

## Gujarat Council of Science City

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GCSC/2024/Admin- 36

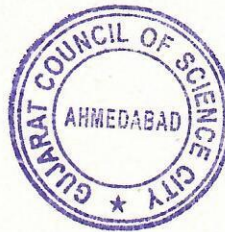
03/05/2024

### Circular

Gujarat Council of Science City, Ahmedabad has constituted an Internal Complain Committee (ICC) as per guidelines of POSH act for Prevention, Prohibition and Redressal of Sexual Harassment of women employee. The committee is as follow

Sr. No.	Position	Name	Phone No and Email ID
1	Presiding Officer	Ms. Hetal Mehta General Manager Finance	<a href="mailto:gmfinance-gcsc@gujarat.gov.in">gmfinance-gcsc@gujarat.gov.in</a> 9978412790
2	Member	Ms. Harshida Patel Project Assistant	<a href="mailto:Proasst-gcsc@gujarat.gov.in">Proasst-gcsc@gujarat.gov.in</a> 8238017009
3	Member	Dr. Vrajesh Parikh General Manager, Science Popularization	<a href="mailto:gm-sp-gcsc@gujarat.gov.in">gm-sp-gcsc@gujarat.gov.in</a> 9978410741
4	External Member	Dr. Jharana Pathak Chairman, Ahmedabad Women's Action Group	<a href="mailto:fmjharna@gmail.com">fmjharna@gmail.com</a> 9913176607

The committee will work as per POSH guidelines



GM HR & A (I/C)  
GCSC

Copy to

1. All the committee members
2. Executive Director of Science City
3. All the General Managers
4. Select File

સમયમર્યાદા/આજેજ

ક્રમાંક:DST/met/e-file/24/2024/0761/Coord

વિજ્ઞાન અને પ્રૌદ્યોગિકી વિભાગ

સચિવાલય,ગાંધીનગર

પ્રતિ,

DST હેઠળની તમામ કચેરી / સંસ્થા / PSUs

**વિષય:- The PoSH Act, 2013 અન્વયે નામ.સુપ્રિમ કોર્ટની સૂચનાઓનું ચુસ્તપણે પાલન કરવા બાબત.**

શ્રીમાન,

ઉપર્યુક્ત વિષય અન્વયે Gender Resource Centreના તા.૨/૦૫/૨૦૨૫ના પત્રથી જણાવેલ POSH ACT-2013 અનુસંધાને નામ.સુપ્રિમ કોર્ટ દ્વારા આપવામાં આવેલ સૂચનાઓ તથા નીચે મુજબ મુદ્દાવાર સૂચનાઓનું ચુસ્તપણે પાલન કરવા વિનંતી છે.

૧) વિભાગ અને વિભાગ હેઠળની તમામ સંસ્થાઓની ઓફિશીયલ વેબસાઈટ્સ પર POSH ACT-2013 માટેનો એક ડેડિકેટ સેક્શન તૈયાર કરીને તેમાં આ સાથે બિડેન નીચે મુજબના ડોક્યુમેન્ટ્સ અપલોડ કરવા.

- ACT
- Rules
- Handbook
- Judgment dt.12/05/2023
- Internal Committee order

(પાલન-GIL તથા તમામ કચેરીઓ)

૨) વિભાગ દ્વારા SHE-BOX પોર્ટલ પર તમામ ફિલ્ડ ઓફિસ ક્રિએટ કરેલ છે. તેમાં રજીસ્ટ્રેશન કરીને IC ની વિગતો અપલોડ કરવી. તેમાં અપલોડ કરેલ માહિતીથી સંબંધિતોને અવગત કરવા અને Annual POSH Compliance Report અપલોડ કરવા(પાલન:- PSUs સહિતની તમામ કચેરીઓ)

પ્રસ્તુત બાબતે નામ.સુપ્રિમ કોર્ટમાં રાજ્ય સરકાર દ્વારા એફિડેવિટ નિયમ સમયમર્યાદામાં રજૂ કરવાનીએ હોઈ, ઉક્ત કાર્યવાહી આજ રોજ ૦૫:૦૦ કલાક સુધીમાં અચૂક પૂર્ણ કરવા અને તે અંગે અત્રે ઈ-મેલથી જાણ કરવા વિનંતી છે.

આપની વિશ્વાસુ,

(અપેક્ષા પટેલિયા)

નોડલ અધિકારી(The PoSH Act 2013)

વિજ્ઞાન અને પ્રૌદ્યોગિકી વિભાગ

બિડાણ:- ઉપર મુજબ

નકલ રવાના:

૧) મહેકમ શાખા, વિજ્ઞાન અને પ્રૌદ્યોગિકી વિભાગ (જાણ અને જરૂરી કાર્યવાહી સારૂ)





# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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No. 18] NEW DELHI, TUESDAY, APRIL 23, 2013/ VAISAKHA 3, 1935 (SAKA)

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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.

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## MINISTRY OF LAW AND JUSTICE

(Legislative Department)

*New Delhi, the 23rd 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)

[22nd 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 policies 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, entertainment, 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

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.

Notification of District Officer.

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.

Constitution and jurisdiction of Local Complaints Committee

(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.

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

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

(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.

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:

Inquiry into  
complaint

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

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—

Action during  
pendency of  
inquiry.

(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.

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—

Determination of compensation

(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.

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:

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

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. 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.

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

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.

Appeal

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

## CHAPTER VI

### DUTIES OF EMPLOYER

19. Every employer shall—

Duties of employer.

(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

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.

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,—

Power to call for information and inspection of records.

(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.

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,

Penalty for non-compliance with provisions of Act.

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.

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.

Cognizance of offence by courts

(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.

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.

Act not in derogation of any other law.

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

Power of appropriate Government to make rules.

(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)".

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CORRIGENDUMTHE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2012  
(3 of 2013)

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

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## CORRIGENDUM

THE BANKING LAWS (AMENDMENT) ACT, 2012  
(4 of 2013)

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

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## 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".

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# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

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महिला एवं बाल विकास मंत्रालय

अधिसूचना

नई दिल्ली, 9 दिसम्बर, 2013

सा.का.नि. 769(अ).—केंद्रीय सरकार, महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोष) अधिनियम, 2013 (2013 का 14) की धारा 29 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, निम्नलिखित नियम बनाती है, अर्थात्:—

1. संक्षिप्त नाम और प्रारंभ.—(1) इन नियमों का संक्षिप्त महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोष) नियम, 2013 है।

(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।

2. परिभाषाएं.—इन नियमों में, जब तक संदर्भ में अन्यथा अपेक्षित न हो, —

(क) "अधिनियम" से कार्यस्थल पर महिलाओं का कार्यस्थल पर लैंगिक उत्पीड़न (निवारण, प्रतिषेध एवं प्रतितोष) अधिनियम, 2013 (2013 का 14) अभिप्रेत है;

(ख) "शिकायत" से धारा 9 के अधीन की गई शिकायत अभिप्रेत है;

(ग) "शिकायत समिति" से आंतरिक समिति अथवा स्थानीय समिति अभिप्रेत है;

(घ) "घटना" से धारा 2 के खंड (द) में यथा-परिभाषित लैंगिक उत्पीड़न की घटना अभिप्रेत है;

(ङ) "धारा" से अधिनियम की कोई धारा अभिप्रेत है;

(च) "विशेष शिक्षक" से कोई ऐसा व्यक्ति अभिप्रेत है जो विशेष जरूरतों वाले लोगों के साथ ऐसे ढंग से संचार करने के लिए प्रशिक्षित है, जिससे उनके व्यक्तिगत मतभेदों एवं आवश्यकताओं का समाधान होता है;

(छ) यहां शब्द और पद जो यहां प्रयुक्त हैं और परिभाषित नहीं किए गए हैं, किंतु अधिनियम में परिभाषित किए गए हैं, उनके अर्थ वही होंगे, जो अधिनियम में दिए गए हैं।

3. आंतरिक समिति के सदस्यों के लिए फीस या भत्ते :

(1) गैर-सरकारी संगठनों में नियुक्त सदस्य, आंतरिक समिति की कार्यवाहियों के आयोजन के लिए प्रतिदिन 200 रुपये के भत्ते के हकदार होंगे, और उक्त सदस्य रेलगाड़ी से श्री टायर वातानुकूलन या वातानुकूलित बस से तथा आटोरिक्शा या टैक्सी से अथवा यात्रा पर उसके द्वारा खर्च की गई वास्तविक राशि, जो भी, कम हो प्रतिपूर्ति के भी हकदार होंगे।

(2) नियोक्ता उप-नियम (1) में निर्दिष्ट भत्तों के संदाय के लिए उत्तरदायी होगा।



4. लैंगिक उत्पीड़न से संबंधित मुद्दों से परिचित व्यक्ति : धारा 7 की उप-धारा (1) के खण्ड (ग) के प्रयोजन के लिए लैंगिक उत्पीड़न से संबंधित मुद्दों से परिचित व्यक्ति ऐसा व्यक्ति होगा जिसे लैंगिक उत्पीड़न से संबंधित मुद्दों पर विशेषज्ञता प्राप्त हो तथा इसमें निम्नलिखित में से कोई सम्मिलित हो सकेगा -

(क) समाज कार्य के क्षेत्र में कम से कम 5 साल के अनुभव वाला कोई सामाजिक कार्यकर्ता जो महिलाओं के सशक्तीकरण तथा विशिष्टतया कार्यस्थल पर लैंगिक उत्पीड़न की समस्या को दूर करने के लिए अनुकूल सामाजिक स्थितियों का सृजन करने का मार्ग प्रशस्त करता है;

(ख) ऐसा व्यक्ति जिसे श्रम, रोजगार, सिविल या दांडिक विधि में अर्हता प्राप्त है।

5. स्थानीय समिति के अध्यक्ष तथा सदस्यों के लिए फीस या भत्ता :

(1) स्थानीय समिति के अध्यक्ष उक्त समिति की कार्यवाहियों के आयोजन के लिए प्रतिदिन 250 रुपये (दो सौ पचास रुपये) के भत्ते के लिए हकदार होंगे।

(2) धारा 7 की उप-धारा (1) के खंड (ख) और खंड (घ) के अधीन नामनिर्दिष्ट सदस्यों से भिन्न स्थानीय समिति के सदस्य, उक्त समिति की कार्यवाहियों के आयोजन के लिए प्रतिदिन दो सौ रुपये के भत्ते के हकदार होंगे और रेलगाड़ी से श्री टायर वातानुकूलन, वातानुकूलित बस से तथा आटोरिक्षा या टैक्सी से अथवा यात्रा पर उसके द्वारा खर्च की गई वास्तविक लागत जो भी कम हो, की प्रतिपूर्ति के भी हकदार होंगे।

(3) जिला अधिकारी, उपनियम (1) और उपनियम (2) में निर्दिष्ट भत्तों के संदाय के लिए उत्तरदायी होगा।

6. लैंगिक उत्पीड़न की शिकायत : धारा 9 की उप-धारा (2) के प्रयोजन के लिए,

(i) जहां व्यथित महिला, अपनी शारीरिक असमर्थता के कारण शिकायत करने में असमर्थ है, वहां निम्नलिखित द्वारा शिकायत फाइल की जा सकती है -

(क) उसका नातेदार या मित्र; अथवा;

(ख) उसका सहकर्मी; या

(ग) राष्ट्रीय महिला आयोग या राज्य महिला आयोग का कोई अधिकारी; या

(घ) व्यथित महिला की लिखित सम्मति से कोई ऐसा व्यक्ति जिसे घटना की जानकारी है।

(ii) जहां व्यथित महिला, अपनी मानसिक अक्षमता के कारण शिकायत करने में असमर्थ है, वहां निम्नलिखित द्वारा शिकायत फाइल की जा सकती है -

(क) उसका नातेदार या मित्र; अथवा

(ख) कोई विशेष शिक्षक; या

(ग) कोई अर्हित मनोविकार विज्ञानी या मनोवैज्ञानिक; अथवा

(घ) संरक्षक या प्राधिकारी जिसके अधीन वह उपचार या देखरेख प्राप्त कर रही है; अथवा

(ङ) उसके नातेदार या दोस्त या विशेष शिक्षक या अर्हता-प्राप्त मनोविकार विज्ञानी या मनोवैज्ञानिक या संरक्षक अथवा प्राधिकारी जिसके अधीन वह उपचार या देखरेख प्राप्त कर रही है, के साथ संयुक्त रूप से कोई ऐसा व्यक्ति जिसे लैंगिक उत्पीड़न की जानकारी है।

(iii) जहां व्यथित महिला, किसी कारण से शिकायत करने में असमर्थ है, वहां उसकी लिखित सम्मति से ऐसे व्यक्ति द्वारा शिकायत फाइल की जा सकती है, जिसे घटना की जानकारी है।

(iv) जहां व्यथित महिला की मृत्यु हो जाती है वहां एक शिकायत, घटना के जानकार द्वारा उसके विधिक वारिस की सम्मति से लिखित रूप में फाइल की जा सकेगी।

7. शिकायत की जांच का ढंग -

(1) शिकायत फाइल करते समय, धारा 11 के उपबंधों के अधीन शिकायतकर्ता समर्थक दस्तावेजों तथा साक्षियों के नाम एवं पता के साथ शिकायत की छह प्रतियां शिकायत समिति को प्रस्तुत करेगा।

(2) शिकायत प्राप्त होने पर, शिकायत समिति उपनियम (1) के अधीन व्यथित महिला से प्राप्त प्रतियों में से एक प्रति सात कार्य दिवस की अवधि के भीतर प्रत्यर्थी को भेजेगी।

(3) प्रत्यर्थी उपनियम (1) के अधीन विनिर्दिष्ट दस्तावेजों की प्राप्ति की तारीख से दस दिन से अधिक अवधि के भीतर दस्तावेजों की सूची तथा साक्षियों के नाम एवं पता के साथ शिकायत पर अपना उत्तर फाइल करेगा।

(4) शिकायत समिति नैसर्गिक न्याय के सिद्धांतों के अनुसार, शिकायत की जांच करेगी।

(5) शिकायत समिति को जांच की कार्यवाही समाप्त करने या शिकायत पर एक पक्षीय निर्णय देने का अधिकार होगा, यदि शिकायतकर्ता या प्रत्यर्थी पर्याप्त कारण के बिना यथास्थिति अध्यक्ष या पीठासीन अधिकारी द्वारा आयोजित लगातार तीन सुनवाईयों में अनुपस्थित रहता है या रहती है :



परंतु संबंधित पक्षकार को अग्रिम में लिखित रूप में पन्द्रह दिन का नोटिस दिए बिना ऐसी समाप्ति या एक पक्षीय आदेश पारित नहीं किया जा सकेगा।

- (6) पक्षकारों को शिकायत समिति के समक्ष कार्यवाही के किसी चरण में अपने मामले का प्रतिनिधित्व करने के लिए किसी विधिक व्यावसायी को लाने की अनुमति नहीं होगी।
- (7) जांच का संचालन करते समय, शिकायत समिति के कम से कम तीन सदस्य जिसमें यथास्थिति पीठासीन अधिकारी अथवा अध्यक्ष, हो, उपस्थित होंगे।

8. जांच लंबित रहने के दौरान शिकायतकर्ता को अन्य अनुरोध : व्यथित महिला के लिखित रूप में अनुरोध पर, शिकायत समिति नियोक्ता से निम्नलिखित की सिफारिश कर सकती है :

- (क) व्यथित महिला के कार्य निष्पादन या उसकी गोपनीय रिपोर्ट लिखने तथा इसे किसी अन्य अधिकारी को आबंटित करने से प्रत्यर्थी को अवरुद्ध करना।
- (ख) शैक्षिक संस्था के मामले में व्यथित महिला की किसी शैक्षिक गतिविधि का पर्यवेक्षण करने से प्रत्यर्थी को अवरुद्ध करना।

9. लैंगिक उत्पीड़न के लिए कार्रवाई करने की रीति : ऐसे मामलों को छोड़कर, जहां सेवा नियम विद्यमान हैं जहां शिकायत समिति इस निष्कर्ष पर पहुंचती है कि प्रत्यर्थी के विरुद्ध अभिकथन साबित हो गए हैं, यह यथास्थिति नियोक्ता या जिलाधिकारी से कार्रवाई करने की सिफारिश कर सकती है जिसमें लिखित रूप में क्षमा याचना करना, चेतावनी जारी करना, डांटना या निंदा करना, प्रोन्नति रोकना, वेतनबंदोत्तरी या वेतनवृद्धि रोकना, प्रत्यर्थी को सेवा समाप्ति करना या परामर्श सत्र में भाग लेने या सामुदायिक सेवा करने का आदेश देना शामिल है।

10. मिथ्या अथवा दुर्भावपूर्ण शिकायत अथवा मिथ्या साक्ष्य पर कार्रवाई : उन मामलों के सिवाय जहां सेवा नियम विद्यमान हैं, जहां शिकायत समिति इस निष्कर्ष पर पहुंचती है कि प्रत्यर्थी के विरुद्ध अभिकथन दुर्भावपूर्ण है अथवा व्यथित महिला अथवा शिकायत करने वाली अन्य किसी व्यक्ति ने यह जानते हुए कि यह मिथ्या है शिकायत की है अथवा व्यथित महिला या शिकायत करने वाले किसी व्यक्ति ने कूटस्थ अथवा भ्रामक दस्तावेज प्रस्तुत किए हैं तो यह यथास्थिति नियोक्ता अथवा जिला अधिकारी को नियम 9 के उपबंधों के अनुसार कार्रवाई करने की सिफारिश कर सकेगी।

11. अपील : धारा 18 के उपबंधों के अधीन, धारा 13 की उप-धारा (2) के अधीन या धारा 13 की उप-धारा (3) के खण्ड (i) या खण्ड (ii) के अधीन अथवा धारा 14 की उपधारा (1) या उप-धारा (2) या धारा 17 के अधीन की गयी सिफारिशों या ऐसी सिफारिशों को कार्यान्वित न किए जाने से व्यथित कोई व्यक्ति औद्योगिक नियोजन (स्थायी आदेश) अधिनियम, 1946 (1946 का 20) की धारा 2 के खण्ड (क) के अधीन अधिमूर्चित अपीली प्राधिकारी को अपील कर सकेगा।

12. धारा 16 के उपबंधों के उल्लंघन के लिए दंड - धारा 17 के उपबंधों के अधीन, यदि कोई व्यक्ति धारा 16 के उपबंधों का उल्लंघन करता है, तो नियोक्ता ऐसे व्यक्ति से शस्तिक रूप में पांच हजार रुपये की राशि की वसूली करेगा।

13. कार्यशालाएं आदि आयोजित करने की रीति : धारा 19 के उपबंधों के अधीन, प्रत्येक नियोक्ता,-

- (क) कार्यस्थल पर लैंगिक उत्पीड़न के प्रतिरोध, निवारण एवं प्रतितोष के लिए एक आंतरिक नीति या चार्टर या संकल्प या घोषणा तैयार करेगा तथा उसका व्यापक प्रसार करेगा, जिसका आशय लिंग संवेदी सुरक्षित स्थानों को बढ़ावा देना तथा ऐसे अंतर्निहित कारकों का निवारण करना है, जो महिलाओं के विरुद्ध प्रतिकूल कार्य परिवेश में योगदान करते हैं;
- (ख) आंतरिक समिति के सदस्यों के लिए, प्रबोधन कार्यक्रमों एवं सेमिनारों का क्रियान्वयन करेगा;
- (ग) कर्मचारी जागरूकता कार्यक्रमों का क्रियान्वयन करेगा तथा संवादों के लिए मंच का सृजन करेगा जिसमें पंचायती राज संस्थाएं, ग्राम सभा, महिला समूह, मातृ समितियाँ, किशोर समूह, शहरी स्थानीय निकाय तथा कोई अन्य निकाय, जिसे आवश्यक समझा जाए, अंतर्बलित हो सकते हैं;
- (घ) आंतरिक समिति के सदस्यों के लिए क्षमता निर्माण एवं कौशल निर्माण कार्यक्रमों का संचालन करेगा;
- (ङ) आंतरिक समिति के सभी सदस्यों के नामों एवं संपर्क के ब्यौरों की घोषणा करेगा;
- (च) अधिनियम के उपबंधों के बारे में कर्मचारियों को संवेदनशील बनाने के लिए, कार्यशालाओं एवं जागरूकता कार्यक्रमों के आयोजन के लिए, राज्य सरकारों द्वारा विकसित मापदंडों का उपयोग करेगा।

14. वार्षिक रिपोर्टें तैयार करना : वार्षिक रिपोर्ट जिसे धारा 21 के अंतर्गत शिकायत समिति द्वारा तैयार किया जाएगा, में निम्नलिखित ब्यौरे होंगे :

- (क) वर्ष में प्राप्त लैंगिक उत्पीड़न की शिकायतों की संख्या;
- (ख) ऐसी शिकायतों की संख्या जिनका वर्ष के दौरान निस्तारण किया गया;
- (ग) ऐसे मामलों की संख्या जो नब्बे दिन से अधिक अवधि तक लंबित हैं;



- (घ) लैंगिक उत्पीड़न के विरुद्ध क्रियान्वित कार्यशालाओं या जागरूकता कार्यक्रमों की संख्या;  
 (ङ) नियोक्ता या जिला अधिकारी द्वारा की गई कार्रवाई का स्वरूप।

[फा. सं. 19-5/2013-डब्ल्यूडब्ल्यू]

डॉ. श्रीरंजन, संयुक्त सचिव

## MINISTRY OF WOMEN AND CHILD DEVELOPMENT

### NOTIFICATION

New Delhi, the 9th December, 2013

**G.S.R. 769(E).**—In exercise of the powers conferred by section 29 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement.** – (1) These rules may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013.  
 (2) They shall come into force on the date of their publication in the Official Gazette.
2. **Definitions.** – In these rules, unless the context otherwise requires,–

- (a) "Act" means the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013);
- (b) "complaint" means the complaint made under section 9;
- (c) "Complaints Committee" means the Internal Committee or the Local Committee, as the case may be;
- (d) "incident" means an incident of sexual harassment as defined in clause (n) of section 2;
- (e) "section" means a section of the Act;
- (f) "special educator" means a person trained in communication with people with special needs in a way that addresses their individual differences and needs;
- (g) words and expressions used herein and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. **Fees or allowances for Member of Internal Committee.**– (1) The Member appointed from amongst non-government organisations shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the Internal Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The employer shall be responsible for the payment of allowances referred to in sub-rule (1).

4. **Person familiar with issues relating to sexual harassment.**– Person familiar with the issues relating to sexual harassment for the purpose of clause (c) of sub-section (1) of section 7 shall be a person who has expertise on issues relating to sexual harassment and may include any of the following:–
  - (a) a social worker with at least five years' experience in the field of social work which leads to creation of societal conditions favourable towards empowerment of women and in particular in addressing workplace sexual harassment;
  - (b) a person who is familiar with labour, service, civil or criminal law.

1. **Fees or allowances for Chairperson and Members of Local Committee.**– (1) The Chairperson of the Local Committee shall be entitled to an allowance of two hundred and fifty rupees per day for holding the proceedings of the said Committee.

(2) The Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) of section 7 shall be entitled to an allowance of two hundred rupees per day for holding the proceedings of the said Committee and also the reimbursement of travel cost incurred in travelling by train in three tier air condition or air conditioned bus and auto rickshaw or taxi, or the actual amount spent by him on travel, whichever is less.

The District Officer shall be responsible for the payment of allowances referred to in sub-rules (1) and (2).

6. **Complaint of sexual harassment.** – For the purpose of sub-section (2) of Section 9,–
  - (i) where the aggrieved woman 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 woman;
- (ii) where the aggrieved woman 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 woman 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 woman is dead, a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir.

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 witnesses.

(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 in accordance with the principles of natural justice.

(5) The Complaints Committee shall have the right to terminate the inquiry proceedings or to give an *ex-parte* 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.

8. **Other relief to complainant during pendency of inquiry.**- The Complaints Committee at the written request of the aggrieved woman may recommend to the employer to-

- (a) restrain the respondent from reporting on the work performance of the aggrieved woman or writing her confidential report, and assign the same to another officer;
- (b) restrain the respondent in case of an educational institution from supervising any academic activity of the aggrieved woman.

9. **Manner of taking action for sexual harassment.**- Except in cases where service rules exist, where the Complaints Committee 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, to take any action including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

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**10. Action for false or malicious complaint or false evidence.-** Except in cases where service rules exist, where the Complaints Committee arrives at the 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 District Officer, as the case may be, to take action in accordance with the provisions of rule 9.

**11. Appeal.-** Subject to the provisions of section 18, any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clauses (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 appellate authority notified under clause (a) of section 2 of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946).

**12. Penalty for contravention of provisions of section 16.-** Subject to the provisions of section 17, if any person contravenes the provisions of section 16, the employer shall recover a sum of five thousand rupees as penalty from such person.

**13. Manner to organise workshops, etc.-** Subject to the provisions of section 19, every employer shall-

- (a) formulate and widely disseminate an internal policy or charter or resolution or declaration for prohibition, prevention and redressal of sexual harassment at the workplace intended to promote gender sensitive safe spaces and remove underlying factors that contribute towards a hostile work environment against women;
- (b) carry out orientation programmes and seminars for the Members of the Internal Committee;
- (c) carry out employees awareness programmes and create forum for dialogues which may involve Panchayati Raj Institutions, Gram Sabha, women's groups, mothers' committee, adolescent groups, urban local bodies and any other body as may be considered necessary;
- (d) conduct capacity building and skill building programmes for the Members of the Internal Committee;
- (e) declare the names and contact details of all the Members of the Internal Committee;
- (f) use modules developed by the State Governments to conduct workshops and awareness programmes for sensitising the employees with the provisions of the Act.

**14. Preparation of annual report.-** The annual report which the Complaints 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 disposed off 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 Officer.

[F. No. 19-5/2013-WW]

Dr. SHREERANJAN, Jt. Secy.



# HANDBOOK

On

## Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013

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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



# **HANDBOOK**

**on**

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**Government of India  
Ministry of Women and Child Development**

**November 2015**





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मेनका संजय गांधी  
*Maneka Sanjay Gandhi*



मंत्री  
महिला एवं बाल विकास मंत्रालय  
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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.

  
(Smt. Maneka Sanjay Gandhi)



V. Somasundaran



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18<sup>th</sup> 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: 17<sup>th</sup> 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.

  
(Prereti 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 to 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]

**A**s 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<sup>1</sup> that where this is to be captured, women's overall work participation would be 86.2 per cent. While the official data<sup>2</sup> 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.

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<sup>1</sup> Professor Jayati Ghosh, Paper on 'What Exactly is Work?' [http://www.macrosan.org/cur/oct14/pdf/Exactly\\_Work.pdf](http://www.macrosan.org/cur/oct14/pdf/Exactly_Work.pdf)

<sup>2</sup> 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*<sup>3</sup> 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.

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<sup>3</sup> *Sathin*<sup>1</sup> means a friend

In a landmark judgment, *Vishaka vs. State of Rajasthan (1997)*<sup>4</sup>, 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:

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<sup>4</sup> (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

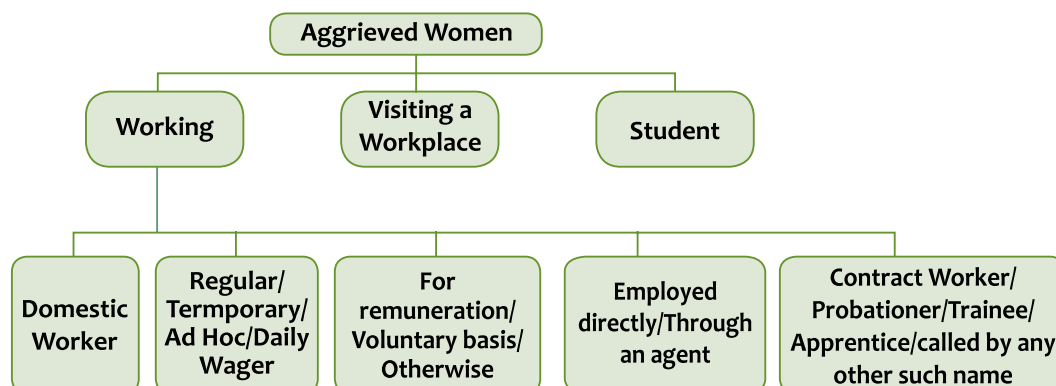
This section defines the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviours through which a woman can experience possible professional and personal harm. It presents the user with scenarios from across-section 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.

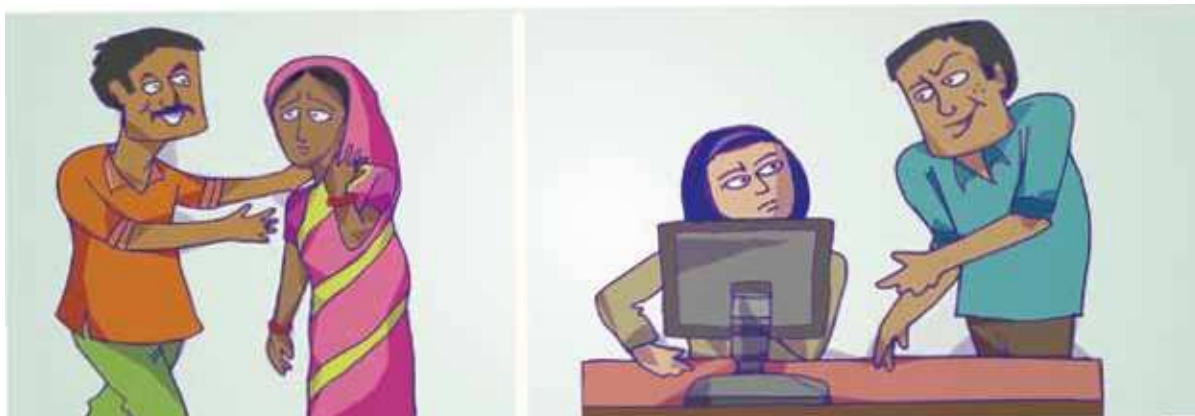
All women working or visiting workplaces, for example:



## 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
<ul style="list-style-type: none"> <li>• Decreased work performance</li> <li>• Increased absenteeism, loss of pay</li> <li>• Loss of promotional opportunities</li> <li>• Retaliation from the respondent, or colleagues/ friends of the respondent</li> <li>• Subjected to gossip and scrutiny at work</li> <li>• Being objectified</li> <li>• Becoming publicly sexualized</li> <li>• Defamation</li> <li>• Being ostracized</li> <li>• Having to relocate</li> <li>• Job and career consequences</li> <li>• Weakened support network</li> </ul>	<ul style="list-style-type: none"> <li>• Depression</li> <li>• Anxiety, panic attacks</li> <li>• Traumatic stress</li> <li>• Sleeplessness</li> <li>• Shame, guilt, self-blame</li> <li>• Difficulty in concentrating</li> <li>• Headaches</li> <li>• Fatigue, loss of motivation</li> <li>• Personal Difficulties with time</li> <li>• Eating disorders (weight loss or gain)</li> <li>• Feeling betrayed and/or violated</li> <li>• Feeling angry or violent towards the respondent</li> <li>• Feeling powerless</li> <li>• Loss of confidence and self esteem</li> <li>• Over all loss of trust in people</li> <li>• Problems with intimacy</li> <li>• Withdrawal and isolation</li> </ul>

### 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 CONSTITUTE 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

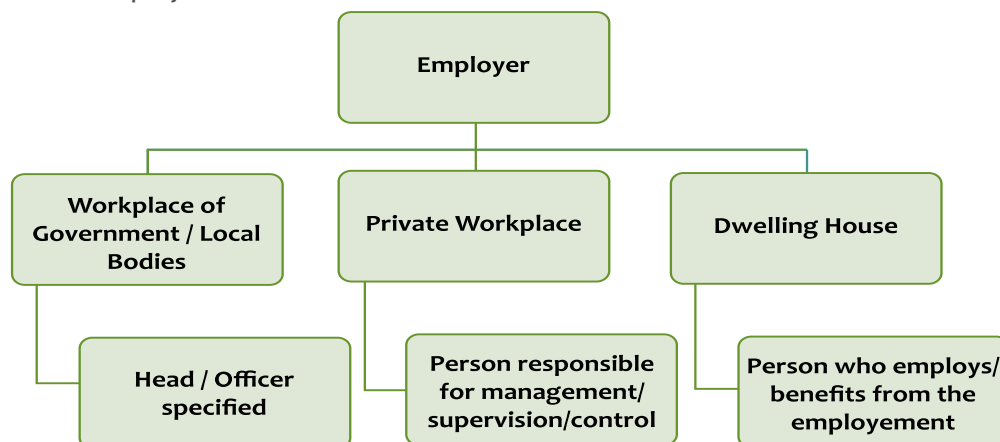
**T**his section describes those who are both responsible and accountable to prevent workplace sexual harassment in compliance with the Act. It also highlights the role of workplaces in prohibiting workplace sexual harassment through an effectively communicated policy.

## 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 APPROPRIATE 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 (CrI.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: <ul style="list-style-type: none"> <li>• At least one must be a woman</li> <li>• At least one must have a background of law or legal knowledge</li> </ul>
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.

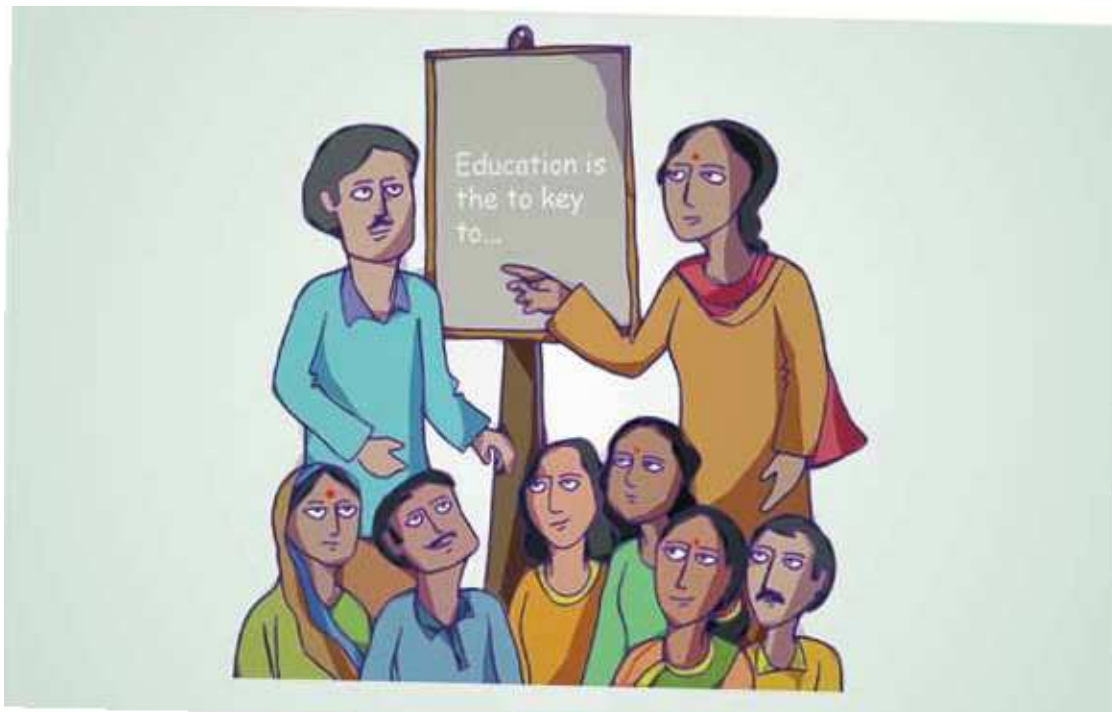
#### Criteria for the External Member

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.

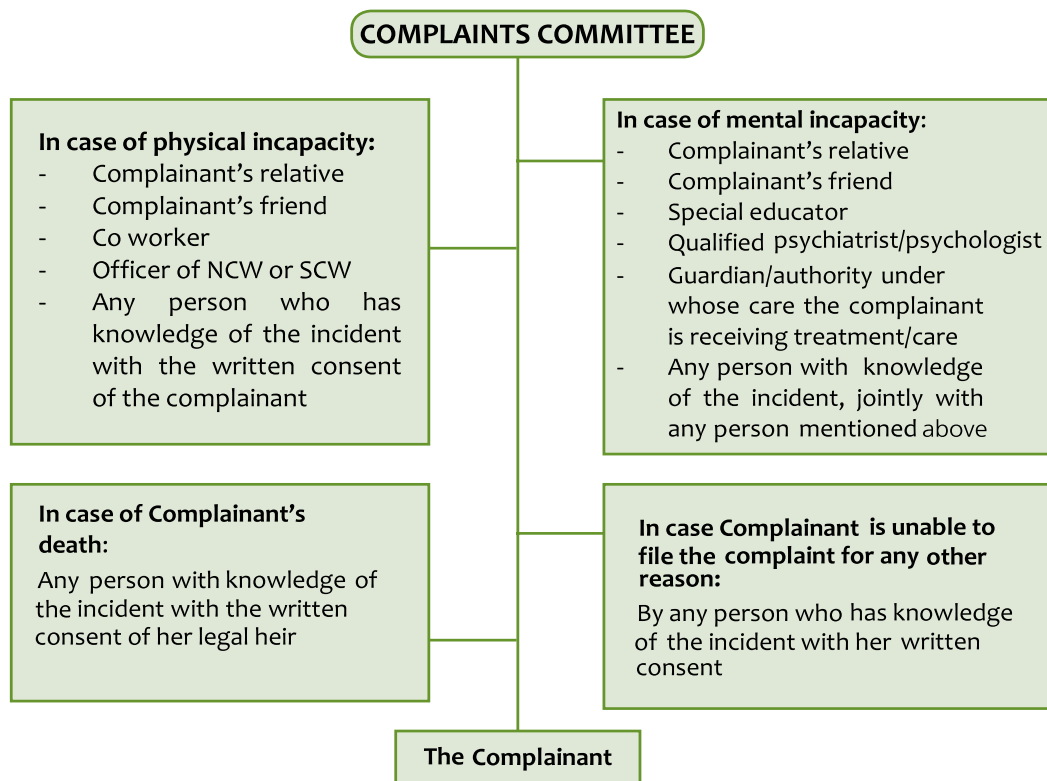
## Redress

*“...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

**T**his 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.

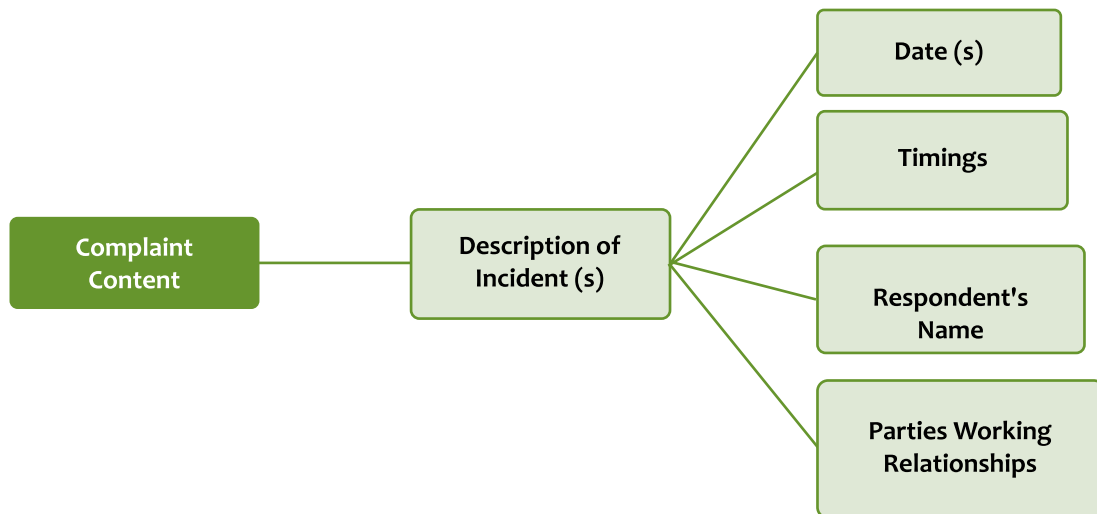
### 4.1 WHO CAN COMPLAIN AND WHERE?



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)

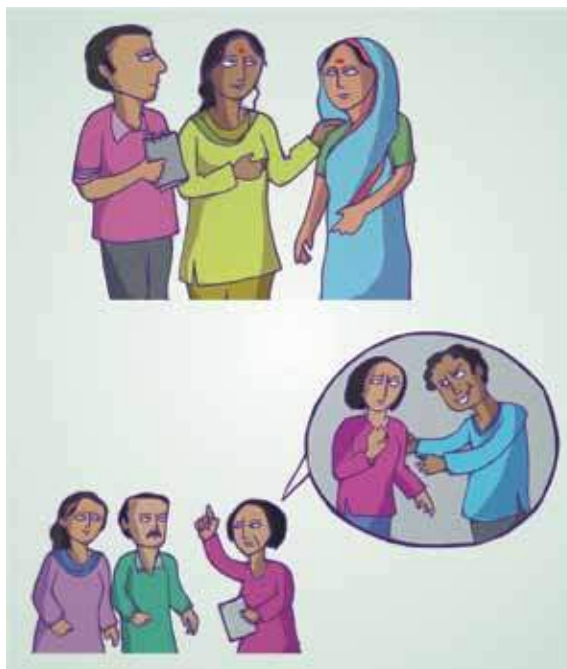
## 4.6 DO’S AND DON’TS FOR COMPLAINTS COMMITTEE

### 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.

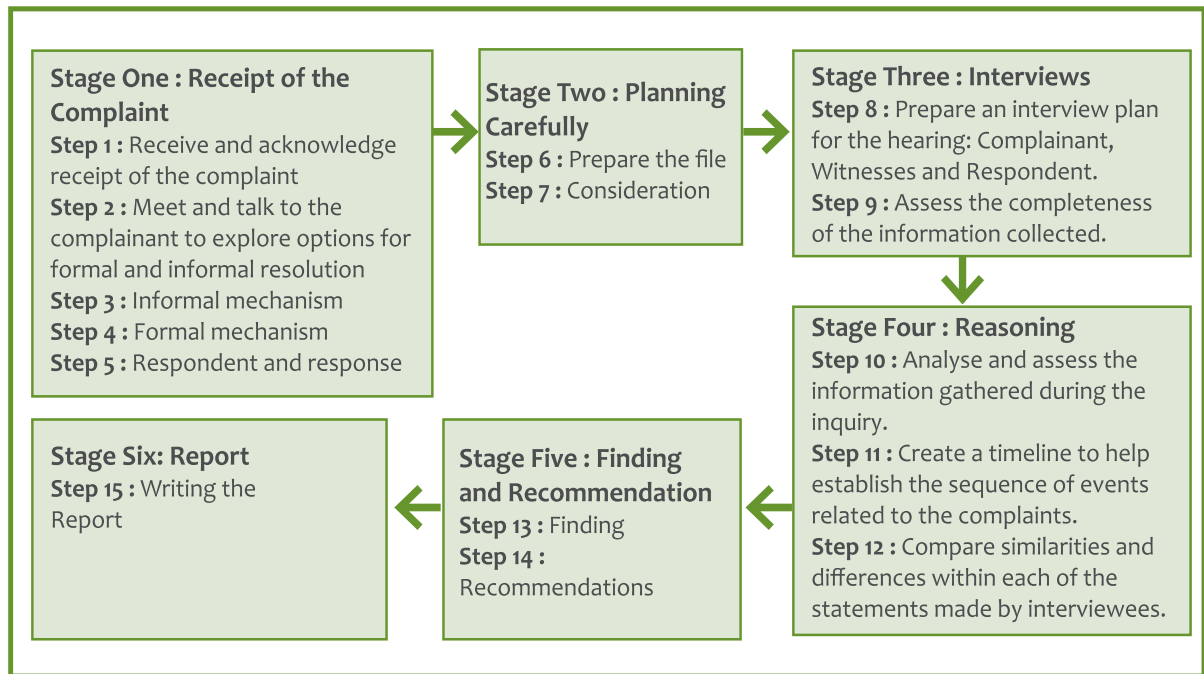


## 4.7 NON-NEGOTIABLES DURING THE INQUIRY PROCESS

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:

- |          |   |          |  |          |                                   |          |   |
|----------|---|----------|--|----------|-----------------------------------|----------|---|
| <b>1</b> | The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment; | <b>2</b> | The behaviour was directed at the complainant; | <b>3</b> | The complainant experienced harm. | <b>4</b> | 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.

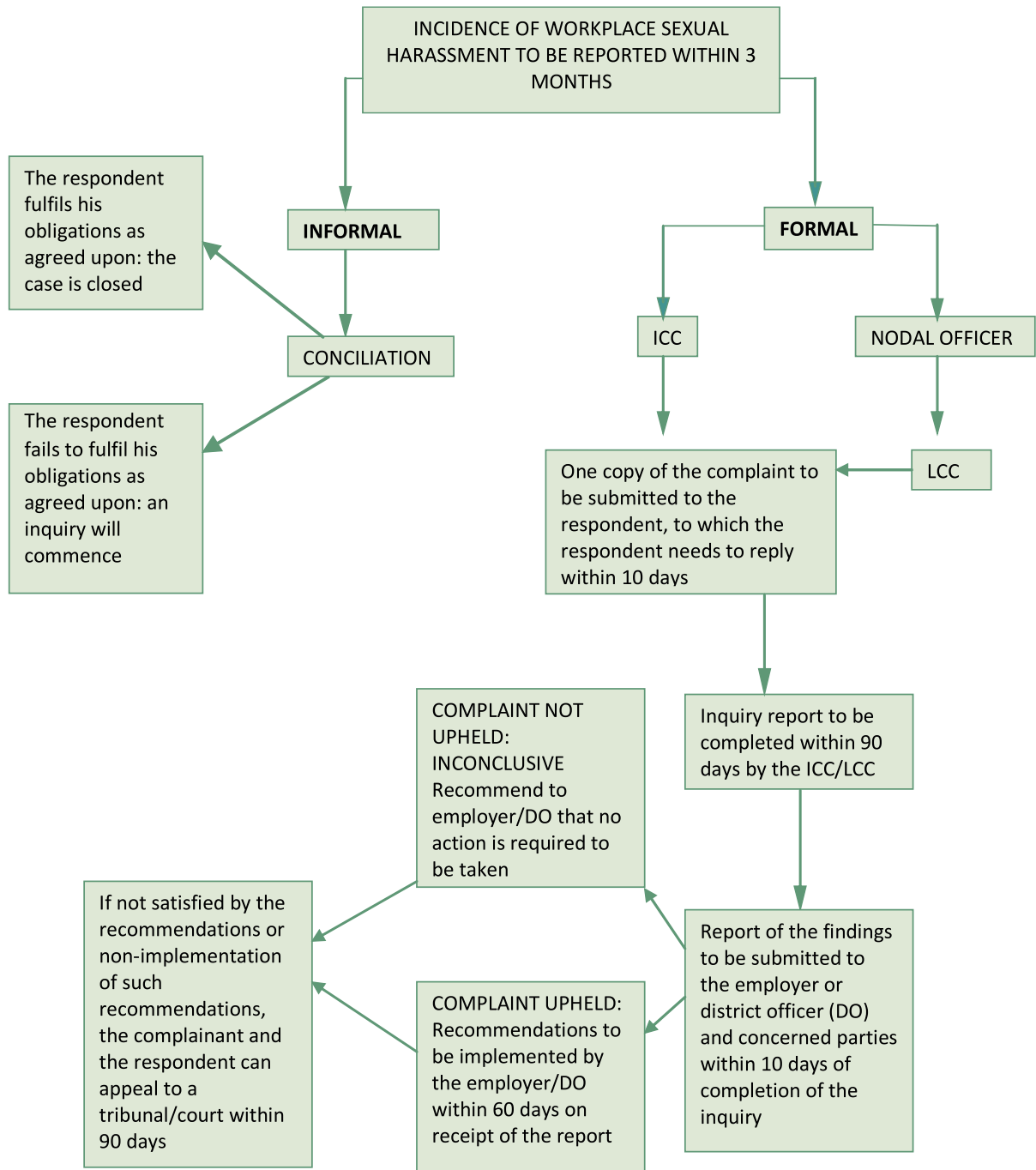
## 4.9 AT A GLANCE

### 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

**T**his 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

I ncreasing 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.<sup>i</sup>
2. Recognition that sexual harassment is a form of gender-specific violence.<sup>ii</sup>
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.<sup>iii</sup> 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.<sup>iv</sup>
5. Eliminating violence against women and advancing women's equality includes the right to be free from workplace sexual harassment.<sup>v</sup>
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.<sup>vi</sup>
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.”<sup>vii</sup>

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.

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<sup>i</sup> General Recommendation 12 of 1989, Committee on the Elimination of All Forms of Discrimination against Women.

<sup>ii</sup> General Recommendation 19 of 1992, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

<sup>iii</sup> Ibid.

<sup>iv</sup> Article 3, Declaration on the Elimination of Violence against Women, 1993.

<sup>v</sup> The Beijing Platform of Action drawn at the United Nations’ Women’s Conference in Beijing in 1995.

<sup>vi</sup> 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>

<sup>vii</sup> Article 5, ILO Decent Work for Domestic Workers Convention, 2011 (No. 189).









Towards a new dawn

Government of India  
Ministry of Women and Child Development

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 2482 of 2014**

**AURELIANO FERNANDES**

....

**APPELLANT**

**Versus**

**STATE OF GOA AND OTHERS**

....

**RESPONDENTS**

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## **JUDGEMENT**

**HIMA KOHLI, J.**

### **A. SCOPE OF THE APPEAL**

1. A challenge has been laid by the appellant to the judgment dated 15<sup>th</sup> March, 2012, passed by the High Court of Judicature at Bombay Bench, at Goa, dismissing a writ petition<sup>1</sup> preferred by him against an order<sup>2</sup> passed by the Executive Council<sup>3</sup> of Goa University (Disciplinary Authority) accepting the Report<sup>4</sup> of the Standing Committee for Prevention of Sexual Harassment at Work Place<sup>5</sup> and imposing upon him, a major penalty of dismissal from services and disqualification from the future employment under Rule 11(IX) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965<sup>6</sup> which was duly upheld by the Governor and the Chancellor of Goa University, being the Appellate Authority<sup>7</sup>.

### **B. SEQUENCE OF EVENTS**

#### **(a) PROCEEDINGS BEFORE THE FIRST COMMITTEE:**

2. The factual matrix of the case needs to be placed in a chronological sequence. The appellant commenced his career in the respondent no. 2 – Goa University as a Temporary Lecturer in the Department of Political Science, in the year 1996. He was

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<sup>1</sup> W.P. No. 602 of 2011

<sup>2</sup> Dated 10<sup>th</sup> May, 2010

<sup>3</sup> For short 'EC'

<sup>4</sup> Dated 05<sup>th</sup> June, 2009

<sup>5</sup> For short 'The Committee'

<sup>6</sup> For short the CCS (CCA) Rules

<sup>7</sup> Vide Order dated 19<sup>th</sup> April, 2011



appointed as the Head of the said Department, in the year 2003. It is the appellant's version, which is strongly refuted by the other side, that aggrieved by the passing of a resolution by the Departmental Council of the Department of Political Science against them, two girl students along with their friends submitted a complaint to the respondent no.2 – University, alleging physical harassment at his hands. The said complaints<sup>8</sup> were the starting point of an inquiry initiated by the Committee on receiving complaints by the Registrar of the respondent no. 2 – University<sup>9</sup>. The Committee served a notice<sup>10</sup> on the appellant calling upon him to explain the charges levelled against him in nine complaints and to appear before it for a personal hearing on 24<sup>th</sup> April, 2009, a date that was subsequently changed to 27<sup>nd</sup> April, 2009. Contemporaneously, the Registrar of the respondent no. 2 – University directed the appellant to hand over charge and proceed on leave till the conclusion of the inquiry.

3. The appellant furnished a detailed reply to the Committee, running into fifty-three pages wherein he raised some preliminary objections to the inquiry being conducted by the Committee, alleged a well-organized conspiracy against him by some wayward students in connivance with the members of the faculty and refuted the contents of fourteen depositions of girl students forwarded to him by the Committee. He concluded by stating that the charges of sexual harassment levelled against him were completely false and baseless. The appellant also addressed a letter to the Registrar seeking

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<sup>8</sup> Complaint dated 11.03.2009 & 17.03.2009

<sup>9</sup> Under cover of letter dated 08.04.2009

<sup>10</sup> Dated 17<sup>th</sup> April, 2009

removal of two Members of the Committee on the ground of bias and on a plea that being his subordinates, they were prone to bias.

4. The Committee called the appellant for a hearing on 27<sup>th</sup> April, 2009. It was alleged by the appellant that the deposition of all the complainants including the witness named by him were recorded while he was made to wait outside the Committee room. He was called later on and the Committee recorded his statement. Even on the next hearing, on 28<sup>th</sup> April, 2009, a similar procedure was adopted by the Committee. On 30<sup>th</sup> April, 2009, the appellant received a notice from the Committee enclosing therewith another complaint of sexual harassment received against him to which he was directed to respond and present himself on 6<sup>th</sup> May, 2009. *Vide* letter 2<sup>nd</sup> May 2009, the appellant sought more time to submit a reply to the additional complaint and permission to engage an Advocate to appear for him before the Committee.

5. The appellant submitted his reply to the notice on 8<sup>th</sup> May, 2009. On 6<sup>th</sup> May, 2009, the request of the appellant to engage a lawyer was declined by the Committee. On the same day, a corrigendum was issued by the Committee to the earlier letter<sup>11</sup> informing him that the next date fixed for filing his reply should be read as “12<sup>th</sup> May, 2009” instead of “12<sup>th</sup> June, 2009” and the date for further deposition should be read as “14<sup>th</sup> May, 2009” instead of “12<sup>th</sup> June, 2009”.

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<sup>11</sup> Dated 5<sup>th</sup> May, 2009

6. Vide letter dated 8<sup>th</sup> May, 2009, the appellant objected to the inquiry being conducted by the Committee on a complaint<sup>12</sup> received from an ex-student of the respondent no. 2 – University on the ground that she was neither a student nor an employee of the University. Additionally, he asked for a copy of the said complaint, besides the statement of deposition that had already been furnished to him.

7. On 12<sup>th</sup> May, 2009, the appellant forwarded an affidavit of a witness to refute some of the allegations levelled against him by the complainants. *Vide* letter of even date, the Committee forwarded an additional deposition of a member of the Faculty, Dr. Rahul Tripathi, who had stepped down from the Committee constituted to look into the complaints against the appellant and deposed as a witness.

8. The appellant wrote a letter dated 13<sup>th</sup> May, 2009 to the Committee seeking some time to appear before it on a plea that he was admitted in the hospital with a severe back-ache. *Vide* notice dated 14<sup>th</sup> May, 2009, the Committee directed the appellant to appear before it on 19<sup>th</sup> May, 2009 for recording his deposition and for submitting his written reply to the fresh deposition of the other complainant. Further extension of time, as requested, was however declined by the Committee.

9. In the meantime, *vide* letter dated 13<sup>th</sup> May, 2009, the appellant applied to the respondent no.2 – University seeking voluntary retirement on health grounds. However, the said application was withdrawn by him on 18<sup>th</sup> May, 2009. On the same date, an advocate engaged by the appellant's brother issued a notice to the respondents no.2 and

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<sup>12</sup> Signed on 27<sup>th</sup> April, 2009

3 seeking extension of time by one month for the appellant to appear before the Committee.

10. In its letter dated 20<sup>th</sup> May, 2009, the Committee noted that though the appellant had failed to appear before it on 19<sup>th</sup> May, 2009 for recording his further deposition, he was being granted one last opportunity to present himself on 23<sup>rd</sup> May, 2009, for completing his deposition and for cross-examining the witness including the complainants. Alongside, six more depositions were forwarded to the appellant, seeking his reply by 22<sup>nd</sup> May, 2009.

11. The appellant addressed yet another letter<sup>13</sup> to the Committee expressing his inability to attend the proceedings on 23<sup>rd</sup> May, 2009, on health grounds and requested for postponement of the proceeding by 3-4 weeks. However, his request was turned down by the Committee on the very same day and the appellant was directed to remain present on 23<sup>rd</sup> May, 2009, failing which, he was informed that the Committee would proceed further with the inquiry. A second request<sup>14</sup> made by the appellant for seeking postponement of the proceedings of the Committee, met the same fate.

12. After about ten days, the appellant sent a letter<sup>15</sup> to the Chairperson of the Committee stating *inter alia* that he had partially recovered from his ailment and was in a position to depose. He sought fresh dates to enable him to furnish a reply to the additional depositions received by him. However, by then the Committee had proceeded

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<sup>13</sup> Dated 22<sup>nd</sup> May, 2009

<sup>14</sup> Dated 23<sup>rd</sup> May, 2009

<sup>15</sup> Dated 4<sup>th</sup> June, 2009

*ex-parte* against the appellant and submitted its Report<sup>16</sup> to the Registrar of the respondent no. 2 – University stating that 18 meetings had taken place in connection with the inquiry that had established sexual harassment of the complaints by the appellant which act amounted to a grave misconduct and was in gross violation of Rule 3(1)(III) of the CCS Conduct Rules and consequently, recommended termination of his services.

(b) **PROCEEDINGS BEFORE THE EXECUTIVE COUNCIL**

13. The EC held a meeting on 13<sup>th</sup> June, 2009 wherein the Report submitted by the Committee was accepted and the appellant was placed under suspension with immediate effect. *Vide* Memorandum dated 8<sup>th</sup> September, 2009, the Chairman of the EC informed the appellant that the EC proposed to conduct an inquiry against him under Rule 14 of the CCS (CCA) Rules. Enclosed with the said Memorandum, was the statement of the Articles of Charge, statement of the imputation of the misconduct in support of each Article of Charge, list of documents and a list of witnesses for sustaining the said charges. The appellant was given ten days' time to submit a written statement of his defence and state whether he desired to be heard in person.

14. The appellant submitted a detailed reply to the aforesaid Memorandum, running into twenty pages and also demanded several documents and information relating to the complaints of sexual harassment made against him, on the plea that they were relevant

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<sup>16</sup> Dated 5<sup>th</sup> June, 2009

for submitting his written statement which was turned down by the Vice Chancellor of the respondent no. 2 – University<sup>17</sup> and he was granted twenty days to respond.

15. On 15<sup>th</sup> October, 2009 the EC appointed a former Judge of the Bombay High Court to conduct an inquiry into the charges framed against the appellant and he was informed that the Inquiry Officer will hold a preliminary inquiry into the charges framed against him on 9<sup>th</sup> November, 2009. The first sitting of the Inquiry Committee conducted on 9<sup>th</sup> November, 2009, was duly attended by the appellant and his Advocate. The second meeting was scheduled on 7<sup>th</sup> December, 2009 on which date when the Presenting Officer appearing on behalf of the respondent no. 2 – University referred to the judgment dated 26<sup>th</sup> March, 2004, passed by this Court in the case of **Medha Kotwal Lele and Others v. Union of India and Others**<sup>18</sup> and the amendment<sup>19</sup> to the *proviso* to Rule 14(2) of the CCS (CCA) Rules that provides that where there is a complaint of sexual harassment within the meaning of Rule 3C of the Central Civil Services (Conduct) Rules, 1964<sup>20</sup>, the Complaints Committee shall be deemed to be the inquiring authority for the purpose of imposing major penalties, the Inquiry Officer decided to keep the inquiry in abeyance, so as to ascertain as to whether any further directions had been issued by the Supreme Court in **Medha Kotwal's** case (*supra*).

16. On 15<sup>th</sup> December, 2009, the Registrar of the respondent no. 2 - University informed the appellant that the disciplinary proceedings initiated against him on the

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<sup>17</sup> *vide* letter 17<sup>th</sup> September, 2009

<sup>18</sup> (2013) 1 SCC 297

<sup>19</sup> Dated 1<sup>st</sup> July, 2004

<sup>20</sup> CCS (Conduct) Rules



recommendations made by the EC in its meeting held on 12<sup>th</sup> December, 2009, stood terminated and the order appointing the Inquiry Officer had also been withdrawn in the light of the order dated 26<sup>th</sup> April, 2004, passed by the this Court in **Medha Kotwal's** case holding that the report of the Complaints Committee for Prevention of Sexual Harassment of Women at Workplace shall be deemed to be an Inquiry Report under the CCS (CCA) Rules which shall be binding on the disciplinary authority for initiating disciplinary action against the government servant. Describing the decision taken by the EC on 14<sup>th</sup> June, 2009 of appointing an Inquiry Officer to inquire into the charges framed against the appellant as inadvertent, the Registrar informed the appellant that the disciplinary authority will decide the further course of action against him under the extant rules.

**C. DECISION OF THE DISCIPLINARY AUTHORITY AND THE APPELLATE AUTHORITY**

17. This was followed by issuance of a Memorandum<sup>21</sup> by the Vice-Chancellor of the respondent no. 2 – University on behalf of the EC informing the appellant that in its meeting conducted on 28<sup>th</sup> January, 2010, the EC had accepted the report of the Committee and decided that he was unfit to be retained in service in view of the gravity of the charges levelled against him. Proposing to impose a major penalty of dismissal

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<sup>21</sup> Dated 17<sup>th</sup> February, 2010

thereby disqualifying him from future employment as contemplated under the Rules<sup>22</sup>, the appellant was granted two weeks to submit his representation.

18. The appellant submitted his reply on 13<sup>th</sup> March, 2010. After examining his reply, the disciplinary authority dismissed the appellant from service *vide* order dated 10<sup>th</sup> May, 2010. The appeal<sup>23</sup> preferred by the appellant against the said dismissal order was rejected by the order<sup>24</sup> of the Appellate Authority<sup>25</sup>.

#### **D. DECISION OF THE HIGH COURT**

19. The said orders were challenged before the Bombay High Court. The High Court observed that the Committee had granted ample opportunities to the appellant to cross-examine the complainants and the witnesses, but he had deliberately elected not to appear before it. In such circumstances, the Committee could not be blamed for proceeding *ex-parte* against him and submitting its Report. It was also held that the Committee was justified in discarding the medical certificates submitted by the appellant as he kept on making flimsy excuses to stay away from the enquiry proceedings. The plea of the appellant that the Committee was improperly constituted or its composition was questionable as it comprised of persons who were junior to him in the Department, was rejected as meritless. Further, the contention that the enquiry had been conducted with undue haste, without giving a

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<sup>22</sup> Rule 11 (IX) CCS CCA, 1965

<sup>23</sup> Appeal dated 25<sup>th</sup> June, 2010

<sup>24</sup> Dated 19<sup>th</sup> April, 2010

<sup>25</sup> Governor of Goa and Chancellor of Goa University

fair and reasonable opportunity to the appellant to defend himself, was also turned down. As a result, the High Court did not see any merits in the said writ petition which was dismissed holding that there was no breach of the principles of natural justice and the Service Rules in the case.

**E. ARGUMENTS ADVANCED BY COUNSEL FOR THE PARTIES :**

**(a) COUNSEL FOR THE APPELLANT**

20. Arguing on behalf of the appellant, Mr. Bishwajeet Bhattacharya, learned Senior counsel has assailed the impugned judgment on several counts. The main thrust of his arguments is that the dismissal order<sup>26</sup> passed by the Disciplinary Authority and upheld by the Appellate Authority is based solely on the Report submitted by the Committee which was nothing more than a fact-finding proceeding that had commenced on 17<sup>th</sup> March, 2009 and concluded on 5<sup>th</sup> June, 2009; that though the inquiry had purportedly commenced on 17<sup>th</sup> March, 2009, the first hearing had actually taken place only on 27<sup>th</sup> April, 2009 and the entire proceedings were hurriedly closed within a span of thirty-nine days, by relying on forty-eight documents and forty-three depositions in the course of eighteen meetings without affording the appellant adequate opportunity to defend himself and present his case. It was argued that though the Committee had acceded to the request of the appellant for extension of time<sup>27</sup> and had granted him time till 12<sup>th</sup> June, 2009, the period was abruptly curtailed by almost one month and the date was advanced to 14<sup>th</sup> May, 2009, without any justification and unmindful of the appellant's indisposition,

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<sup>26</sup> Order dated 10<sup>th</sup> May, 2010

<sup>27</sup> Vide Letter dated 5<sup>th</sup> May, 2009

as was conveyed. Only when the appellant wrote to the Committee seeking a new date for his further deposition and for conducting further proceedings, did he come to know that the Committee had concluded its proceeding and submitted its Report on 5<sup>th</sup> June, 2009 itself. It is thus contended that the principles of natural justice have been grossly violated by the respondents and the appellant has been deprived of a reasonable opportunity of a fair trial, before passing the order of dismissal from service thereby causing him serious prejudice.

21. Citing the decision of this Court in **Union of India and Another v. Tulsiram Patel**<sup>28</sup>, learned Senior counsel argued that none of the three clauses to the second proviso to Article 311(2) of the Constitution of India that mandates that no person employed by the Union or the State shall be dismissed or removed from the service except after an inquiry, could have been resorted to by the respondents for having elected not to conduct a proper inquiry before proceeding to dismiss the appellant. It was vehemently contended that contrary to the procedure prescribed under the CCS (CCA) Rules, no proper inquiry was conducted by the respondents and no charges were framed by the first Committee till the date it had submitted its Report<sup>29</sup> and that the Articles of Charge that were framed by the respondents *vide* Memorandum dated 8<sup>th</sup> September, 2009, were subsequently dropped and the inquiry ordered was abandoned in favour of the Report submitted by the first Committee which was only a fact finding report that could not have been relied on as a final inquiry, particularly when it entailed serious

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<sup>28</sup> (1985) 3 SCC 398

<sup>29</sup> Vide letter dated 5<sup>th</sup> June, 2009

consequences. Learned Senior counsel cited a decision of a learned Single Judge of the Delhi High Court in **Sandeep Khurana v. Delhi Transco Ltd. And Others**<sup>30</sup> and of a Single Judge of the Karnataka High Court in **Professor Giridhar Madras v. Indian Institute of Science represented by Chairman and Others**<sup>31</sup> to urge that the Report of the Committee could not be equated with the report of an Inquiry officer, as contemplated in the procedure prescribed in Rule 14 of the CCS (CCA) Rules. This non-adherence to the procedure prescribed has caused grave injustice to the appellant, it being a serious infraction of the principles of natural justice. Allegations of bias were also levelled by the appellant against some members of the first Committee.

22. Learned counsel further argued that none of the three clauses appended to the second *proviso* of Article 311(2) of the Constitution of India have been pressed against the appellant to justify the impracticability of holding a proper inquiry and that failure on the part of the Committee to follow the procedure as prescribed in the CCS (CCA) Rules itself vitiates the entire proceedings. In fact, it is the case of the appellant that at no stage was he informed by the Committee that the proceeding being conducted by it were disciplinary proceedings and therefore, the report submitted by the said Committee could not have been treated by the respondents as an Inquiry Report under CCS (CCA) Rules.

**(b) COUNSEL FOR THE RESPONDENTS NO. 2 AND 3**

23. On the other hand, Ms. Ruchira Gupta, learned counsel appearing for the respondents no.2 and 3 strongly refuted the arguments advanced on behalf of the

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<sup>30</sup> ILR 2006 (11) Del 1313

<sup>31</sup> (2019) SCC Online Kar 3508

appellant. She submitted that the appellant having failed to challenge the decision taken by the respondent no.2 – University of dispensing with the inquiry contemplated in the Memorandum dated 8<sup>th</sup> September, 2009 at the appropriate stage, he is precluded from doing so belatedly. To substantiate this submission, she referred to the preliminary objections taken by the appellant in his letter dated 18<sup>th</sup> April, 2009 where he had raised five preliminary objections relating to the reconstitution of the Committee and its composition, the prejudice allegedly harboured against him by two members of the Committee and the fact that he was denied access to the records sought by him. But the grievance subsequently sought to be raised about the competence or jurisdiction of the Committee to conduct the inquiry and the procedure adopted by it, was never questioned by the appellant.

24. Referring to the correspondence exchanged between the Committee and the appellant, learned counsel submitted that the appellant was granted at least three opportunities to submit his reply and eighteen hearings were conducted by the Committee but he did not participate in the proceedings on several dates. Only after the appellant failed to turn up and made flimsy excuses of indisposition and repeatedly sought adjournments, did the Committee proceed *ex parte* against him and submitted its Report to the Registrar on 5<sup>th</sup> June, 2009. It was thus sought to be argued that the situation would not have changed in any manner had another opportunity been afforded to the appellant, as requested by him *vide* letter dated 4<sup>th</sup> June, 2009. In this context, the attention of the Court was drawn to the *proviso* to Rule 14(2) of the CCS (CCA)



Rules, which enjoins the Complaints Committee to hold an inquiry into the complaint of sexual harassment, “*as far as practicable*”, in accordance with the procedure laid down in the Rules. The decision of the Division Bench of the Delhi High Court in **Avinash Mishra v. Union of India**<sup>32</sup> has been cited to justify the stand of the respondents that the expression “*as far as practicable*” itself indicates that the Committee is vested with the discretion not to strictly follow the entire procedure as long as the officer charged has been afforded adequate opportunity to explain his stand in respect of the complaint and the relevant material has been disclosed to him.

25. Learned counsel for respondents no. 2 and 3 went on to state that the Committee had afforded adequate opportunities to the appellant to cross-examine the witnesses, produce his witnesses and complete his own deposition but he kept on delaying the proceedings under one pretext or the other. Referring to the Report, she stated that it shows that the Committee had taken note of the detailed reply submitted by the appellant on 25<sup>th</sup> April, 2009 and had dealt with the same at considerable length. Reliance has also been placed on the decisions of this Court in **Hira Nath Mishra and Others v. Principal, Rajendra Medical College, Ranchi and Another**<sup>33</sup> and **P.D. Agrawal v. State Bank of India and Others**<sup>34</sup> to argue that principles of natural justice is not an inflexible doctrine and the facts and circumstances of each case have to be examined to see whether the requirements of natural justice stand satisfied. In the present case,

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<sup>32</sup> 2014 SCC Online Del 1856

<sup>33</sup> (1973) 1 SCC 805

<sup>34</sup> (2006) 8 SCC 776

having regard to the sensitivity of the matter where no less than seventeen students of the respondent no. 2 – University had submitted complaints of sexual harassment against the appellant, the Committee exercised its discretion by keeping a balance and conducted the proceedings without violating the principles of natural justice, which is amply borne out from a perusal of the Report itself.

26. Learned counsel also refuted the submission made by the other side that failure on the part of the Committee to frame Articles of Charge before conducting the inquiry had caused serious prejudice to the appellant. She submitted that the sum and substance of the complaints were well known to the appellant from the very beginning and all the relevant depositions of the complainants and other witnesses were duly furnished to him. He was afforded ample opportunity to respond to the said complaints, cross-examine the witnesses and produce his own witnesses in defence. Explaining the decision of the respondent no.2 – University to terminate the subsequently constituted inquiry proceedings against the appellant by virtue of the Memorandum dated 8<sup>th</sup> September, 2009, learned counsel alluded to the order dated 26<sup>th</sup> April, 2004, passed by this Court in **Medha Kotwal's case** (supra), which had clarified that the Complaints Committee as contemplated in **Vishaka and Others v. State of Rajasthan and Others**<sup>35</sup>, will be the Inquiry Authority for the purposes of the CCS (CCA) Rules and the report of the said Committee will be deemed to be an Inquiry Report on which the Disciplinary Authority shall act in accordance with the Rules. It was submitted that the EC

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<sup>35</sup> (1997) 6 SCC 241

had made a *bona fide* error by appointing an Inquiry Authority to inquire into the charges framed against the appellant and the said decision to recall the order dated 15<sup>th</sup> October, 2009 was duly communicated to the appellant on 15<sup>th</sup> December, 2009. Only thereafter, did the EC issue a fresh Memorandum<sup>36</sup> to the appellant calling upon him to submit his representation on the decision to accept the Report submitted by the Committee and impose on him, a major penalty of dismissal from service.

27. It was thus submitted that no prejudice was caused to the appellant and the Committee had observed the principles of natural justice “*as far as was practical*”, in the given facts and circumstances of the case. Adequate opportunity was afforded to the appellant not just by the Committee, but also by the Disciplinary Authority and the Appellate Authority before taking any action against him. Therefore, this was not a case of “no opportunity” or “no hearing” but a case of “adequate opportunity” and “fair hearing” afforded to the appellant before imposing a major penalty of dismissal from service on him, as specified in Section 11 (9) of the CCS (CCA) Rules.

#### **F. THE TRIAD : ARTICLES 309, 310 AND 311 OF THE CONSTITUTION OF INDIA**

28. Services under the Union and the States are governed under Part XIV of the Constitution. Article 309 of the Constitution that provides for recruitment and conditions of service of persons serving the Union or a State, Article 310 that refers to the tenure of office of persons serving the Union or a State and Article 311 that deals with dismissal,

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<sup>36</sup> dated 17<sup>th</sup> February, 2010

removal or reduction in rank of persons employed in civil capacities under the Union or a State are inter-linked and “form an integrated whole, there being an organic and thematic unity running through them”<sup>37</sup>.

**(a) ARTICLE 309: CONDITIONS OF SERVICE**

29. Article 309 does not by itself provide for recruitment or conditions of service of Government servants, but confers this power on the appropriate legislature to make the laws and on the President and the Government of a State to make rules relating to these matters. The expression “*conditions of service*” in Article 309 takes in its sweep all those conditions that regulate holding of a post by a person which begins from the time he enters the service till his retirement and even post-retirement, in relation to matters like pension, pending disciplinary proceedings, etc. This expression also includes the right to dismiss such a person from service<sup>38</sup>. A Statute can be enacted by the appropriate Legislature or Rules can be made by the appropriate Executive under Article 309 for prescribing the procedure and the authority who can initiate disciplinary action against a Government servant<sup>39</sup>. It has further been held that any Act or Rule that violates the rights guaranteed to a government servant under Article 311, would be void<sup>40</sup>. Similarly, such an Act or Rule would be treated as void if it violates any of the fundamental rights guaranteed under Part III of the Constitution.

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<sup>37</sup> Union of India and Another v. Tulsi Ram Patel, (1985) 3 SCC 398

<sup>38</sup> State of Madhya Pradesh and Others v. Shardul Singh, (1970) 1 SCC 108

<sup>39</sup> Bk. Sardari Lal v. Union of India and Others, (1971) 1 SCC 411

<sup>40</sup> Moti Ram Deka v. The General Manager, North East Frontier Railway, (1964) 5 SCR 683

**(b) ARTICLE 310: DOCTRINE OF PLEASURE**

30. Article 310 embodies the “**Doctrine of Pleasure**” and in the context of Government servants, relates to their tenure of service. Article 310(1) makes the tenure of Government servants subject to the pleasure of the President or the Governor of a State except as expressly provided for by the Constitution. This Article is analogous to the rights of the Crown in England where all public officers and servants of the Crown are appointed at the pleasure of the Crown and their services can be terminated at will, without assigning any cause<sup>41</sup>. That is the reason why the tenure of the Government servant is subject to the pleasure of the President or the Governor of a State, except as expressly provided for under the Constitution. All members of such services who receive their stipend from the public exchequer, whether at the top of the hierarchy or at the very bottom, are finally answerable to the public and expected to discharge their duties responsibly, efficiently, effectively and above all, for the higher good of the public. It can, therefore, be seen that though the origin of Government servants may be contractual, once appointed to the post or office, they acquire a status and their rights and obligations are no longer determined by the consent of both the parties, but are governed by the Statute or Statutory Rules<sup>42</sup>.

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<sup>41</sup> Union of India and Another v. Tulsi Ram Patel, (1985) 3 SCC 398

<sup>42</sup> Roshan Lal Tandon v. Union of India, (1968) 1 SCR 185

**(c) ARTICLE 311 : A MANIFESTATION OF THE PRINCIPLES OF NATURAL JUSTICE**

31. This Court has held that in matters of dismissal, removal or reduction in rank of public servants, Article 311 of the Constitution is a manifestation of the essential principles of natural justice. It imposes a duty on the Government to ensure that any such decision against the public servant is preceded by an inquiry that contemplates an opportunity of hearing to be granted to the public servant, who is also entitled to make a representation against such a decision<sup>43</sup>. Article 311 reads as under :

***“311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.—***(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.”

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<sup>43</sup> Nisha Priya Bhatia v. Union of India and Another, (2020) 13 SCC 56

32. To provide a sense of security of tenure to Government servants, the Framers of the Constitution have incorporated safeguards in respect of the punishment or dismissal or removal or reduction in their rank as provided for in Clauses (1) and (2) of Article 311. At the same time, being mindful of the very same public interest and public good which does not permit that Government servants found to be corrupt, dishonest or inefficient be continued in service, a remedy is provided under the second *proviso* to Clause (2) of Article 311 whereunder their services can be dispensed with, without conducting a disciplinary inquiry.

33. Thus, the golden thread that weaves through Articles 309, 310 and 311 is public interest, directed towards larger public good. Together, they form a triad and symbolize the overarching Doctrine of Public Policy.

#### **G. ARTICLE 14 : BEDROCK OF THE PRINCIPLES OF NATURAL JUSTICE**

34. Principles of natural justice that are reflected in Article 311, are not an empty incantation. They form the very bedrock of Article 14 and any violation of these principles tantamounts to a violation of Article 14 of the Constitution. Denial of the principles of natural justice to a public servant can invalidate a decision taken on the ground that it is hit by the vice of arbitrariness and would result in depriving a public servant of equal protection of law.

35. Article 14, often described as the 'Constitutional Guardian' of the principles of natural justice, expressly forbids the State, as defined in Article 12, from denying to any person, equality before the law or equal protection of the laws. Article 14 provides an



express guarantee of equality before the law to all persons and extends a protection to them against discrimination by any law. Article 13(3)(a) defines law to include any ordinance, order, bye-law, rule, regulation, notification, custom or usages having in the territory of India, the force of law. Thus, principles of natural justice guaranteed under Article 14, prohibit a decision-making adjudicatory authority from taking any arbitrary action, be it substantive or procedural in nature. These principles of natural justice, that are a natural law, have evolved over a period of time and been continuously refined through the process of expansive judicial interpretation.

#### H. THE TWIN ANCHORS : NEMO JUDEX IN CAUSA SUA AND AUDI ALTERAM PARTEM

36. The twin anchors on which the principles of natural justice rest in the judicial process, whether quasi-judicial or administrative in nature, are *Nemo Judex In Causa Sua*, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and *Audi Alteram Partem*, i.e. a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken.

37. How deeply have Courts internalised and incorporated the principles of natural justice into the Constitution can be perceived from the seven Judge Bench decision in the case of **Maneka Gandhi v. Union of India and Another**<sup>44</sup>. In this case, where a challenge was laid to the order of impounding the passport of the appellant, which was

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<sup>44</sup> (1978) 1 SCC 248

silent on the reasons for such an action and the respondent–State had declined to furnish the reason therefor, it was held that life and liberty of a person cannot be restricted by any procedure that is established by law, but only by procedure that is just, fair and reasonable. Quoting the *audi alteram partem* rule and equating it with “fair play in action”, Justice P.N. Bhagwati (as he then was) had authored the judgment for the majority and had observed that:

“14. ....The *audi alteram partem* rule is not cast in a rigid mould and judicial decisions establish that it may suffer situational modifications. The core of it must, however, remain, namely, that the person affected must have a reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. That is why Tucker, L.J., emphasised in **Russel v. Duke of Norfolk**<sup>45</sup> that "whatever standard of natural justice is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case". What opportunity may be regarded as reasonable would necessarily depend on the practical necessities of the situation. It may be a sophisticated full-fledged hearing or it may be a hearing which is very brief and minimal : it may be a hearing prior to the decision or it may even be a post-decisional remedial hearing. The *audi alteram partem* rule is sufficiently flexible to permit modifications and variations to suit the exigencies of myriad kinds of situations which may arise.....”

38. In the captioned case, citing the judgment of a Constitution Bench of this Court in **Rustom Cavasjee Cooper v. Union of India**<sup>46</sup>, wherein it was held that fundamental rights are not a water tight compartment, the Court observed as under:-

“The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14”

The emphasis was on the Court’s attempt to expand the reach and ambit of the fundamental rights guaranteed in the Constitution rather than attenuate their meaning

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<sup>45</sup> 1949 1 ALL ER 109

<sup>46</sup> (1970) 1 SCC 248

and content by a process of judicial construction. Relying on the minority judgment rendered by Justice Fazal Ali in the case of **A.K. Gopalan v. State of Madras**<sup>47</sup>, this Court went on to hold in **Maneka Gandhi's case** (supra) that the procedure required to be prescribed under Article 21 must include four essentials namely, notice, opportunity to be heard, impartial tribunal and ordinary course of procedure. It was observed that even on principle, having regard to the impact of Article 14 on Article 21, the concept of reasonableness must be projected in the procedure contemplated by Article 21.

39. In **Delhi Transport Corporation v. D.T.C. Mazdoor Congress and Others**<sup>48</sup>, a five-Judge Bench of this Court highlighted how essential it is to afford a reasonable opportunity to an employee to put forth his case in a domestic inquiry and the requirement of an employer to comply with the principles of natural justice and fair play, in the following words :

**“202. ....It is now well settled that the ‘audi alteram partem’ rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally..... Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination.....**

**[emphasis added]**

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<sup>47</sup> 1950 SCC 228

<sup>48</sup> (1991) Supp (1) SCC 600

**316.** Thus it could be held that Article 14 read with Article 16(1) accords right to an equality or an equal treatment consistent with the principles of natural justice. Any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly, justly and reasonably. Right to fair treatment is an essential inbuilt of natural justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty. **The conferment of absolute power to dismiss a permanent employee is antithesis to justness or fair treatment. The exercise of discretionary power wide off the mark would breed arbitrary, unreasonable or unfair actions and would not be consistent with reason and justice. The provisions of a statute, regulations or rules that empower an employer or the management to dismiss, remove or reduce in rank of an employee, must be consistent with just, reasonable and fair procedure. It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Article 21 of the Constitution.** Any procedure prescribed to deprive such a right to livelihood or continued employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily, unjustly and unreasonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure. Otherwise any law or rule in violation thereof is void.”

[emphasis added]

40. The significant role played by procedural fairness in the backdrop of internalising the principles of natural justice into the Constitution cannot be overstated. This aspect has been highlighted by a Division Bench of this Court of which one of us, [Hima Kohli, JJ], was a member, in **Madhyamam Broadcasting Limited v. Union of India & Others**<sup>49</sup>.

Speaking for the Bench, Chief Justice D. Y. Chandrachud stated :

“53. The judgment of this Court in **Maneka Gandhi** (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In

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<sup>49</sup> (2023) SCC Online 366

view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. **The facet of *audi alterum partem* encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness.** The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing.”

- [emphasis supplied]

41. In **A.K. Kraipak and Others v. Union of India and Others**<sup>50</sup> quoting with approval the judgment **In re: H.K. (All Infant)**<sup>51</sup>, this Court held that :

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. **If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in**

<sup>50</sup> (1969) 2 SCC 262

<sup>51</sup> (1967) 1 All ER 226

character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative inquiry may have more far reaching effect than a decision in a quasi-judicial inquiry.....”

- *[Emphasis supplied]*

## I. FAIR ACTION AND IMPARTIALITY IN SERVICE JURISPRUDENCE:

42. In the context of service law, it is, therefore mandatory to afford a Government servant or an employee, a reasonable opportunity of being heard before an order is passed. In **Mangilal v. State of M.P.**<sup>52</sup>, this Court declared that even if a Statute is silent and there are no positive words in the Act or the Rules made thereunder, principles of natural justice must be observed. This is what the Court has held:

“10....Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See **Swadeshi Cotton Mills v. Union of India**<sup>53</sup>) Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves.....”

43. In **Tulsiram Patel's case** (supra), observing that violation of the rules of natural justice would result in arbitrariness which would amount to discrimination, the Constitution Bench made the following observations :

“95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that article. Shortly put, the syllogism runs thus: violation of a rule of natural justice results in arbitrariness which is the same as discrimination; where discrimination is the result of State action, it is a violation of Article 14:

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<sup>52</sup> (2004) 2 SCC 447

<sup>53</sup> (1981) 1 SCC 664

therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. **The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body of men, not coming within the definition of State in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.**

96. The rule of natural justice with which we are concerned in these appeals and writ petitions, namely, the *audi alteram partem* rule, in its fullest amplitude means that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. The process of a fair hearing need not, however, conform to the judicial process in a Court of law, because judicial adjudication of causes involves a number of technical rules of procedure and evidence which are unnecessary and not required for the purpose of a fair hearing within the meaning of *audi alteram partem* rule in a quasi-judicial or administrative inquiry. If we look at clause (2) of Article 311 in the light of what is stated above, it will be apparent that that clause is merely an express statement of the *audi alteram partem* rule which is implicitly made part of the guarantee contained in Article 14 as a result of the interpretation placed upon that article by recent decisions of this Court. **Clause (2) of Article 311 requires that before a government servant is dismissed, removed or reduced in rank, an inquiry must be held in which he is informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges....."**

**- [emphasis supplied]**

At the same time, a note of caution was added in the captioned case and the Court observed that the rules of natural justice are neither statutory rules nor are they cast in stone. They are flexible and can be adapted and modified by statutes, depending on the exigencies of different situations, the facts and circumstances of the case and the framework of the law<sup>54</sup>.

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<sup>54</sup> Also refer : A.K.Kraipak and others v. Union of India and Others, (1969) 2 SCC 262 and Union of India v. Col. J.N. Sinha and Another, (1970) 2 SCC 458



44. In Swadeshi Cotton Mills v. Union of India<sup>55</sup>, in his dissenting judgment, Justice

O. Chinnappa Reddy, had made the following pertinent observations :-

“106. The principles of natural justice have taken deep root in the judicial conscience of our people, nurtured by **Dr. Bina pani**<sup>56</sup>, **A.K. Kraipak**<sup>57</sup>, **Mohinder Singh Gill**<sup>58</sup>, **Maneka Gandhi**<sup>59</sup>. They are now considered so fundamental as to be “implicit in the concept of ordered liberty and, therefore, implicit in every decision-making function, call it judicial, quasi-judicial or administrative. **Where authority functions under a statute and the statute provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner and in no other. No wider right than that provided by statute can be claimed nor can the right be narrowed. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice.** The implication of natural justice being presumptive it may be excluded by express words of statute or by necessary intendment. Where the conflict is between the public interest and the private interest, the presumption must necessarily be weak and may, therefore, be readily displaced.....”

- [emphasis supplied]

45. Thus, ordinarily, courts interpret statutory provisions in sync with the aforesaid principles of natural justice on a premise that no statutory authority would violate the fundamental rights enshrined in the Constitution. When it comes to authorities that are expected to discharge judicial and quasi-judicial functions, the rule of *audi alteram partem* applies with equal force. Reasonableness infuses lifeblood in procedural matters, be it elements of the notice, the contents of the notice, the scope of inquiry, the material available or an adequate opportunity to rebut such material. All of this is to avoid

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<sup>55</sup> (1981) 1 SCC 664

<sup>56</sup> AIR 1967 SC 1269

<sup>57</sup> (1969) 2 SCC 262

<sup>58</sup> (1978) 1 SCC 405

<sup>59</sup> (1978) 1 SCC 248

miscarriage of justice at any stage. This is of course fluid and subject to adapting to the demands of a situation in the given facts of a case.

## **J. THE STATUTORY REGIME**

### **(a) GOA UNIVERSITY STATUTE**

46. In the above background, we may now proceed to examine the relevant Rules that govern the conditions of service of the appellant herein. The Statutory regime in respect of teachers employed in the respondent no. 2 – University is governed by the Goa University Statute SSB-1 (XXVI). SC-6(i) of the Statute contemplates as follows–

“For disciplinary and departmental action, the teachers shall be governed under the CCS (CCA) Rules, 1965, Fundamental Rules and Supplementary Rules as applicable to the employees of the Goa Government”.

### **(b) CCS (CCA) RULES :**

47. The CCS (CCA) Rules mentioned above, have been enacted by the President of India in exercise of the powers conferred by the *proviso* to Article 309 and Clause 5 of Article 148 of the Constitution of India. Part VI of the CCS (CCA) Rules lays down the procedures for imposing penalties. Rule 3(C) has been incorporated in the CCS (CCA) Rules *vide* GSR 49 dated 7<sup>th</sup> March, 1998 and subsequently, *vide* GSR 823 (E) dated 19<sup>th</sup> November, 2014. The said provision states as follows: -

#### **“3C. Prohibition of sexual harassment of working women**

(1) No Government servant shall indulge in any act of sexual harassment of any women 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 the 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) 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 a sexual nature.”

(c) **PRAGMATIC APPLICATION OF THE “AS FAR AS IS PRACTICABLE” RULE**

48. Rule 14 of the CCS (CCA) Rules stipulates the procedure for imposing major penalties and is extracted below :

**“14. Procedure for imposing major penalties**

- (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.
- (2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

**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.”**

- ***[emphasis supplied]***

49. As can be seen from the above, when the misconduct relates to a complaint of sexual harassment at the work place, the Complaints Committee constituted by the respondent no.2-University to examine such a complaint, dons the mantle of the inquiring authority and is expected to conduct an inquiry in accordance with the procedure

prescribed in the rules, as far as may be practicable. The use of the expression “as far as is practicable” indicates a play in the joints available to the Complaints Committee to adopt a fair procedure that is feasible and elastic for conducting an inquiry in a sensitive matter like sexual harassment at the workplace, without compromising on the principles of natural justice. Needless to state that the fact situation in each case will vary and therefore no set standards or yardstick can be laid down for conducting the inquiry in complaints of this nature. However, having regard to the serious ramifications with which the delinquent employee may be visited at the end of the inquiry, any discordant note or unreasonable deviation from the settled procedures required to be followed, would however strike at the core of the principles of natural justice, notwithstanding the final outcome.

#### **K. JOURNEY FROM “VISHAKA” CASE TO THE PoSH ACT**

##### **(a) VISHAKA GUIDELINES : FILLING IN THE VACUUM :**

48. The occasion to amend Rule 14 (2) of the CCS (CCA) Rules and append a *proviso* thereto was a direct consequence of judicial intervention by this Court in the case of Vishaka (supra), where the powers vested under Article 32 of the Constitution of India were exercised by a three-Judge Bench to enforce the fundamental rights of women to “gender equality and right to life and liberty”, bestowed under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India. Treating a set of writ petitions filed by some social activists and NGOs, who were agitating the brutal gang rape of a social worker in a

village of Rajasthan as a class action, this Court worked towards filling in the vacuum in the existing legislation. Noting the absence of any Statute enacted to provide for effective enforcement of the basic human right of gender equality and guarantee against sexual abuse, particularly against sexual harassment at work places, the Court drew strength from several provisions of the Constitution of India including Article 15<sup>60</sup>, Article 42<sup>61</sup> and Article 51(A)<sup>62</sup> and with the aid of the relevant International Conventions and norms including the General Recommendations of the CEDAW<sup>63</sup> that had passed a Resolution on 25<sup>th</sup> June, 1993, resolving that an effective complaint mechanism be put in place to address sexual harassment in the work place, laid down a set of Guidelines and norms with a direction that they would be strictly adhered to at all work places and shall be binding and enforceable in law till the vacuum was filled and a legislation was enacted to occupy the field. The Guidelines directed creation of a complaints mechanism to ensure time bound treatment of complaints, constitution of a Complaints Committee and recommended, disciplinary action where such conduct amounted to misconduct in employment 'as defined by the relevant service rules'. The momentous judgment in **Vishaka's case** (supra) was delivered on 13<sup>th</sup> August, 1997 and the Guidelines declared by the Court continued to hold the field till the Sexual Harassment of Women at

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<sup>60</sup> Article 15: The State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth of any of them.

<sup>61</sup> Article 42: The State shall make provisions for securing just and humane conditions of work and for maternity relief.

<sup>62</sup> Article 51(A): (e) ..... It shall be the duty of every citizen of India to, amongst others, renounce practices derogatory to the dignity of women.

<sup>63</sup> The Convention on the Elimination of All Forms of Discrimination Against Women

Workplace (Prevention, Prohibition and Redressal) Act, 2013<sup>64</sup> was enacted on 22<sup>nd</sup> April, 2013.

(b) **MEDHA KOTWAL LELE'S CASE : FOLLOW UP THROUGH CONTINUING MANDAMUS :**

49. After **Vishaka's case** (supra), came the case of **Medha Kotwal Lele and Others v. Union of India and Others**<sup>65</sup> (supra) where a grievance was raised by several petitioners that the Complaints Committees directed to be constituted in terms of the Guidelines laid down by this Court, had not been established to deal with cases of sexual harassment. Treating the said petition as a Public Interest Litigation, notices were issued to several parties including the Union of India and the State Governments and the following directions were issued :

“2.....“Complaints Committee as envisaged by the Supreme Court in its judgment in **Vishaka case** SCC at para 53, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964 (hereinafter called the CCS Rules) and the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the Rules.”

A similar amendment was also directed to be carried out in the Industrial Employment (Standing Orders) Rules.

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<sup>64</sup> For short 'PoSH Act'

<sup>65</sup> (2013) 1 SCC 311

50. On 17<sup>th</sup> January, 2006, in the very same case of **Medha Kotwal Lele**<sup>66</sup>, noting that there was no information available regarding implementation of the directions issued in **Vishaka's case** (supra), this Court issued the following directions :

"2. It is not known whether the committees as suggested in Vishaka case have been constituted in all the departments/institutions having members of staff of 50 and above and in most of the district-level offices in all the States, members of the staff working in some offices would be more than 50. It is not known whether the committees as envisaged in Vishaka case have been constituted in all these offices. The number of complaints received and the steps taken in these complaints are also not available. We find it necessary to give some more directions in this regard:

2.1. We find that in order to coordinate the steps taken in this regard, there should be a State-level officer i.e. either the Secretary of the Women and Child Welfare Department or any other suitable officer who is in charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary.

2.2. As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in that direction. They shall work as nodal agency as regards shops, factories and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required committee is established in such institutions."

51. Exercising its powers of a writ of continuing mandamus, the aforesaid petition was again taken up after the passage of over six years, on 19<sup>th</sup> October, 2012<sup>67</sup> when this Court examined the affidavits filed by each State Government to satisfy itself on the compliance of the Guidelines laid down in **Vishaka's case** (supra). On examining the position regarding amendments required to be carried out in the CCS(CCA) Rules and the Standing Orders as also the establishment and composition of the Complaints

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<sup>66</sup> (2013) 1 SCC 312

<sup>67</sup> (2013) 1 SCC 297



Committees, the Court noted with great dismay that several State Governments had failed to make compliances. Extracted below are the observations made in this regard:

“43. As the largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence—domestic violence, sexual assault, sexual harassment at the workplace, etc.—and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population—the women.

44. In what we have discussed above, we are of the considered view that guidelines in **Vishaka** should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

44.1. The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services Conduct Rules (by whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings, etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

44.2. The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in para 44.1 within two months.

44.3. The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and State level. Those States and/or Union Territories which have formed only one committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such committees an independent member shall be associated.

44.4. The State functionaries and private and public sector undertakings/organisations/ bodies/institutions, etc. shall put in place sufficient mechanism to ensure full implementation of Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

44.5. The Bar Council of India shall ensure that all Bar Associations in the country and persons registered with the State Bar Councils follow **Vishaka** guidelines. Similarly, the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by **Vishaka**. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as the Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with **Vishaka** and *Others v. State of Rajasthan and Others* (1997) 6 SCC 241, guidelines and the guidelines in the present order.”

(c) **ENACTMENT OF THE PoSH ACT AND RULES :**

52. After the passage of fifteen years from the date of the verdict delivered in **Vishaka's case** (*supra*), the PoSH Act, was legislated on 22<sup>nd</sup> April, 2013 and finally notified on 9<sup>th</sup> December, 2013. The Act lays down a comprehensive mechanism for constitution of Internal Complaints Committee, Local Committee and Internal Committees, the manner of conducting an inquiry into a complaint received, duties of an employer, duties and powers of the District Officer and others, penalties for non-compliance of the provisions of the Act, etc. Accompanying the Act are the Rules, 2013<sup>68</sup> that have been framed in exercise of powers conferred under Section 29 of the PoSH Act and amongst others, lays down the manner in which an inquiry into a complaint of sexual harassment ought to be conducted (Rule 7), the interim reliefs that can be extended to the aggrieved women during the pendency of the inquiry (Rule 8), the manner of taking action for sexual harassment (Rule 9) etc. It is noteworthy that sub-rule (3) of Rule 7

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<sup>68</sup> The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013

provides that the respondent shall file his reply to the complaint within a stipulated time along with the relevant documents and give details of the witnesses and sub-rule (4) stipulates that the Complaints Committee shall make an inquiry into the complaints “*in accordance with the principles of natural justice*”.

(d) **BREATHING REASONABLENESS INTO THE PROCEDURAL REGIME :**

53. Thus, it can be seen that the journey from **Vishaka’s case** (supra) that acted as a springboard and sowed the seeds of future legislation by structuring Guidelines to deal with cases of sexual harassment, blossomed into a comprehensive legislation with the enactment of the PoSH Act and Rules. At the same time, however, women centric the Guidelines and the Act may have been, they both recognize the fact that any inquiry into a complaint of sexual harassment at the workplace must be in accordance with the relevant rules and in line with the principles of natural justice. The cardinal principle required to be borne in mind is that the person accused of misconduct must be informed of the case, must be supplied the evidence in support thereof and be given a reasonable opportunity to present his version before any adverse decision is taken. Similarly, the concerned employer is also expected to act fairly and adopt a procedure that is just, fair and reasonable. The whole purpose is to breathe reasonableness into the procedural regime. But, the test of reasonableness cannot be abstract. It has to be pragmatic and grounded in the realities of the facts and circumstances of a case. When conducting an inquiry, it is the duty of the Inquiring Authority to proceed in a manner that is visibly free

from the taint of arbitrariness, unreasonableness or unfairness. An inquiry that can culminate into imposition of a major penalty like termination of service of an employee, must doubly conform to a just, fair and reasonable procedure. Any displacement of the principles of natural justice can only be in exceptional circumstances, as contemplated in the proviso to Article 311(2) of the Constitution of India and not otherwise. Wherever the rules are silent, principles of natural justice must be read into them and a hearing be afforded to the person who is proposed to be punished with a major penalty<sup>69</sup>.

54. The four predominant purposes sought to be achieved by reading the principles of natural justice into law and into the conduct of judicial and administrative proceedings to achieve the underlying object of securing fairness have been concisely expressed by this Court as an assurance of a fair outcome by following the procedural Rules, an assurance of equality in the proceedings, legitimacy of the decision and decision-making authority thereby preserving the integrity of the system and finally, with the idea of preserving the dignity of individuals where citizens are treated with respect and the dignity they deserve in a society governed by the Rule of Law<sup>70</sup>.

#### **L. ANALYSIS AND DISCUSSION :**

55. In the present case, the incidents in question relate to the period when the **Vishaka Guidelines** were in place and it had been clarified in **Medha Kotwal Lele** (supra) that the Complaints Committee will be deemed to be an inquiry authority for the

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<sup>69</sup> State Bank of India and Others v. Ranjit Kumar Chakraborty and Another, (2018) 12 SCC 807

<sup>70</sup> Madhyamam Broadcasting Limited v. Union of India decided on 5<sup>th</sup> April 2023

purposes of the CCS Rules. Keeping this in mind, we may now proceed to ascertain as to whether the procedure adopted by the respondents No. 2 and 3 herein violated the principles of natural justice and thereby caused prejudice to the appellant, as has been alleged, for this Court to interfere in the impugned judgment.

(a) **SCOPE OF INTERFERENCE BY THE HIGH COURT IN JUDICIAL REVIEW :**

56. It may be clarified at the outset that to satisfy itself that no injustice has been meted out to the appellant, the High Court was required to examine the decision-making process and not just the final outcome. In other words, in exercise of powers of judicial review, the High Court does not sit as an Appellate Authority over the factual findings recorded in the departmental proceedings as long as those findings are reasonably supported by evidence and have been arrived at through proceedings that cannot be faulted on account of procedural illegalities or irregularities that may have vitiated the process by which the decision was arrived at.

57. The purpose of judicial review is not only to ensure that the individual concerned receives fair treatment, but also to ensure that the authority, after according fair treatment, reaches, a conclusion, which is correct in the eyes of law<sup>71</sup>. Notably, in **Apparel Export Promotion Council vs. A.K. Chopra**, a matter related to sexual harassment at the workplace<sup>72</sup> where, aggrieved by the decision taken by the Disciplinary Authority of accepting the report of the Inquiry Officer and removing the

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<sup>71</sup> (1999) 1 SCC 759

<sup>72</sup> Chief Constable of the North Wales Police v. Evans, (1982) 3 ALL ER 141 HL. Also refer : B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749.

respondent therein from service on the ground that he had tried to molest a lady employee, this Court had set aside the order of the High Court that had narrowly interpreted the expression “sexual harassment” and held that in departmental proceedings, the Disciplinary Authority is the sole judge of facts and once findings of fact, based on appreciation of evidence are recorded, the High Court in its writ jurisdiction should not normally interfere with those factual findings unless it finds that the recorded findings were based either on no evidence or that the findings were wholly perverse and/or legally untenable. The Court is under a duty to satisfy itself that an inquiry into the allegations of sexual harassment by a Committee is conducted in terms of the service rules and that the concerned employee gets a reasonable opportunity to vindicate his position and establish his innocence<sup>73</sup>.

**(b) EXTENT OF ADHERENCE TO THE “AS FAR AS PRACTICABLE” NORM**

58. Assuming as correct, the submission made by learned counsel for the respondents no.2 and 3 that the Committee was not bound to strictly follow a step by step procedure for conducting an inquiry having due regard to the *proviso* to Rule 14(2) of the CCS (CCA) Rules that permits a Committee to enquire into a complaint of sexual harassment ‘as far as practicable’, in accordance with the procedure laid down in the Rules, the question that would still beg an answer is

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<sup>73</sup> Dr. Vijaykumaran C.P.V. v. Central University of Kerala and Others, (2020) 12 SCC 426

whether the inquiry conducted by the Committee in the instant case, would meet the '*as far as practicable*' norm?

59. Rule 14 prescribes the procedure required to be followed for conducting an inquiry by a Public Authority which entails issuance of a charge sheet, furnishing details of the Articles of Charge, enclosing statements of imputations in respect of each article of charge, forwarding of a list of witnesses and the documents sought to be relied upon by the Management/employer. The said procedure may not have been strictly followed by the Committee in the present case, but it is not in dispute that all the complaints received from time to time and the depositions of the complainants were disclosed to the appellant. He was, therefore, well aware of the nature of allegations levelled against him. Not only was the material proposed to be used against him during the inquiry furnished to him, he was also called upon to explain the said material by submitting his reply and furnishing a list of witnesses, which he did. Furthermore, on perusing the Report submitted by the Committee, it transpires that depositions of some of the complainants were recorded audio-visually by the Committee, wherever consent was given and the appellant was duly afforded an opportunity to cross-examine the said witnesses including the complainants. The charges levelled by all the complainants were of sexual harassment by the appellant with a narration of specific instances. Therefore, in



the given facts and circumstances, non-framing of the Articles of Charge by the Committee cannot be treated as fatal. Nor can the appellant be heard to state that he was completely in the dark as to the nature of the allegations levelled against him and was not in a position to respond appropriately. So far, so good.

(c) **THE COMMITTEE'S UNDERSTANDING OF ITS MANDATE :**

60. As noted above, when the Registrar of the respondent No. 2–University addressed a letter to the Chairperson of the Committee, he forwarded nine complaints of sexual harassment that had been received by the Vice Chancellor of the University. The process of the inquiry was set into motion on 17<sup>th</sup> March 2009 when the appellant was informed that on receiving complaints of sexual harassment against him, the Committee had conducted a preliminary verification of the complaints by recording the statements of the concerned students. Till then, no specific Articles of Charge were framed by the Committee and no imputation of charges were forwarded to the appellant. At the same time, copies of all the complaints received and the statements recorded were forwarded directly to the appellant calling upon him to explain the charges levelled against him.

61. The plea of the appellant that the Committee understood the remit of its inquiry as a 'fact-finding proceeding', can be discerned from the contents of the letters dated 17<sup>th</sup> March 2009 and 20<sup>th</sup> April 2009 addressed to the appellant. The

impression carried by the Committee that it was only required to submit a fact-finding report to the University was no different for the EC as is borne out from a perusal of the Memorandum dated 8<sup>th</sup> September 2009, issued by the Chairman of the EC who, after receiving the Committee's Report, informed the appellant that an inquiry was proposed to be conducted against him under Rule 14 of the CCS (CCA) Rules. This was the first time when the respondents informed the appellant that the EC had decided to follow the procedure prescribed under the rules of drawing up a Statement of Articles of Charge, imputation of misconduct in support of each Article of Charge and other documents and had granted the appellant time to submit his reply in defence. The appellant did submit a reply. But it is an admitted position that the said inquiry proceedings were aborted at the initial stage itself and it was the Report of the Committee submitted earlier, that was acted upon by the EC in terms of a decision taken on 28<sup>th</sup> January 2010. We are of the opinion that when the Committee itself was unclear as to the scope of its inquiry, the appellant cannot be blamed for harbouring an impression that the remit of the Committee was confined to fact finding alone and it was not discharging the functions of a disciplinary committee, as contemplated under the service Rules.

**(d) WHIRLWIND PROCEEDINGS**

62. On examining the records, it emerges that the point at which the Committee fell into an error was when it attempted to fast forward the entire proceedings after the first few hearings and declined to grant a reasonable time to the appellant to effectively participate in the said proceedings. It is noteworthy that the proceedings of the Committee had commenced on 16<sup>th</sup> April 2009 and stood concluded on 5<sup>th</sup> June, 2009. During this period, 18 meetings were conducted by the Committee. Following is the month-wise details of the dates on which the meetings of the Committee were conducted :

- (i) April 2009 – On 16<sup>th</sup>, 27<sup>th</sup> and 29<sup>th</sup>
- (ii) May 2009 – On 6<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup>, 23<sup>rd</sup>, 25<sup>th</sup>, 27<sup>th</sup>, 28<sup>th</sup> and 29<sup>th</sup>
- (iii) June, 2009 – On 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup>

63. It is also noteworthy that the time span prescribed under the CCS (CCA) Rules for concluding an inquiry is ordinarily within a period of six months from the date of receipt of the order of appointment. But, here, the entire process was wrapped up in flat 39 days. This shows the tearing hurry in which the Committee was to submit its Report. One such glaring instance of the over anxiety to conclude the proceedings is apparent from the letter dated 5<sup>th</sup> May 2009, addressed by the Committee to the appellant informing him that the next date for filing his reply and for recording further depositions was 12<sup>th</sup> June 2009. Surprisingly, on the very

next day, the Committee issued yet another letter advancing the said dates by claiming that an error had crept into the previous letter and informing the appellant that the date for filing his reply should be read as '12<sup>th</sup> May 2009' and the date for recording further depositions should be read as '14<sup>th</sup> May, 2009', thus moving the dates back by a whole month. Another egregious example of the hurry and scurry shown by the Committee can be gathered from the fact that on 20<sup>th</sup> May 2009, the Committee had written to the appellant giving him a last opportunity to present himself on 20<sup>th</sup> May 2009, not only to complete his deposition, but also to cross-examine the complainants and other witnesses. Simultaneously, the Committee forwarded six more depositions to the appellant and directed him to furnish his reply within 48 hours i.e. by 22<sup>nd</sup> May, 2009.

64. Even if this Court was to accept the submission made by learned counsel for the respondents that the appellant was offering flimsy excuses to somehow prolong the proceedings and the health ground taken by him was not genuine, it does not explain the approach of the Committee which was well aware of the fact that at least six more depositions had been handed over to the appellant as late as on 20<sup>th</sup> May 2009. Even if he had been hale and hearty, he would still have required a reasonable time to respond to the additional depositions and simultaneously, prepare himself for cross-examining the complainants and completing his

deposition. This can only be termed as an unreasonable and unfair direction by the Committee.

65. The undue haste demonstrated by the Committee for bringing the inquiry to a closure, cannot justify curtailment of the right of the appellant to a fair hearing. The due process, an important facet of the principles of natural justice was seriously compromised due to the manner in which the Committee went about the task of conducting the inquiry proceedings. As noted above, when the proceedings, subject matter of the present appeal had taken place, the PoSH Act was nowhere on the horizon and the field was occupied by the **Vishaka** Guidelines. The said Guidelines also did not exclude application of the principles of natural justice and fair play in making procedural compliances. The silence in the Guidelines on this aspect could not have given a handle to the Committee to bypass the principles of natural justice and whittle down a reasonable opportunity of affording a fair hearing to the appellant. This Court has repeatedly observed that even when the rules are silent, principles of natural justice must be read into them. In its keen anxiety of being fair to the victims/complainants and wrap up the complaints expeditiously, the Committee has ended up being grossly unfair to the appellant. It has completely overlooked the cardinal principle that justice must not

only be done, but should manifestly be seen to be done. The principles of *audi alterem partem* could not have been thrown to the winds in this cavalier manner.

(e) **HOW DID THE EXECUTIVE COUNCIL FALTER?**

66. The error committed on the part of the EC, is no less grave. It is apparent that the EC continued to remain under an impression that the First Committee to which the complaints were forwarded, was only a ‘fact-finding Committee’ and that a full-fledged inquiry was still required to be conducted subsequently, in the manner prescribed under Rule 14 of the CCS (CCA) Rules. The result was that though the Report of the First Committee was accepted and the EC proceeded to place the appellant under suspension, for the very first time, it decided to issue him Memorandum detailing the Articles of Charge and the imputation of charges and further appointed a Former Judge of the High Court as an Inquiry Officer to conduct the inquiry in terms of the Rules. Respondent Nos. 2 and 3 got wiser only when the said proceedings commenced and the Inquiry Officer was appraised of the directions issued in **Medha Kotwal’s** case where it had been clarified by this Court that the Complaints Committee contemplated in **Vishaka’s** case (*supra*), will be deemed to be an Inquiry Authority for the purposes of the CCS (Conduct) Rules and its report shall be deemed to be a Report under the CCS (CCA) Rules.

67. When the employer itself was oblivious to the remit of the Committee and the Committee remained under the very same impression having described its proceedings as fact-finding in nature, it was all the more incumbent for the respondents to have paused on receiving the Report of the First Committee and verify the legal position before taking the next step. In all this back and forth, it was the procedure prescribed under Rule 14 for conducting an inquiry of sexual harassment at the workplace that came to be sacrificed at the alter of expeditious disposal, which can neither be justified nor countenanced.

68. The intent and purpose of the *proviso* inserted in Rule 14(2) of CCS (CCA) Rules and Rule 3C of CCS (Conduct) Rules is that the procedure required to be adopted for conducting an inquiry into the complaint of sexual harassment that can lead to imposition of a major penalty under the Rules, must be fair, impartial and in line with the Rules. Pertinently, the emphasis on adhering to the principles of natural justice during an inquiry conducted by a Complaints Committee finds specific mention in Rule 7(4) of the subsequently enacted Rules of 2013. But the spirit behind the due process could never be suppressed or ignored even in the absence of the Statute or the Rules inasmuch as the principles of natural justice is the very essence of the decision-making process and must be read into every judicial or even a quasi-judicial proceeding.

69. This is not to say that the Committee even if described as an Inquiring authority, by virtue of the ruling in **Medha Kotwal's** case (*supra*) and required to follow the procedure prescribed under Rule 14, was expected to conduct the inquiry as if it was a full-fledged trial. The expression used in the *proviso* to Rule 14(2), '*as far as practicable*' has to be read and understood in a pragmatic manner. In any such proceedings initiated by the Disciplinary Authority, a calibrated balance would have to be struck between the rights of a victim of sexual harassment and those of the delinquent employee. At the same time, fairness in the procedure would have to be necessarily adopted in the interest of both sides. After all, what is sauce for the goose, is sauce for the gander.

#### **M. CONCLUSION**

70. In the instant case, though the Committee appointed by the Disciplinary Authority did not hold an inquiry strictly in terms of the step-by-step procedure laid down in Rule 14 of the CCS (CCA) Rules, nonetheless, we have seen that it did furnish copies of all the complaints, the depositions of the complainants and the relevant material to the appellant, called upon him to give his reply in defence and directed him to furnish the list of witnesses that he proposed to rely on. Records also reveal that the appellant had furnished a detailed reply in defence. He had also submitted a list of witnesses and depositions. This goes to show that he was



well-acquainted with the nature of allegations levelled against him and knew what he had to state in his defence. Given the above position, non-framing of the articles of charge cannot be said to be detrimental to the interest of the appellant.

71. In fact, the glaring defects and the procedural lapses in the inquiry proceedings took place only thereafter, in the month of May, 2009, when 12 hearings, most of them back-to-back, were conducted by the Committee at a lightning speed. On the one hand, the Committee kept on forwarding to the appellant, depositions of some more complainants received later on and those of other witnesses and called upon him to furnish his reply and on the other hand, it directed him to come prepared to cross-examine the said complainants and witnesses as also record his further deposition, all in a span of one week. Even if the medical grounds taken by the appellant seemed suspect, the Committee ought to have given him reasonable time to prepare his defence, more so when his request for being represented through a lawyer had already been declined. It was all this undue anxiety that had led to short-circuiting the inquiry proceedings conducted by the Committee and damaging the very fairness of the process.

72. For the above reasons, the appellant cannot be faulted for questioning the process and its outcome. There is no doubt that matters of this nature are sensitive and have to be handled with care. The respondents had received as

many as seventeen complaints from students levelling serious allegations of sexual harassment against the appellant. But that would not be a ground to give a complete go by to the procedural fairness of the inquiry required to be conducted, more so when the inquiry could lead to imposition of major penalty proceedings. When the legitimacy of the decision taken is dependent on the fairness of the process and the process adopted itself became questionable, then the decision arrived at cannot withstand judicial scrutiny and is wide open to interference. It is not without reason that it is said that a fair procedure alone can guarantee a fair outcome. In this case, the anxiety of the Committee of being fair to the victims of sexual harassment, has ended up causing them greater harm.

73. This Court is, therefore, of the opinion that the proceedings conducted by the Committee with effect from the month of May, 2009, fell short of the “*as far as practicable*” norm prescribed in the relevant Rules. The discretion vested in the Committee for conducting the inquiry has been exercised improperly, defying the principles of natural justice. As a consequence thereof, the impugned judgment upholding the decision taken by the EC of terminating the services of the appellant, duly endorsed by the Appellate Authority cannot be sustained and is accordingly quashed and set aside with the following directions:

- (i) The matter is remanded back to the Complaints Committee to take up the inquiry proceeding as they stood on 5<sup>th</sup> May 2009.
- (ii) The Committee shall afford adequate opportunity to the appellant to defend himself.
- (iii) The appellant shall not seek any adjournment of the proceedings.
- (iv) A Report shall be submitted by the Committee to the Disciplinary Authority for appropriate orders.
- (v) Having regard to the long passage of time, the respondents are directed to complete the entire process within three months from the first date of hearing fixed by the Committee.
- (vi) The procedure to be followed by the Committee and the Disciplinary Authority shall be guided by the principles of natural justice.
- (vii) The Rules applied will be as were applicable at the relevant point of time.
- (viii) The decision taken by the Committee and the Disciplinary Authority shall be purely on merits and in accordance with law.
- (ix) The appellant will not be entitled to claim immediate reinstatement or back wages till the inquiry is completed and a decision is taken by the Disciplinary Authority.

**N. EPILOGUE**

74. Just as we celebrate a decade of the PoSH Act being legislated, it is time to look back and take stock of the manner in which the mandate of the Act has been given effect to. The working of the Act is centred on the constitution of the Internal Complaints Committees (ICCs) by every employer at the workplace and constitution of Local Committees (LCs) and the Internal Committees (ICs) by the appropriate Government, as contemplated in Chapters II and III, respectively of the PoSH Act. An improperly constituted ICC/LC/IC, would be an impediment in conducting an inquiry into a complaint of sexual harassment at the workplace, as envisaged under the Statute and the Rules. It will be equally counterproductive to have an ill prepared Committee conduct a half-baked inquiry that can lead to serious consequences, namely, imposition of major penalties on the delinquent employee, to the point of termination of service.

75. It is disquieting to note that there are serious lapses in the enforcement of the Act even after such a long passage of time. This glaring lacuna has been recently brought to the fore by a National daily newspaper that has conducted and published a survey of 30 national sports federations in the country and reported that 16 out of them have not constituted an ICC till date. Where the ICC have been found to be in place, they do not have the stipulated number of members or lack

the mandatory external member. This is indeed a sorry state of affairs and reflects poorly on all the State functionaries, public authorities, private undertakings, organizations and institutions that are duty bound to implement the PoSH Act in letter and spirit. Being a victim of such a deplorable act not only dents the self-esteem of a woman, it also takes a toll on her emotional, mental and physical health. It is often seen that when women face sexual harassment at the workplace, they are reluctant to report such misconduct. Many of them even drop out from their job. One of the reasons for this reluctance to report is that there is an uncertainty about who to approach under the Act for redressal of their grievance. Another is the lack of confidence in the process and its outcome. This social malady needs urgent amelioration through robust and efficient implementation of the Act. To achieve this, it is imperative to educate the complainant victim about the import and working of the Act. They must be made aware of how a complaint can be registered, the procedure that would be adopted to process the complaint, the objective manner in which the ICC/LC/IC is expected to function under the Statute, the nature of consequences that the delinquent employee can be visited with if the complaint is found to be true, the result of lodging a false or a malicious complaint and the remedies that may be available to a complainant if dissatisfied with the Report of the ICC/LC/IC etc.

76. However salutary this enactment may be, it will never succeed in providing dignity and respect that women deserve at the workplace unless and until there is strict adherence to the enforcement regime and a proactive approach by all the State and non-State actors. If the working environment continues to remain hostile, insensitive and unresponsive to the needs of women employees, then the Act will remain an empty formality. If the authorities/managements/employers cannot assure them a safe and secure work place, they will fear stepping out of their homes to make a dignified living and exploit their talent and skills to the hilt. It is, therefore, time for the Union Government and the State Governments to take affirmative action and make sure that the altruistic object behind enacting the PoSH Act is achieved in real terms.

#### **O. DIRECTIONS**

77. To fulfil the promise that the PoSH Act holds out to working women all over the country, it is deemed appropriate to issue the following directions :

- (i) The Union of India, all State Governments and Union Territories are directed to undertake a timebound exercise to verify as to whether all the concerned Ministries, Departments, Government organizations, authorities, Public Sector Undertakings, institutions, bodies, etc. have constituted ICCs/LCs/ICs, as the case

may be and that the composition of the said Committees are strictly in terms of the provisions of the PoSH Act.

(ii) It shall be ensured that necessary information regarding the constitution and composition of the ICCs/LCs/ICs, details of the e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned Authority/Functionary/Organisation/Institution/Body, as the case may be. The information furnished shall also be updated from time to time.

(iii) A similar exercise shall be undertaken by all the Statutory bodies of professionals at the Apex level and the State level (including those regulating doctors, lawyers, architects, chartered accountants, cost accountants, engineers, bankers and other professionals), by Universities, colleges, Training Centres and educational institutions and by government and private hospitals/nursing homes.

(iv) Immediate and effective steps shall be taken by the authorities/managements/employers to familiarize members of the ICCs/LCs/ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the Report submitted.

(v) The authorities/management/employers shall regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of the ICCs/LCs/ICs and to educate women employees and women's groups about the provisions of the Act, the Rules and relevant regulations.

(vi) The National Legal Services Authority(NALSA) and the State Legal Services Authorities(SLSAs) shall develop modules to conduct workshops and organize awareness programmes to sensitize authorities/managements/employers, employees and adolescent groups with the provisions of the Act, which shall be included in their annual calendar.

(vii) The National Judicial Academy and the State Judicial Academies shall include in their annual calendars, orientation programmes, seminars and workshops for capacity building of members of the ICCs/LCs/ICs established in the High Courts and District Courts and for drafting Standard Operating Procedures (SOPs) to conduct an inquiry under the Act and Rules.

(viii) A copy of this judgment shall be transmitted to the Secretaries of all the Ministries, Government of India who shall ensure implementation of the directions by all the concerned Departments, Statutory Authorities, Institutions, Organisations etc. under the control of the respective Ministries. A copy of the judgment shall also be transmitted to the Chief Secretaries of all the States and Union Territories



who shall ensure strict compliance of these directions by all the concerned Departments. It shall be the responsibility of the Secretaries of the Ministries, Government of India and the Chief Secretaries of every State/Union Territory to ensure implementation of the directions issued.

(ix) The Registry of the Supreme Court of India shall transmit a copy of this judgment to the Director, National Judicial Academy, Member Secretary, NALSA, Chairperson, Bar Council of India and the Registrar Generals of all the High Courts. The Registry shall also transmit a copy of this judgment to the Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and the Engineering Council of India for implementing the directions issued.

(x) Member-Secretary, NALSA is requested to transmit a copy of this judgment to the Member Secretaries of all the State Legal Services Authorities. Similarly, the Registrar Generals of the State High Courts shall transmit a copy of this judgment to the Directors of the State Judicial Academies and the Principal District Judges/District Judges of their respective States.

(xi) The Chairperson, Bar Council of India and the Apex Bodies mentioned in sub-para (ix) above, shall in turn, transmit a copy of this judgment to all the State Bar Councils and the State Level Councils, as the case may be.

78. The Union of India and all States/UTs are directed to file their affidavits within eight weeks for reporting compliances. List after eight weeks.

79. The appeal is allowed on the above terms while leaving the parties to bear their own costs. Pending applications, if any, shall stand disposed of.

.....J.  
[ A.S. BOPANNA ]

.....J.  
[ HIMA KOHLI ]

**NEW DELHI**  
**MAY 12, 2023**