be brought face to face with each other.*

Interviewing Tips

1. Introduction

Questioning the parties and witnesses in a situation of workplace sexual harassment is a sensitive task. The Complaints Committee must therefore proceed with empathy, while appreciating at times, a different version of the facts.

2. Questioning

Determine beforehand the following:

- Date, time, place and order of interviews
- Questions and their order
- Time for each interview

Generally rely on questions related to **who, what, where, when and how.** Remember:

- Questions ought to be clear and focused.
- Obtain as much information as possible through the interview.
- Do not share information gathered from other sources.

3. Choose an Appropriate Location

To create trust, comfort and openness

4. Explain the Interview Process

Explain how the interview will be conducted and what is expected

5. Records of the Interview

Take notes and explain the need for a proper record

6. Manage the Interview

The Chairperson of the Complaints Committee is responsible for ensuring the interviews are correctly carried out and due process followed

7. Sign Statements

At the conclusion of the interview, have those interviewed, sign and date statements made and recorded before the Complaints Committee

Step 9: Assess the Completeness of the Information Collected

At this stage, the Complaints Committee should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

STAGE FOUR: REASONING

Step 10: Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:-

- Identify the substance of each aspect of the complaint.
- Determine, whether or not, on a **balance of probability**, the unwelcome sexual harassment took place.
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.
- Comment on any underlying factor(s) that may have contributed to the incident.

Step 11: Create a timeline to help establish the sequence of events related to the complaint.

Step 12: Compare similarities and differences within each of the statements made by the interviewees.

STAGE FIVE: FINDING AND RECOMMENDATION

Step 13: Finding

Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.

Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

Step 14: Recommendations

Based on its findings, the Complaints Committee shall then make appropriate recommendations which may include:

1. Where the Complaints Committee is unable to uphold the complaint, it shall recommend no action.
2. Where the Complaints Committee upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules, which may include a warning to terminate.

In case service rules do not exist, recommended action may include:

- Disciplinary action, including a written apology, reprimand, warning, censure;
- Withholding promotion/ pay raise/ increment;
- Termination;
- Counselling;
- Community service.

3. The Complaints Committee may also recommend financial damages to the complainant, while deciding the amount they shall take into consideration:

- Mental trauma, pain, suffering and emotional distress caused;
- Medical expenses incurred;
- Loss of career opportunity;
- Income and financial status of the respondent.

If the amount is not paid it can be recovered as an arrear of land revenue.

4. The Complaints Committee can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

STAGE SIX: REPORT

Step 15: Writing the Report

The Complaints Committee will prepare a final report that contains the following elements:

- A description of the different aspects of the complaint;
- A description of the process followed;
- A description of the background information and documents that support or refute each aspect of the complaint;
- An analysis of the information obtained;
- Findings as stated above;
- Recommendations.

An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties. The Employer or District Officer is obliged to act on the recommendations within 60 days. Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.

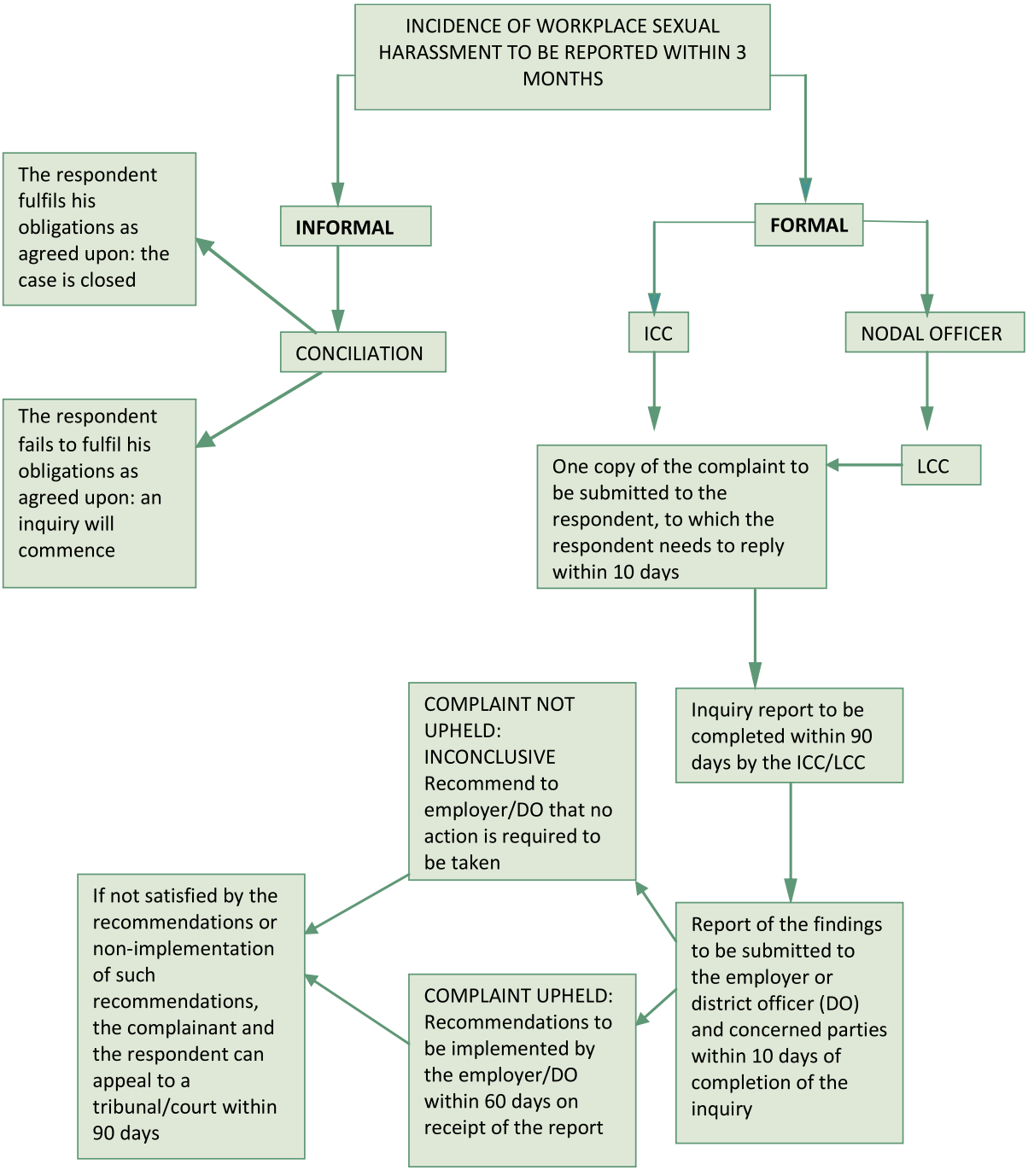
Given that most workspaces today are gender unequal and male-dominated, it is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

4.9 AT A GLANCE

1) Complaints Committee's Checklist

- Review the written complaints and response to complaints
- Review the applicable policy, the Act/Rules, Vishaka Guidelines and other relevant laws
- Develop a plan
- Meet with the complainant
- Meet with the respondent
- Meet with the witnesses
- Record statements and have them dated and signed
- Review and adapt the plan, as needed
- Proceed with further interviews, as needed
- Analyze all the facts to develop reasoning
- Arrive at the findings
- Give recommendations
- Prepare the report
- Submit the file to the organization or District Officer for implementation of the recommendations and for safe keeping.

INQUIRY PROCESS AT A GLANCE



2) Timelines as per the Act

Submission of Complaint	**Within 3 months of the last incident**
Notice to the Respondent	**Within 7 days of receiving copy of the complaint**
Completion of Inquiry	**Within 90 days**
Submission of Report by ICC/LCC to employer/DO	**Within 10 days of completion of the inquiry**
Implementation of Recommendations	**Within 60 days**
Appeal	**Within 90 days of the recommendations**

3) Confidentiality

The Act prohibits the publication or making known the contents of a complaint and the inquiry proceedings. Any breach of confidentiality will result in specific consequences.

The Act prohibits the disclosure of:

- Contents of the complaint;
- Identity and address of complainant, respondent and witnesses; Information pertaining to conciliatory/inquiry proceedings or recommendations of the ICC/LCC;
- Action taken by the employer/DO.

Accountability: Any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action taken under the provisions of this Act.

Consequences: As per the Service Rules or Rs.5,000/ to be collected by the employer.

Exception: Dissemination of information regarding the justice secured without disclosure of name, address, identity and particulars of complainant or witnesses.

Section 4 completes the details of the Complaints Committee process in addressing formal complaints. It serves as a guideline to action in providing appropriate redress. The manner in which a complaint is addressed will make all the difference to the equal rights of working women as well as the kind of workplace culture being promoted.

Monitoring

> *"Vishaka was a victory for all women"*
> Bhanwari Devi

This section refers to ways in which application of the Act at all workplaces is monitored. Monitoring is a way to ensure compliance of the Act on the ground. As an additional means of monitoring, the Act mandates the submission of Annual Reports with specific information as well as specific consequences where compliance is lacking.

The Act authorizes Appropriate Government to monitor the implementation of the Act. As per the Act, Appropriate Government means:

i. In relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly-
   a. By the Central Government or the Union Territory administration, the Central Government;
   b. By the State Government, the State Government;
ii. In relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

Thus to monitor the Act, the Appropriate Government has the authority to undertake any of the following measures:

5.1 Inspection

In relation to workplace sexual harassment, when it is in the public interest or in the interest of women employees, every employer/District Officer can be ordered by the Appropriate Government i.e. State and Central Government, to make available any information, record or document, including opening its workplace for inspection relating to the same.

5.2 Annual Report

The Appropriate Government is entrusted with the monitoring of the implementation of this Act and for maintaining the data on the number of cases filed and disposed of under it. In particular, the Act mandates submission of an Annual Report by the ICC/LCC to the employer/District Officer.

The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

a. No. of complaints received;

b. No. of complaints disposed of;

c. No. of cases pending for more than 90 days;

d. No. of workshops/awareness programmes carried out;

e. Nature of action taken by the employer/DO;

The Report of ICC will be forwarded to the DO through the employer.

5.3 Penalties

An employer can be subjected to a penalty of up to INR 50,000 for:

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

Monitoring is a critical yardstick to measure success in terms of compliance with the Act. Additionally, it highlights those areas, in terms of law and practice, which may require improvement and/or additional information and guidance at both the State as well as the workplace levels.

Global Norms and Good Practices

Increasing awareness and compliance with international standards is a reminder that we must not lose sight of the goal. Over the years, the international community has developed benchmarks that provide guidance on what the laws around workplace sexual harassment should look like in practice. The key benchmarks are listed below:

1. Recognition that workplace sexual harassment is a form of human rights violation. [i]
2. Recognition that sexual harassment is a form of gender-specific violence.[ii]
3. Equality, dignity and worth of a human person must be emphasized.
4. Gender-based violence includes sexual harassment and impairs the enjoyment by women of several basic human rights and fundamental freedoms.[iii] Some of these rights include:
    - The right to life, the right to liberty and security of the person.
    - The right to equal protection under the law.
    - The right to the highest standard attainable of physical and mental health.
    - The right to just and favourable conditions of work.[iv]
5. Eliminating violence against women and advancing women's equality includes the right to be free from workplace sexual harassment.[v]
6. Legislation on violence against women should define violence to include sexual harassment. Such legislation should also recognize sexual harassment as a form of discrimination and a violation of women's rights with health and safety consequences.[vi]
7. The International Labour Organization (ILO) has also drawn specific attention to domestic workers, who have a right to "enjoy effective protection against all forms of abuse, harassment and violence." [vii]

In terms of practice, international law and policy frameworks have an important role to play in encouraging the adoption of an understanding of sexual harassment as a fundamental human right and equality issue, and not just a problem for labour/employment law to solve.

Converting these concepts into practice involves constant monitoring and adapting to changing circumstances. As a start, six simple steps to keep in mind and practice in any workplace should involve the following:

1. Make sure there is a policy that has been "effectively" communicated to all workers, irrespective of whether they are paid or volunteers.
2. Display details of both informal and formal ways available to a worker to address/complain about workplace sexual harassment.
3. Undertake orientation on workplace sexual harassment for all workers in respective organizations, establishments or institutions.
4. A Complaints Committee which is trained in terms of skill and capacity is critical for building trust.
5. Encourage senior persons/leaders/supervisors or any person who can influence employment-related decisions, to become role models.
6. Men and women should be included in building a culture which no longer tolerates workplace sexual harassment.

Legally, workplace sexual harassment can no longer be dismissed as some moral transgression. The Vishaka Guidelines raised that bar, when for the first time it recognized "each incident of sexual harassment" as a violation of the fundamental right to equality. That notion has found its way into the Act, which promotes the right of women as citizens to a workplace free of sexual harassment. Complaints Committees at all workplaces are now charged with the role to ensure that the right remains intact, through a fair, informed, user-friendly process of redress.

Prioritising prevention and establishing a redress mechanism, which comprises of 50 per cent women, a woman chair and an external third party expert, is India's innovative model in responding to working women's experience of sexual harassment. Assuming adequate changes follow, in both law and practice to meet global benchmarks, that model can evolve into an exemplary best practice. To get there, workplaces in India today, must rise to the requirement of promoting gender equality.

[i] General Recommendation 12 of 1989, Committee on the Elimination of All Forms of Discrimination against Women.

[ii] General Recommendation 19 of 1992, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

[iii] Ibid.

[iv] Article 3, Declaration on the Elimination of Violence against Women, 1993.

[v] The Beijing Platform of Action drawn at the United Nations' Women's Conference in Beijing in 1995.

[vi] United Nations UN Division for the Advancement of Women *Handbook for Legislation on Violence Against Women* (UN Handbook). http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf

[vii] Article 5, ILO Decent Work for Domestic Workers Convention, 2011 (No. 189).


A safe
workplace
is every
woman's
right



Government of India
Ministry of Women and Child Development

No. 11013/2/2014-Estt (A-III)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
Establishment Division

.....

North Block, New Delhi
Dated February 2, 2015

OFFICE MEMORANDUM

Subject: Central Civil Services (Conduct) Rules 1964 – Guidelines regarding prevention of sexual harassment of women at the workplace– regarding

Following the promulgation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [SHWW(PPR) Act] and notification of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 [SHWW(PPR) Rules] on 09.12.2013, the Government has recently, on 19.11.2014, notified the amendments to Central Civil Services (Conduct) Rules 1964 and Classification, Control and Appeal Rules, 1965. The amendments and other salient features of the Act/ Rules was brought to the notice of all concerned vide Office Memorandum of even no. dated 27.11.2014. The amendments to the Central Civil Services (Conduct) Rules 1964 and Classification, Control and Appeal Rules, 1965 and the Office Memorandum dated 01.12.2014 are available on the Department's website.

2. The following guidelines, conveying the decision of the Committee of Secretaries on this subject, were issued vide this Department's Office Memorandum No. 11013/3/2009-Estt.(A) dated 03.08.2009,

> "As regards provisions for protection of women, it was suggested that the complaints committee mechanism provided under Vishakha guidelines relating to sexual harassment should be strictly in accordance with the judgment and steps should be taken to ensure that the committee is effective and functional at all times. It would also be desirable for the Committees to meet once a quarter, even if there is no live case, and review preparedness to fulfil all requirements of the Vishakha judgment in the Department/Ministry/ organization concerned."

3. As per the guidelines issued vide Office Memorandum dated 21.07.2009, it is also to be ensured that the Complaints Committee shall at all times be in existence and changes in its composition, whenever necessary, should be made promptly and adequately publicized. The composition of the Complaints Committee should also be posted on the websites of the concerned Ministries/Departments/Offices concerned.

4. Vide the Office Memorandum dated 01.12.2014, the attention of the Ministries/ Departments was also invited to the reporting requirements mentioned in the SHWW(PPR) Act and SHWW(PPR) Rules.

...2/

5. All Ministries/ Departments are requested to please review the progress of implementation of the existing abovementioned guidelines issued in the aftermath of the Vishakha judgment.

6. Attention of all Ministries is invited to Section 22 of the Act relating to including information in Annual Report, and to request that information relating to number of cases filed, if any, and their disposal may be included in the Annual Report of the Ministry / Department.

7. All Ministries / Departments are also requested to furnish an annual return (as on 31st March) in the enclosed proforma to this Department by 30th April every year.

(J.A. Vaidyanathan)
Director (E)
Telefax: 2309 3179

To

1. The Secretaries of all Ministries/ Departments
2. President's Secretariat, New Delhi
3. Vice-President's Secretariat, New Delhi
4. The Prime Minister's Office, New Delhi
5. Cabinet Secretariat, New Delhi
6. Rajya Sabha Secretariat/ Lok Sabha Secretariat, New Delhi
7. The Registrar General, the Supreme Court of India, New Delhi
8. The Registrar, Central Administrative Tribunal, Principal Bench, New Delhi
9. The Comptroller and Auditor General of India, New Delhi
10. The Secretary, Union Public Service Commission, New Delhi
11. The Secretary, Staff Selection Commission, New Delhi
12. The Chief Vigilance Officers of the all Ministries/ Departments
13. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
14. National Commission for Scheduled Castes, New Delhi
15. National Commission for Scheduled Tribes, New Delhi
16. National Commission for OBCs, New Delhi
17. The Secretary, National Council (JCM), 13, Feroze Shah Road, New Delhi
18. Director (Administration), DoPT
19. NIC (DOP&T) for placing this Office Memorandum on the Website.
20. Hindi Section for providing the Hindi translation

Reference: DOP&T O.M.No. 11013/2/2014-Estt.A-III dated February 2, 2015

Annual Return on cases of Sexual Harassment

Period : 1st April..... to 31st March, ...

Ministry / Department :.....

S.No.		Ministry / Department	Autonomous Bodies
1.	Number of complaints of sexual harassment received in the year		
2.	Number of complaints disposed off during the year		
3.	Number of cases pending for more than 90 days		
4.	Number of workshops on awareness programmes against sexual harassment conducted during the year		
5.	Nature of action		

Note:

1. Information is to be provided in consolidated form in respect of Ministry/ Department as a whole (including Attached / Subordinate Offices).
2. Information consolidated in respect of autonomous bodies may be provided in the appropriate column.

No.DOPT-1667566576557
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel and Training
ESTT.(Estt. A-III)
****

(Dated 04 November, 2022)

OFFICE MEMORANDUM

Prevention of sexual harassment of working women at workplace

In the case of Vishaka and Ors Vs State of Rajasthan and Ors (JT 1997 (7) SC 384), the Hon'ble Supreme Court had laid down the guidelines and norms to be observed to prevent sexual harassment of working women. In pursuance to the pronouncement of this judgement, Department of Personnel and Training took the following steps:

(i) Guidelines/ Norms of the Hon'ble Supreme Court were circulated by Department of Personnel & Training vide OM No. 11013/10/97-Estt.(A) dated 13.02.1998 for strict compliance by the Ministries/ Departments.

(ii) Amendments in Central Civil Services (Conduct) Rules, 1964 were also carried out by inserting the Rule 3-C declaring Sexual Harassment of Working Women as a misconduct, vide Notification No. 11013/10/97-Estt.(A) dated 13.02.1998 published in Gazette of India as G.S.R. 49 dated 07.03.1998

(iii) Subsequently, Central Civil Services (Classification, Control & Appeal) Rules, 1965 were also amended by inserting a provision below sub-rule 2 of Rule 14 in connection with treatment of the Complaint Committee as Inquiring Authority and to follow the procedure as laid down in these Rules to hold inquiry into the complaints of Sexual Harassment. This was notified vide Notification No. 11012/5/2001-Estt.A dated 01.07.2004 published in Gazette of India vide G.S.R. No. 225 dated 10.07.2004

2. Later on, the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' {SHWW (PPR) Act} was promulgated on 22.04.2013. The 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013' were notified on 09.12.2013. The Act and the Rules framed thereunder provide a redressal mechanism for handling cases of sexual harassment of women at workplace.

3. Thus, the provisions relating to handling cases of sexual harassment of women at workplace are scattered across SHWW (PPR) Act, Central Civil Services (Conduct) Rules, 1964, Central Civil Services (Classification, Control and Appeal) Rules, 1965, etc. In addition, a number ofexecutive instructions covering different aspects of this issue have been issued from time to time. Now, with a view to facilitate the Ministries/Departments and other stake holders in proper implementation of these provisions, a need has been felt to consolidate these provisions and place the same in the public domain for easy access as and when required.Accordingly, the relevant provisions of the Act/Rules/executive instructions have been compiled as under:

(A) DEFINITION OF "SEXUAL HARASSMENT" AND "WORKPLACE"

Section 2(n) and 2(o) of the SHWW (PPR) Actdefines "Sexual Harassment" and "Workplace" respectively. The same have been incorporated through an amendment in the CCS (Conduct) Rules, 1964 as under:

"*Rule 3C - Prohibition of sexual harassment of working women*

(1) No Government servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation- 1 For the purpose of this rule,

(a) "sexual harassment" includes any one or more of the following acts or behaviour, (whether directly or by implication), namely:—

(i) physical contact and advances; or
(ii) demand or request for sexual favours; or
(iii) sexually coloured remarks; or
(iv) showing any pornography; or
(v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: -

(i) implied or explicit promise of preferential treatment in employment; or
(ii) implied or explicit threat of detrimental treatment in employment; or
(iii) implied or explicit threat about her present or future employment status; or
(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
(v) humiliating treatment likely to affect her health or safety.

(c) "workplace" includes, -

(i) any department, organisation, 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 Central Government;
(ii) hospitals or nursing homes;

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

(iv) 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;

(v) a dwelling place or a house."

(Rule 3-C of the CCS (Conduct) Rules, 1964)

(B) COMPLAINTS COMMITTEE:

❖ Complaints Committees have been set up in all Ministries/Department and organizations under them in pursuance to the judgement of the Hon'ble Supreme Court in the *Vishakha* case. As per Section 4(1) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("the Act"), the Internal Complaints Committee (referred to as "Complaints Committee" hereafter) is to be set up at every workplace. As per Section 4(2), this will be headed by a woman and at least half of its members should be women. In case a woman officer of sufficiently senior level is not available in a particular office, an officer from another office may be so appointed. To prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committees should involve a third party, either an NGO or some other body which is familiar with the issue of sexual harassment.

[Para 1 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015**]**

❖ Section 4 of the SHWW (PPR) Act-

"4. Constitution of Internal Complaints Committee.— (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committees shall consist of the following members to be nominated by the employer, namely: —

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section(1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer

shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee, —

(a) contravenes the provisions of section 16; or
(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section."

[Section 4 of the SHWW (PPR) Act]

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❖ **Seniority of the Chairperson of the Complaint Committee**-

There is no bar either in the CCS (CCA) Rules or under the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* to the Chairperson of the Complaints Committee being junior to the suspect officer or the charged officer. Hon'ble Allahabad High Court has in *Smt. Shobha Goswami vs State of U.P. and 2 Ors*, in WRIT – A No. – 31659 of 2015 observed as follows:

"In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual harassment are brought. The language of Section 4 of the Act only requires the lady member to the Senior Level".

This also does not in any way cause any prejudice to the charged officer.

[Para 2 of OM No. 11013/2/2014-Estt.A-III dated 09.09.2016]

❖ **Complaints Committee to be Inquiring Authority**

As per Proviso to Rule 14(2) of CCS (CCA) Rules, 1965, in case of complaints of sexual harassment, the Complaints Committee set up in each Ministry or Department etc. for inquiring into such complaints shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules. Complaints Committee, unless a separate procedure has been prescribed, shall hold the inquiry as far as practicable in accordance with the procedure laid down in the Rule 14.

[Para 6 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015**]**

❖ **Proviso to Rule 14(2) of the CCS (CCA) Rules, 1965-**

"Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules."

[Proviso to Rule 14(2) of the CCS (CCA) Rules, 1965]

(C) INQUIRY INTO COMPLAINT [FIRST STAGE]

- The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per **Section 9 (1) of the Act**, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

- As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

[Para 7 and 8 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

➢ **Section 9 of the the SHWW (PPR) Act**

"***9. Complaint of sexual harassment***.— *(1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:*

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section."

[Section 9 of the SHWW (PPR) Act]

➢ **Rule 6 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**

"*6. Complainant of Sexual Harassment.- For the purpose of sub-Section (2) of Section 9,-*

(i) Where the aggrieved women is unable to make a complaint on account of her physical incapacity, a complaint may be filed by –

(a) her relative or friend; or
(b) her co-worker; or
(c) an officer of the National Commission for Women or State Women's Commission; or
(d) any person who has knowledge of the incident, with the written consent of the aggrieved women;

(ii) where the aggrieved women is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-

(a) her relative or friend; or

(b) a special educator; or
(c) a qualified psychiatrist or psychologist; or
(d) the guardian or authority under whose care she is receiving treatment or care; or
(e) any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;

(iii) where the aggrieved women for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent;

(iv) where the aggrieved women is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir."

- **Section 11 of the the SHWW (PPR) Act**

"***11. Inquiry into complaint***.— *(1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if prima facie case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code (45 of 1860), and any other relevant provisions of the said Code where applicable:*

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code (45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court the Code of Civil Procedure, 1908 (5 of 1908) when trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;
(b) requiring the discovery and production of documents; and
(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days."

- **Rule 7 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**

*"7. **Manner of Inquiry into complaint.-** (1) Subject to the provisions of section 11, at the time of filing the complaint, the complainant shall submit to the Complaints Committee, six copies of the complaint along with supporting documents and the names and addresses of the witness.*

(2) On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule(1) to the respondent within a period of seven working days.

(3) The respondent shall file his reply to the complaint along with his list of documents, and names and addresses of witnesses within a period not exceeding ten working days from the date of receipt of the documents specified under sub-rule(1).

(4) The Complaints Committee shall make inquiry into the complaint accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an exparte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Chairperson or Presiding Officer, as the case may be:

Provided that such termination or ex-parte order may not be passed without giving a notice in writing, fifteen days in advance, to the party concerned.

(6) The parties shall not be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.

(7) In conducting the inquiry, a minimum of three Members of the Complaints Committee including the Presiding Officer or the Chairperson, as the case may be, shall be present."

- On the completion of an inquiry under this Act, the Complaints Committee shall provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

[Section 13(1) of the SHWW (PPR) Act]

- Where the Complaints Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.

[Section 13(2) of the SHWW (PPR) Act]

- Where the Complaints Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent.

[Section 13(3)(i) of the SHWW (PPR) Act]

(D) INQUIRY UNDER CCS (CCA) RULES, 1965 [SECOND STAGE]

❖ Dual Role

- In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

- As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.

- In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgmental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

[Para 9 to 11 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Decision to issue Charge sheet. and conducting Inquiry

- On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14 (5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.

- If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS (CCA) Rules.

[Para 12 and 13 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ The Inquiry-stages

- In case the Charged Officer denies the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 14 (6) will be forwarded to the Complaints Committee. As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

  (a) summoning and enforcing the attendance of any person and examining him on oath;
  (b) requiring the discovery and production of documents; and
  (c) any other matter which may be prescribed.

- The Disciplinary Authority shall also in terms of Rule 14(5)(c) appoint a Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/ Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. As a first step, the charged officer would be formally asked as to whether he admits the charges. As mentioned above, in case of any clear and unconditional admission of any Article of Charge, no inquiry would be held in respect of that Article and the admission of the Charged Officer would be taken on record. The inquiry would be held, thereafter, in respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 14(8).

- The Inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such documents, if not only given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. TheInquiringAuthority would consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed. Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.

- When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

[Para 14 to 17 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Examination of Witnesses

- Summons would, thereafter, be sent to the witnesses listed in the Charge sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions of the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.

- The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appears as a witness, she would also be examined and cross-examined. The Inquiry Officer may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.

- If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

[Para 18 to 20 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Daily Order Sheet

The Inquiring Authority would also maintain a document called Daily Order Sheet in which all the main events of the inquiry and including requests/representations by the Charged Officer or the Presenting Officer, and decisions thereon would be recorded. For example (i) if the Charged Officer refuses to cross-examine the witnesses, this should be recorded in the Daily Order Sheet (ii) the Daily Order Sheet should record that the Charged Officer had been advised that he has the right to engage a Defense Assistant (iii) it should also be clearly mentioned that the Charged Officer was also informed as to who are eligible to assist him as Defense Assistant. (iv) the Daily Order Sheet should also record in case request of the Charged Officer for engaging a particular person as Defense Assistant is disallowed in the light of the existing instructions. Daily Order Sheet should be signed by the Inquiring Authority, Presenting Officer and the Charged Officer/Defence Assistant.

[Para 21 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Defence Evidence

After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross-examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

[Para 22 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ General Examination of the Charged Officer

After the Defense evidence is over, the Inquiring Authority shall ask Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defense witness. In case however, he declines to do so, the Inquiring Authority is required to generally question him. At this stage due care is required to be exercised that as per Rule 14(18) the purpose of this stage is to apprise Charged Officer of the circumstances which appear to be against him. This is to enable the Charged Officer to explain them to the Inquiring Authority. Presenting Officer and the Defence Assistant do not take any part in the General Examination. Charged Officer may not be compelled to answer questions during examination by the Inquiring Authority.

[Para 23 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Brief

- After this, the Presenting Officer would be asked to submit his brief. A copy of this brief would be given to the Charged Officer. Both the Presenting Officer and the Charged Officer may be allowed reasonable time for submission of their brief.

- The Inquiring Authority then writes the Inquiry Report in which the evidence in support of the charges and against them will be examined. The Report should be a speaking one clearly bringing out as to the evidence on the basis of which any particular conclusion has been reached. Based on this analysis, the Inquiring Authority will give its findings on the Articles as proved or not proved. In case any Article of charge is proved only partially, then the Inquiring Authority should record the extent to which that Article has been proved.

[Para 24 and 25 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Powers of the Committee to make recommendations

- Normally, the Inquiry Officer is not allowed to make any recommendations in his report. Here the function of the Complaints Committee acting as the Inquiring Authority differs.

The Complaints Committee will also have the powers to recommend:-

(a) to transfer the aggrieved woman or the charged officer to any other workplace; or

(b) to grant leave to the aggrieved woman up to a period of three months. (The leave will not be deducted from her leave account).

(c) to grant such other relief to the aggrieved woman as may be prescribed; or

(d) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs.Such compensation will not amount to penalty under Rule 11 of CCS (CCA) Rules in terms of the Explanation (ix) to Rule 11.

(e) to take actionagainst complainant, if the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.

(f) to take actionagainst any witness if such witness has given false evidence or produced any forged or misleading document.

[Para 6 and 7 of the OM No. 11013/2/2014-Estt.A-III dated 27.11.2014]
[Para 5 and 26 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

(g) The Complaints Committee at the written request of the aggrieved women may recommend to the employer to-

i. restrain the respondent from reporting on the work performance of the aggrieved women or written her confidential report, and assign the same to another officer;

ii. restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved women.

[Rule 8 of the SHWW (PPR) Rules, 2013]

- Rule 48 of CCS (Leave) Rules, 1972 [Special Leave connected with inquiry on sexual harassment]:

"48. Special Leave connected to inquiry of sexual harassment - Leave upto a period of 90 days may be granted to an aggrieved female Government Servant on the recommendation of the Internal Committee or the Local Committee, as the case may be, during the pendency of inquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the leave granted to the

aggrieved female Government Servant under this rule shall not be debited against the leave account".

[Rule 48 of CCS (Leave) Rules, 1972]

➢ Explanation (ix) to Rule 11 of the CCS (CCA) Rules, 1965

"*Explanation.—The following shall not amount to a penalty within the meaning of this rule, namely:—*

(ix) Any compensation awarded on the recommendation of the Complaints Committee referred to in the proviso to sub-rule (2) of rule 14 and established in the Department of the Government of India for inquiring into any complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964"

❖ Prohibition of publication or making known contents of complaint and inquiry proceedings.—

➢ The Complaints Committee should also remember that as per the Section 16 of the Act, notwithstanding the RTI Act, 2005, information as regards identity and addresses of the aggrieved woman, respondent and witnesses, Inquiry proceedings, Recommendations of the Committee, shall not be published or communicated or made known to public, press or media in any manner. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

[Para 27 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

➢ **Section 16 and 17 of the the SHWW (PPR) Act**

"***16.Prohibition of publication or making known contents of complaint and inquiry proceedings****.—Notwithstanding anything contained in the Right to Information Act, 2005 (22 of 2005), the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:*

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses."

➢ ***17. Penalty for publication or making known contents of complaint and inquiry proceedings.****— Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.*

❖ With the above stage, the inquiry would be formally over. The Inquiring Authority should prepare separate folders containing the documents mentioned in Rule 14(23) ((ii) of CCS (CCA) Rules, 1965

[Para 28 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Suspension of the Charged Officer

A Government servant may also be placed under suspension before or after issue of a Charge Sheet where his continuance in office will prejudice the investigation, for example if there is an apprehension that he may tamper with witnesses or documents. Suspension may also be resorted to where continuance of the Government servant in office will be against wider public interest such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals. It may be desirable to resort to suspension in case of misdemeanor involving acts of moral turpitude.

[Para 29 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Transfer of Charged Officer:

To ensure fair inquiry, Ministries/ Departments may also consider transferring the suspect officer/ charged officer to another office to obviate any risk of that officer using the authority of his office to influence the proceedings of the Complaints Committee.

[Para 3 of OM No. 11013/2/2014-Estt.(A-III) dated 09.09.2016]

❖ Special provisions to deal with threats or intimidation

Disciplinary Authority may also dispense with inquiry under Rule 19(ii), and action may be taken without the inquiry when the Disciplinary Authority concludes that it is not reasonably practicable to hold such an inquiry. The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. Such situation would be deemed to have arisen:

(i) where the Government servant, through or together with his associates terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or

(ii) where the Government servant himself or with or through others threatens, intimidates and terrorizes the Disciplinary Authority, Members of the Committee, the Presenting Officer or members of their family.

[Para 30 of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

❖ Disciplinary Authority is not expected to dispense with the inquiry lightly, arbitrarily or with ulterior motive or merely because the case against the Government servant is weak.

[Last Para of OM No. 11013/2/2014-Estt.(A-III) dated 16.07.2015]

(E) APPEAL UNDER SECTION 18(1) OF THE SHWW (PPR) ACT, 2013 BY THE COMPLAINANT

- Where a Complaint Committee has not recommended any action against the employee against whom the allegation have been made in a case of involving allegations of sexual harassment, the Disciplinary Authority shall supply a copy of the Report of the Complaints Committee to the complainant and shall consider her representation, if any submitted, before coming to a final conclusion. The representation shall be deemed to be an appeal under section 18(1) of the Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

[Para 3 of OM No. 11012/5/2016-Estt.A-III dated 02.08.2016]

- **Section 18 of the the SHWW (PPR) Act [Appeal]**

"*18 Appeal.—(1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or subsection (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.*

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations."

(F) Sexual Harassment electronic-Box (She-Box)

- Ministry of Women & Child Development launched an online complaint management system titled Sexual Harassment electronic-Box (She-Box) on 24th July, 2017 for registering complaints related to sexual harassment at workplace. The She-Box is an initiative to provide a platform to the women working or visiting any office of Central Government (Central Ministries, Departments, Public Sector Undertakings, Autonomous Bodies and Institutions etc.) to file complaints related to sexual harassment at workplace under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

- Once a complaint is submitted to She-Box, it will be directly sent to the Internal Complaint Committee (ICC) of the concerned Ministry/ Department/ PSU/ Autonomous Body etc. having jurisdiction to inquire into the complaint. The She-Box also provides an opportunity to both the complainant and nodal administrative authority to monitor the progress of inquiry conducted by the ICCs. The She-Box portal can be accessed at the link given below:

http://www.shebox.nic.in/

- Features of the She-Box are as under:

(i) She-Box is an online Complaint Management System for lodging complaints related to sexual harassment of women at workplace. The steps required for filing of complaint through She-Box can be downloaded from the link: http://www.shebox.nic.in/assets/site/downloads/manual.pdf

(ii) Any woman working or visiting any office of Central Government (Central Ministries, Departments, Public Sector Undertakings, Autonomous Bodies and Institutions etc.) can file complaint related to sexual harassment at workplace through this She-Box.

(iii) Once a complaint is submitted to the She-Box, it will directly send the complaint to the Internal Complaints Committee (ICC) of the concerned Ministry/ Department/ PSU/ Autonomous Body etc. having jurisdiction to inquire into the complaint. The Internal Complaints Committee will take action as prescribed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and update the status of the complaint through '**Administrator Login'**.

(iv) The status of complaint can be viewed at any time by pressing the tab '**View Status of Your Complaint'** within She-Box.

- The complaint registered in the She-Box contains only a brief description of the incident of sexual harassment at workplace. The Internal Complaints Committee (ICC) is required to initiate inquiry as prescribed under Section 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 read with Department of Personnel & Training's O.M. No.11013/2/2014-Estt.(A-III) dated 16th July, 2015 by calling upon the complainant to provide detailed complaint along with all the relevant evidences (documentary or otherwise).

(G) Duties of the employer-

- **Rule 3C(2) of the CCS (Conduct) Rules, 1964**

Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at the work place.

- **Section 19 of the the SHWW (PPR) Act [Duties of employer]**

"*19. Duties of employer.— Every employer shall—*

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) *monitor the timely submission of reports by the Internal Committee*"

[Section 19 of the SHWW (PPR) Act]

- It should be ensured that Complaints Committee shall at all time be in existence and changes in its composition, whenever necessary, should be made promptly and adequately publicized. The composition of the Complaint Committee should also be posted on the website of the concerned Ministries/ Departments/ Office concerned. It would also be desirable for the Committees to meet once a quarter, even if there is no live case, and review preparedness to fulfil all requirements of the Vishakha judgment in the Department/ Ministry/ organization concerned.

[OM No. 11013/2/2014-Estt.A-III dated 02.02.2015]

- It should be ensured that the aggrieved women are not victimized in connection with the complaints filed by them. For a period of five years after a decision in a proven case of sexual harassment, a watch should be kept to ensure that she is not subjected to vendetta. She should not be posted under the Respondent, or any other person where there may be a reasonable ground to believe that she may be subjected to harassment on this account. In case of any victimization the complainant may submit a representation to the Secretary in the case of Ministries/Departments and Head of the Organization in other cases. These representations should be dealt with sensitivity, in consultation with the Complaints Committee, Ministries/Department and Head of the Organization in other cases. These representations should be dealt with sensitivity, in consultation with the Complaints Committee, and a decision taken within 15 days of the submission of the same.

[*Para 3 of the OM No 11013/7/2016-Estt.A-III dated 22.12.2016*]

- All Ministries/Department shall furnish a **monthly report** to the Ministry of Women and Child Development giving details of number of complaints received, disposed of and action taken in the case.

[*Para 4 of the OM No 11013/7/2016-Estt.A-III dated 22.12.2016*]

(H) Provisions regarding preparation of Annual Report by Complaints Committee

➢ **Section 21 of the the SHWW (PPR) Act**

"*21. Committee to submit annual report.— (1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.*
(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government."

➢ **Rule 14 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013**

"*14. Preparation of annual report.- The annual report which the Complainants Committee shall prepare under Section 21, shall have the following details:-*
(a) number of complaints of sexual harassment received in the year;
(b) number of complaints disposedoff during the year;
(c) number of cases pending for more than ninety days;
(d) number of workshops or awareness programme against sexual harassment carried out;
(e) *nature of action taken by the employer or District Officers*."

(I) Provisions regarding preparation of Annual Report by Employer

➢ Attention of all Ministries is invited to Section 22 of the Act relating to including information in Annual Report, and to request that information relating to number of cases filed, if any, and their disposal may be included in the Annual Report of the Ministry/ Department.

[Para 6 of the OM No. 11013/2/2014-Estt.A-III dated 02.02.2015]

➢ **Section 22 of the the SHWW (PPR) Act**

"*22. Employer to include information in annual report.—The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer*"

(J) Miscellaneous-

- Fees or allowance for Member of the Complaints Committee is mentioned in Sexual Harassment of Women at Workplace (Prevention, Prohibition or Redressal) Rules, 2013

Note: In case any reference to the relevant OM is required, the same may be accessed by clicking on the hyperlink or from the DOPT's website.

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