

*(Draft Document)*

Compendium on Prevention of Sexual Harassment of  
Working Women(Prevention, Prohibition &  
Redressal) at Workplace

(Updated December, 2017)



FOR CSIR EMPLOYEES

## **PREFACE**

As part of the ongoing HR/Policy initiative to make a centralized web based repository of CSIR orders on various subjects with an objective to facilitate those dealing with the subject matter in the administration as well as the staff members for their reference and awareness the present Compendium on Prevention of Sexual Harassment of Working Women (Prevention, Prohibition and Redressal) at workplace has been compiled.

Best efforts have been made to incorporate all the available circulars/ instructions/ orders (including the text of the Act of 2013) starting from 26th March, 1998 till December, 2017 on the subject matter.

**Joint Secretary (Admn.)**

## Sexual Harassment (Draft Document)

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(1)

**Sub:- Sexual Harassment of working women.**

I am directed to forward herewith OM and Notification No. 11013/10/97-Estt. (A) dated 13<sup>th</sup> Feb., 1998 received from Ministry of Personnel, Public Grievances and Pension both on the subject of sexual harassment of working women, for information, guidance and necessary action.

*Copy of CSIR letter No. 17(228)/98-E.II dated 26.3.1998*

F.No. 11013/10/97-Estt. (A) dated 13<sup>th</sup> Feb., 1998 of Govt. of India, Ministry of Personnel, Public Grievances and Pension, DoPT

G.S. R. ----- In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the India Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Conduct) Rules, 1964, namely:-

1. (1) These rules may be called the Central Civil Services (Conduct) Amendment Rules, 1998.  
(2) They shall come into force on the date of their publication in the official Gazette.
2. In the Central Civil Services (Conduct) Rules, 1964, after rule 3B, the following rule shall be inserted, namely:-

“3C – Prohibition of sexual harassment of working women

1. No Government servant shall indulge in any act of sexual harassment of any woman at her work place.
2. Every Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation – For the purpose of this rule, “sexual harassment” includes such unwelcome sexually determined behavior, whether directly or otherwise, as

- a. Physical contact and advances;
- b. Demand or request for sexual favours;
- c. Sexually coloured remarks;
- d. Showing any pornography; or
- e. Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

(2)

**Sub:-CCS (Conduct) Rules, 1964 - Guidelines regarding prevention of Sexual harassment of working women in the workplace.**

I am to Forward herewith a copy of the Office Memorandum No. 11013/3/2009-Estt.(A) of the Govt. of India, Ministry of Personnel, Public Grievances and Pensions (Deptt. of Personnel and Training) dated 3rd August, 2009 on the subject cited above for your information, guidance and necessary action, with a request that the copies of the same may kindly be provided, to all concerned.

*Copy of CSIR letter No. 15-6(82)/98-O&M-II dated 5.11.2009*

No.11013/3/2009-Estt. (A) Dated 3<sup>rd</sup> August, 2009 of Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training)

In continuation of Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India O.M. of even number dated the 21st July, 2009 on the abovementioned subject, the undersigned is directed to say the matter was considered by a Committee of Secretaries and the following decision was taken:-

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

2.All Ministries/Departments are requested to ensure compliance.

**PROVISIONS OF Rule 14 (2) of the CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1965**

14 (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 in the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

(3)

**Sub:-Alignment of Service Rules with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013.**

I am forwarding herewith the copies of Office Memoranda No. 11013/2/2014-Estt.(A-III), dated 27.11.2014 and No. 11013/6/2014-Estt.A, dated 10.12.2014 for your information, guidance and compliance.

*Copy of CSIR letter No. 15-1(60)/81-Vig.-II dated 15.12.2014*

No. 11013/2/2014 Estt. (A.III) Dated 27<sup>th</sup> November 2014 of Government of India Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training)

The undersigned is directed to say that the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013' {SHWW (PPR) Act} has been promulgated on 22nd April 2013. Further to the Act, the 'Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 were notified on 9.12.2013. The Act and the Rules framed thereunder provide a redressal mechanism for handling cases of sexual harassment at workplace. The Act and Rules are available at the website of the Ministry of Women and Child Development ([wcd.nic.in](http://wcd.nic.in)) under Legislation/Acts.

2. The CCS (Conduct) Rules, 1964 and CCS (CCA) Rules, 1965 have been amended vide Notifications of even number published as G.S.R. 823(E) and G.S.R.822(E) in the Gazette of India - Extraordinary dated 19-11-2014. These are available on this Department's website [www.persmin.gov.in](http://www.persmin.gov.in)

3. So far as Central Government employees are concerned, provisions already exist in the CCS (Conduct) Rules 1964 defining sexual harassment. Further, the proviso to Rule 14(2) of the CCS (CCA) Rules 1965 provides that the complaints committee established in each Ministry or Department or office enquiring into such complaints shall be deemed to be the inquiring authority appointed by the disciplinary authority and the committee shall hold the inquiry so far as practicable in accordance with the procedure laid down in those rules. Similar provisions exist in the relevant service rules of the Central Government servants not governed by CCS (Conduct) Rules / CCS (CCA) Rules.

4. Sexual harassment as defined in rule 3-C of CCS (Conduct) Rules, 1964 it has been amended vide Notification of even number dated 19-11-2014 (copy enclosed). The amended rule is as follows:

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

1. No Government servant shall indulge in any act of sexual harassment of any woman at any work place.
2. Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanation-1 For the purpose of this rule,

- (a) "sexual harassment" includes any one or more of the following acts or behaviour, (whether directly or by implication), namely:-\*
  - (i) physical contact and advances; or
  - (ii) demand or request for sexual favours; or
  - (iii) sexually coloured remarks; or
  - (iv) showing any pornography; or
  - (v) any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.
- (b) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: -
  - (i) implied or explicit promise of preferential treatment in employment; or
  - (ii) implied or explicit threat of detrimental treatment in employment; or
  - (iii) implied or explicit threat about her present or future employment status; or
  - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - (v) humiliating treatment likely to affect her health or safety.
- (c) "workplace" includes, -
  - (i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
  - (ii) hospitals or nursing homes;
  - (iii) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;



- (iv) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- (v) a dwelling place or a house."

5. All Ministries/Departments are advised that the following procedure may be adopted while dealing with complaints of sexual harassment:-

- (i) Sexual harassment will include any one or more of the Acts or behaviour defined in Rule 3C of the CCS (Conduct) Rules 1964 read with Sec 3(2) of SHWW (PPR) Act.
- (ii) The Committee constituted in each Ministry/ Department/ office under the CCS (Conduct) Rules, 1964 shall inquire into complaints of sexual harassment in accordance with the provisions of Section 4 of the SHWW (PPR) Act.
- (iii) The Committee will as far as practicable follow the procedures prescribed in CCS (CCA) Rules 1965 for conduct of the inquiry.
- (iv) If any complaint is received directly by the committee, the same shall be referred to the appropriate disciplinary authority and the Committee shall inquire into the complaint on the complaint being referred to it by the disciplinary authority.

6. In addition, the Committee will have the powers to recommend to the employer: -

- a. to transfer the aggrieved woman or the charged officer to any other workplace; or
- b. to grant leave to the aggrieved woman up to a period of three months.  
(The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled to.)
- c. to grant such other relief to the aggrieved woman as may be prescribed; or
- d. to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs. Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs. Such compensation will not amount to penalty under Rule 11 of CCS (CCA) Rules in terms of the Explanation (ix) to Rule 11 inserted vide Notification of even Number dated 19-11-2014.

7. It may also be noted that the Committee may recommend action to be taken against the person who has made a complaint, if the Committee arrives at the conclusion that the allegation is malicious or the aggrieved woman or the person making the complaint has made the complaint knowing it to be false or has produced any forged or misleading document. The Committee may also recommend action against any witness if it comes to the conclusion that such witness has given false evidence or produced any forged or misleading document.

8. Attention is also invited to the following provisions of SHWW (PPR) Act:

Sec 16 & 17 Prohibition of publication or making known contents of complaint, inquiry proceedings and recommendations of the Committee.

Sec 19 : Duties of employer. This may be read with provisions of Rule 3(C) (2) of CCS (Conduct) Rules.

Sec 21. 22 of SHWW(PPR) Act and Rule 14 of the SHWW (PPR) Rules Annual Reports

9. All the Ministries/Departments are requested to bring the contents of this OM to the notice of all officers and staff working under them. The Ministries/ Departments are also requested to advise the PSEs /Autonomous Bodies under their administrative control to align their service rules with the SHWW (PPR) Act/ Rules.

(4)

**Sub:-Central Civil Services (Conduct) Rules, 1964 – Guidelines regarding prevention of sexual harassment of women at the workplace – reg.**

I am forwarding herewith a copy of Office Memorandum No. 11013/2/2014-Estt.(A-III), dated 2.2.2015 for your information, guidance and compliance. It is requested that Annual return (as on 31<sup>st</sup> March) in the prescribed proforma may be furnished to this Office by 15<sup>th</sup> April every year.

*Copy of CSIR letter No. 15-1(60)/81-Vig. – II dated 17.2.2015*

No. 11013/2/2014-Estt.(A-III), dated 2.2.2015 of Government of India, Ministry of Personnel, Public Grievances and Pensions, DoPT.

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

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

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

3. As per the guidelines issued vide Office Memorandum dated 21.07.2009, it is also to be ensured that the Complaints Committee shall at all times be in existence and changes in its composition, whenever necessary, should be made promptly and adequately publicized. The composition of the Complaints Committee should also be posted on the websites of the concerned Ministries/Departments/Offices concerned.
4. Vide the Office Memorandum dated 01.12.2014, the attention of the Ministries/ Departments was also invited to the reporting requirements mentioned in the SHWW(PPR) Act and SHWW(PPR) Rules.
5. All Ministries/ Departments are requested to please review the progress of implementation of the existing abovementioned guidelines issued in the aftermath of the Vishakha judgment.
6. Attention of all Ministries is invited to Section 22 of the Act relating to including information in Annual Report, and to request that information relating to number of cases filed, if any, and their disposal may be included in the Annual Report of the Ministry / Department.
7. All Ministries / Departments are also requested to furnish an annual return (as on 31st March) in the enclosed proforma to this Department by 30th April every year.

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

Annual Return on cases of Sexual Harassment

Period: 1st April..... to 31<sup>st</sup> March

Ministry / Department: .....

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

	programmes against sexual harassment conducted during the year		
5.	Nature of action		

**Note:**

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

(5)

**Sub:- Sexual Harassment of Women at Workplace – reg.**

In pursuance of the Gazette of India notification dated 09<sup>th</sup> December, 2013 relating to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (14 of 2013) issued by the Ministry of Women and Child Development, the Vice President, CSIR is pleased to constitute the following Committee for redressal of complaints regarding any sexual harassment at workplace made by a women employee at any of the CSIR Labs/Instts. against any of the Directors of the CSIR Labs/Instts. situated all over India.

1. Smt. Pravin Tripathi,  
Former Member, Competition Appellate Tribunal - Chairperson  
Resi. Address : D-243, Anupam Garden,  
Lane 1B, Sainik Farms, Naib Seral,  
New Delhi – 110068
2. Dr. (Ms.) M. Lakshmi Kantam - Member  
Former Director, CSIR-IICT  
Present address:  
Dr. (Ms.). M. Lakshmi Kantam,  
Prof. of Eminence,  
Deptt.of Chemical Science  
Tezpur University, Napaam,  
SONITPUR – 784028 (ASSAM)
3. Dr. Chandra Shekhar, - Member  
Director, CSIR-CEERI, PILANI – 333031
4. Prof. (Dr.) Nahid Zafar Shaikh, - Member  
Member, Maulana Azad Education Foundation (MAEF)  
Permanent address: 104, Green Park, Ekta Marg,  
Ratangiri– 415612

*Copy of CSIR letter No. 15-11(48)/2014-Vig.dated 3.6.2015*

(6)

**Sub:-Complaint Committee for redressal of Complaint regarding sexual harassment.**

In continuation of the OM of even no. dated 3.6.2015 notifying the Complaint Committee for redressal of complaints regarding any sexual harassment at workplace made by a woman employee at any of the CSIR Labs/Instts. against any of the Directors of the CSIR Labs/Instts. situated all over India, the following modifications are made.

1. The designation in respect of Smt. Praveen Tripathi also be read as – Independent Director, MCX – Multi Commodity Exchange of India limited, Mumbai and
2. The designation in respect of Dr. (MS) M. Lakshami Kantam also be Read as – Professor of Eminence, Tezpur University, Assam.

*Copy of CSIR letter No. 15.11(48)/2014-Vig.dated 2.7.2015*

(7)

**Sub:- Steps for conducting inquiry in case of allegation of Sexual Harassment.**

I am forwarding herewith the copies of Office Memoranda No. 11013/2/2014-Estt.(A-III), dated 16.7.2015 and corrigendum of even number, dated 30.7.2015 for your information, guidance and bringing it to the notice of all concerned.

*Copy of CSIR letter No. 15-1(60)/81-Vig.-II dated 13.8.2015*

F.No. 11013/2/2014-Estt.(A-III), dated 16.7.2015 of Government of India, Ministry of Personnel, Public Grievances and Pensions, DoPT.

Undersigned is directed to say that during the meeting of the Chairpersons of Complaints Committees with Secretary (Personnel) on the 16<sup>th</sup> April, 2015 it was suggested that the Department of Personnel and Training may prepare a step guide for conduct of inquiry in complaint cases of sexual harassment, Rule 14(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 lays down that the Complaints Committee established in each Ministry or Department for inquiring into complaints of sexual harassment shall hold such inquiry as far as practicable in accordance with the procedure laid down in these Rules.

2. The annexed guide on "Steps for Conduct of Inquiry in complaints of Sexual Harassment" is intended to give the procedure as prescribed in the rules/instructions. This is, however, not intended as a substitute for reference to the Rules and instructions. Members of the Complaints Committees and others who are required to deal with such inquiries should acquaint themselves with Central Civil Services (Classification, Control and Appeal) Rules, 1965, and instructions issued thereunder.

## **Steps for Conduct of Inquiry in Complaints of Sexual Harassment**

### **Complaints Committees**

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

### **What is Sexual Harassment?**

2. "Sexual Harassment" includes any one or more of the following acts or behaviour, (whether directly or by implication), namely:-
  - i. physical contact and advances; or
  - ii. demand or request for sexual favours; or
  - iii. Sexually coloured remarks; or
  - iv. showing any pornography; or
  - v. any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.
3. The following circumstances, among other circumstances, in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment:-
  - (i) implied or explicit promise of preferential treatment in employment; or
  - (ii) implied or explicit threat of detrimental treatment in employment; or
  - (iii) implied or explicit threat about her present or future employment status; or
  - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - (v) humiliating treatment likely to affect her health or safety.

### **Workplace defined:**

4. As per Section 2(o) of the Act, the following places are included within the ambit of the expression "workplace":

- (i) any department, organisation, undertaking, establishment enterprise, institution, office,' etc, -established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government:
- (ii) hospitals or nursing homes;
- (iii) any sports institute, stadium, etc. used for training, sports or other activities relating thereto;
- (iv) any place visited by the employee arising out of or during the course of employment - including transportation provided by the employer for undertaking such journey;

**Initial relief:**

- 5. The Committee will also have the powers to recommend:-
  - a. To transfer the aggrieved woman or the charged officer to any other workplace; or
  - b. To grant leave to the aggrieved woman up to a period of three months.  
(The leave will not be deducted from her leave account.)

**Complaints Committee to be Inquiring Authority:**

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

**Need for investigation**

- 7. The Complaints Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.
- 8. As mentioned above, the complaints of sexual harassment are required to be handled by Complaints Committee. On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the

imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

### **Dual Role**

9. In the light of the Proviso to the Rule 14 (2) mentioned above, the Complaints Committee would normally be involved at two stages. The first stage is investigation already discussed in the preceding para, the second stage is when they act as Inquiring Authority, It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.
10. As the Complaints Committees also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.
11. In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgemental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

### **Decision to issue Charge sheet, and conducting Inquiry**

12. On receipt of the investigation Report the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer, As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14(5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.
13. if the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS (CCA) Rules,



## The Inquiry-stages

14. In case the Charged Officer denies, the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the Complaints Committee for formal inquiry, and documents mentioned in Rule 14 (6) will be forwarded to the Complaints Committee, As per Section 11(3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.. when trying a suit in respect of the following matters, namely;—
- a. summoning and enforcing the attendance of any person and examining him on oath;
  - b. requiring the discovery and production of documents; and
  - c. any other matter which may be prescribed, ;

The Section 11(4) of the Act requires that the inquiry shall be completed within a period of ninety days.

15. The Disciplinary Authority shall also in terms of Rule 14(5) (c) appoint a Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/ inquiring Authority, The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. As a first step, the charged officer would be formally asked as to whether he admits the charges. As mentioned above, in case of any clear and unconditional admission of any Article of Charge, no, inquiry would be held in respect of that Article and the admission of the Charged Officer would be taken on record. The inquiry would be held, thereafter, in respect of those charges which have, not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions 'relating to Defence Assistant are given in Rule 14(8).
16. The inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such 'documents, if not only given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. The. Inquiring Authority would' consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed. Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.
17. When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

## **Examination of Witnesses**

18. Summons would, thereafter, be sent to the witnesses listed in the Charge sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions to the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.
19. The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appear as a witness, she would also be examined and cross-examined. The Inquiry Officer may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.
20. If Inquiring Authority wishes to ascertain some facts for clarity, he may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

## **Daily Order Sheet**

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

## **Defence Evidence**

22. After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be

produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross-examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

### **General Examination of the Charged Officer**

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

### **Brief**

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

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

### **Powers of the Committee to make recommendations**

26. Normally, the Inquiry Officer is not allowed to make any recommendations in this report. Here the function of the Complaints Committee acting as the Inquiry Authority differs. The Complaints Committee may however, make recommendations including what has been mentioned in para 2 above.

- (c) to grant such other relief to the aggrieved woman as may be prescribed; or
- (d) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs,

- Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs.
- Such compensation will not amount to penalty under Rule 11 of CCS (CCA) Rules in terms of the Explanation (ix) to Rule 11. Inserted vide Notification of even Number dated 19.11.2014.
- Committee may recommend action to be taken against complainant, If the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.
- The Committee may also recommend action against any witness if such witness has given false evidence or produced any forged or misleading document.

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

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

### **Suspension**

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

### **Special provisions to deal with threats or intimidation**

30. Disciplinary Authority may also dispense with inquiry under Rule 19(ii), and action may be taken without the inquiry when the Disciplinary Authority concludes that it is not reasonably practicable to hold such an inquiry. The circumstances leading to such a

conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. Such situation would be deemed to have arisen:

- i. Where the Government servant, through or together with his associates terrorizes, threatens or intimidates witnesses who are likely to give evidence against him with fear of reprisal in order to prevent them from doing so; or
- ii. Where the Government servant himself or with or through others threatens, intimidates and terrorizes the Disciplinary Authority, Members of the Committee, the Presenting Officer or members of their family.

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

(8)

**Sub: Steps for conducting inquiry in case of allegation of Sexual Harassment - Corrigendum.**

The undersigned is directed to say that a step guide for conduct of inquiry in complaint cases of sexual harassment was prepared by this Department and the same was circulated vide O.M. of even no. dated 16.7.2015.

2. In the step guide the definition of 'workplace' is based on section 2(o) of the Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act, 2013, However, in para 4 'a dwelling place or a house' was inadvertently omitted. Therefore, In the step guide under the heading 'workplace' the following may be added in para 4 after (iv):

*(v).a dwelling place or a house.*

*Copy of CSIR letter No. 15-1(60)/81-Vig.-II dated 13.8.2015*

(9)

**Sub:- Constitution of Internal Complaints Committee in DSIR for dealing with cases of Sexual Harassment of women at Work Place – reg.**

I am directed to forward herewith following Office Memorandum for information, guidance and compliance.

S.No.	Office Memorandum No.	Subject
1.	DSIR OM No. H-12019/02/2005-Admn. Dated 2.2.2016 & DO letter No 19-8/2013/WW dated 15.12.2015 from Smt. Maneka	Constitution of Internal Complaints Committee in DSIR for dealing with cases of Sexual Harassment of women at Work Place – reg.

	Sanjay Gandhi, Minister of Women & Child Development.	
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*Copy of CSIR letter No. 5-1(17)/2008-PD dated 4.3.2016*

F.No. H-12019/02/2005-Admn. Dated 2.2.2016 of Govt. of India, Ministry of Science and Technology, DoPT

The undersigned is directed to refer to this Department's Office Memorandum of even number dated 12.1.2016 on the above mentioned subject and to send herewith a copy of D.O. letter dated 15.12.2015 from Smt. Maneka Sanjay Gandhi, Hon'ble Minister of Women & Child Development together with its enclosure, i.e. Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 [brought out by the Ministry of Women & Child Development] to facilitate proper implementation of the Act.

D.O. No. 19-8/2013/WW dated 15.12.2015 of Minister of Women & Child Development

As you are aware the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 has come into force from 9<sup>th</sup> December, 2013 the Rules under this Act have also been notified on 9<sup>th</sup> December, 2013.

2. With improved access to education and employment, millions of Indian women are entering the country's workforce today. Many of these 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, as women have the right to work in safe and secure environment. It is the responsibility of every employer to ensure compliance of the provisions of the Act so as to ascertain the safety of our 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 with the enactment of the Act. India is now a part of the group of countries to have prohibited sexual harassment at workplace through national legislation. Unfortunately, despite the enactment of the Act, in 2013, women continue to be harassed in the workplace because effective implementation of the Act requires the support and commitment of all stakeholders. The Ministry of Women and child Development has been receiving many reference from across the country in this regard. May a times, it is lack of knowledge about procedures, lack of support systems or simply getting stuck at what would seem as the simplest of procedures; the fact however is that legal interventions have never been easy. The idea of this Handbook germinated from some such difficulties faced by organizations in implementing the Act.
3. I am pleased to share with you a copy of this Handbook on Sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013. This Handbook is also available on the Ministry's website i.e. [www.wcd.nic.in](http://www.wcd.nic.in).

4. I would like to request you to direct your officer for dissemination of these Handbooks among the member of the Internal Complaints Committees constituted in your Ministry and its attached and subordinate offices to ensure proper implementation of the Act.
5. I look forward to hearing from you on steps taken by your Ministry/Department in this regard.

HANDBOOK ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 FOR EMPLOYER'S/INSTITUTIONS/ORGANIZATIONS/INTERNAL COMPLAINTS COMMITTEE/ LOCAL COMPLAINTS COMMITTEE – NOTIFIED BY GOVERNMENT OF INDIA, MINISTRY OF WOMEN AND CHILD DEVELOPMENT – NOVEMBER, 2015.



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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)

## **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, Indian 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 organized and unorganized 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 organizations vested with responsibility to enforce the law.

The Handbook is structured into six sections. The first section is an introduction and details regarding the genesis of the act, the second sets the context by defining the workplace and sexual harassment and impact of such behavior, 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 complaints 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.

## **1. INTRODUCTION**

Whereas sexual harassment results in violation of the fundamental rights of a woman to equality....,

[Preamble, Sexual Harassment of women at workplace (Prevention, Prohibition, Redressal Act)]

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

A safe work place is therefore women'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 behavior 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 physical and psychological wellbeing of workers at risk. This leads to poor productivity and negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioral patterns, which create 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 cost, 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 environment 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 and 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 experience in 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 that where this is to be captured, women's overall work participation would be 86.2%. While the official data shows that women's work participation rate is around 25.3% in rural areas and 14.7% 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% of women workers are employed in the informal sector, they remain unprotected by laws. With no laws or mechanism to protect them, proactive measures are required to make their workplaces safe.

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 workplaces 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 the 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-set 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 to work towards the prevention of the practice of child marriages. During the course of her work, she prevented the marriage of a 1 year old girl in the community. Her work was met with the resentment and attracted harassment from men of that community. Bhanwari Devi reported this to the local authority and but no action was taken. That omission came at great cost-- Bhanwari was subsequently gang raped by those very man .

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 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 .

In a landmark judgment, *Vishaka vs. State of Rajasthan (1997)*, 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 union 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 defines sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demand for sexual favours, and sexually offensive visual in the workplace. The definition also covered situations where women 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 matter of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by women 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.

Vishakha 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 on 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:

- 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 Vishakha judgement, 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 his chances 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 workplaces 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 register complaint; and what the inquiry process and outcomes should include.

## **1.5 WHO IS THE HANDBOOK FOR**

This handbook informs the end user (an employee/workers) about workplace sexual harassment and their right to inform 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 complaint 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:** describe the monitoring requirements as per the Act.

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



## **2. Workplace Sexual Harassment – What Is It?**

This section defined the aggrieved woman, workplace and sexual harassment as well as highlights key elements of workplace sexual harassment. It provides examples of behaviors 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 organized 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 organizations, 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 institutions/Facilities;

- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

The Act defines the Unorganized 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 examples:

1. Nursing Homes
2. NGOs
3. Farms
4. Corporations
5. House
6. Government Organizations
7. Hospitals
8. Sports Facilities
9. Cooperative Societies
10. Service Providers
11. Educational Institutional
12. Companies

### **2.3 WHAT IS SEXUAL HARASSMENT AT THE WORKPLACE?**

“Sexual Harassment” includes anyone or more of the following unwelcome acts or behavior (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 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 singly instance of sexual harassment or a series of incident 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 FIRST STEP TO PREVENTION IS RECOGNITION**

Workplace Sexual Harassment is behavior that is

**UNWELCOME**

**SEXUAL** in nature

A **SUBJECTIVE** experience

**IMPACT** no intent is what matters

Often occurs in a matrix of **POWER**

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 behavior.

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

<b>Unwelcome</b>	<b>Welcome</b>
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 behavior**

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.

<b>Professional</b>	<b>Personal</b>
Decreased work performance	Depression
Increased absenteeism, loss of pay	Anxiety, panic attacks
Loss of promotional opportunities	Traumatic stress
	Sleeplessness

Retaliation from the respondent, or Colleagues/friends of the respondent	Shame, guild, self-blame Difficulty in concentrating
Subjected to gossip and scrutiny at work	Headaches
Being objectified	Fatigue, loss of motivation
Becoming publicly sexualized	Personal difficulties with time
Defamation	Eating disorders (weight loss or gain)
Being ostracized	Feeling betrayed and/or violated
Having to relocate	Feeling angry or violent towards the respondent
Job and career consequences	Feeling Powerless
Weakened support network	Loss of confidence and self esteem
	Over all loss of trust in people
	Problems with intimacy
	Withdrawal and isolation

## **SEXUAL HARASSMENT IS A SUBJECTIVE EXPERIENCE**

In 2010, the High Court of Delhi endorsed the view that sexual harassment is a subjective experience and for that reason held “We therefore prefer to analyze harassment from the [complainant’s] perspective. A complete understanding of the [complainant’s] view requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women.. Men tend to view some forms of sexual harassment as “harmless social interactions to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that a woman may perceive.”

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

## **2.5 EXAMPLES OF BEHAVIOURS AND SCENARIOS THAT CONSTITUTE SEXUAL HARASSMENT**

Below are examples of behavior 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 behavior occurs in cluster. Distinguishing between these different possibilities is not an easy task and requires essential training and skill building.

### **Some examples of behavior 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 behavior 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 behavior 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 or 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 & succeed.

### **Some examples of workplace behaviors 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 behavior:

- 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 offer 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 behavior 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 behavior 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 organization 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 behavior 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 behavior. 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 behavior 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 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 harassment 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 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 behaviors 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.

### **3. PREVENTION AND PROHIBITION**

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

#### **3.1 Preventive Authorities**

##### **3.1.1 Who is an employer?**

An employer refers to:

1. The head of the department, organization, undertaking, establishment, enterprise, institution, office, branch or unit 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 employees or benefits from the employment of domestic worker or women employees.

#### **Employer**

- a. Workplace of Government/Local Bodies
- b. Private Workplace
- c. Dwelling House
- d. Head/Officer specified
- e. Person responsible for management/supervision/control
- f. Person who employs/benefits from the employment

##### **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 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 of sub-division, an ICC has to be set up at every administrative unit and office.

## 1. ICC/LCC ARE MANDATORY

The employee who had a fundamental right to at workplace free of sexual harassment, had complained about sexual harassment. According to the Court, had the organization 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 of the non-constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the sexual Harassment of Women at Workplace Act 2013 had not been enacted).

*Ms. G.V. ISG Novasoft Technologies Ltd. Madras High Court (Crl. R.C. No. 370 of 2014 order dated 2.9.2014. 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 unorganized sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

1. From women working in an organization 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, provide that: <ul style="list-style-type: none"><li>• <i>At least one must be a woman</i></li><li>• <i>At least one must have a background of law or legal knowledge</i></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;

#### **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 behavior 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 responsibilities to:

1. Effectively communicate a policy that prohibits unwelcome behavior that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes.
2. Carryout 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.

#### 4. REDRESS

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

##### 4.1 Who can complain and where?

<b>COMPLAINTS COMMITTEE</b>	
<p><b>In case of physical Incapacity</b></p> <ul style="list-style-type: none"> <li>- Complainant's relative</li> <li>- Complainant's friend</li> <li>- Co worker</li> <li>- Officer of NCW or SCW</li> <li>- Any person who has knowledge of the incident with the written consent of the complainant</li> </ul>	<p><b>In case of mental incapacity:</b></p> <ul style="list-style-type: none"> <li>- Complainant's relative</li> <li>- Complainant's friend</li> <li>- Special educator</li> <li>- Qualified Psychiatrist/Psychologist</li> <li>- Guardian/authority under whose care the complainant is receiving treatment/care</li> <li>- Any person with knowledge of the incident, jointly with any person mentioned above</li> </ul>
<p><b>In case of Complainant's death:</b> Any person with knowledge of the incident with the written consent of her legal heir</p>	<p><b>In case Complainant is unable to file the complaint for any other reason:</b> By any person who has knowledge of the incident with her written consent</p>
<b>THE COMPLAINANT</b>	

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, counseling 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. Right 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. Analyze 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 synthesize 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 Statesmen newspaper, Rina Mukhejee 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 Hon’ble Supreme Court’s direction in Vishakavs 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 Statesman Ltd. and Smt. Rina Mukherjee. Order of K.K. Kumai, Judge, dated 6.2.2013, Fourth Industrial Labour Tribunal (West Bengal).

#### **4.6 DO’s and Don’ts for complaints committee**

##### **DO’s**

1. Create and 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 on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.

#### **Stage One: Receipt of the Complaint**

Step 1: Receive and acknowledge receipt of the complaint

Step 2: Meet and talk to the complaint to explore options for formal and informal resolution

Step 3: Informal mechanism

Step 4: Formal mechanism

Step 5: Respondent and response

#### **Stage Two: Planning Carefully**

Step 6: Prepare the file

Step 7: Consideration

#### **Stage Three: Interviews**

Step 8: Prepare and interview plan for the hearing; complaint, Witnesses and Respondent,

Step 9: Assess the completeness of the information collected.

#### **Stage Four: Reasoning**

Step 10: Analysis and assess the information gathered during the inquiry.

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

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

#### **Stage Five: Finding and Recommendation**

Step 13: Finding

Step 14: Recommendations

#### **Stage Six: Report**

Step 15: Writing the Report

## **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 complaints has the required competency and skill building training for managing 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.

Element of the Behaviour:

The complaint needs to satisfy the following elements:

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

### **Step 2: Meet and Talk to the Complaint 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 Complaint Committee to explore enabling ways to address the complaint. This can include counseling, educating, orienting, or warning the respondent to promptly stop the unwelcome behavior 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 and 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 counseling, addressing health related concerns or sanctioning of leave.

## **STATGE 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.

<b>Interviewing Tips</b>	
<p><b>1. Introduction</b> Questioning the parties and witnesses in a situation of workplace sexual harassment is a sensitive task. The Complaint Committee must therefore proceed with empathy, while appreciating at times, a different version of the facts.</p>	<p><b>2. Questioning</b> Determine beforehand the following:</p> <ul style="list-style-type: none"> <li>- Date, time, place and order of Interviews.</li> <li>- Questions and their order</li> <li>- Time for each interview</li> </ul> <p>Generally rely on questions related to who, what, where, when and how, Remember:</p> <ul style="list-style-type: none"> <li>- Questions ought to be clear and focused.</li> <li>- Obtain as much information as possible through the interview.</li> <li>- Do not share information gathered from other sources.</li> </ul>
<p><b>3. Chose an Appropriate Location</b> To create trust, comfort and openness</p>	<p><b>4. Explain the interview process</b> Explain how the interview will be conducted and what is expected</p>
<p><b>5. Records of the interview</b> Take notes and explain the need for a proper record</p>	<p><b>6. Manage the interview</b> The Chairperson of the Complaint Committee is responsible for ensuring the interviews are correctly carried out and due process followed.</p>
<p><b>7. Sign Statements</b> At the conclusion of the interview, have those interviewed, sign and date statements made and recorded before the Complaint Committee</p>	

**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 behavior/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 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;
  - Counseling;
  - 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;
    - Income and financial status of the respondent.

In 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 aspects 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 (at 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 workplaces 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). Complaint 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.



## 1. INQUIRY PROCESS AT A GLANCE

- I. Incidence of Workplace Sexual Harassment to be reported within 3 months.
  - a. Informal
  - b. Formal

a.(i) Conciliation

a.(ii) The respondent fulfills his obligations as agreed upon: the case is closed

a.(iii) The respondent fails to fulfill his obligations as agreed upon: an inquiry will commence

b.(i) ICC

b.(ii) Nodal Officer

b.(iii) LCC

b.(iv) One copy of the complaint to be submitted to the respondent, to which the respondent needs to reply within 10 days

b.(v) Inquiry report to be completed within 90 days by the ICC/LCC

b.(vi) Report of the findings to be submitted to the employer or district officer (DO) and concerned parties within 10 days of completion of the inquiry

b.(vii) Complaint Upheld: Recommendations to be implemented by the employer/DO within 60 days on receipt of the report

b.(viii) Complaint Not Upheld: Inconclusive Recommendation to employer/DO that no action is required to be taken

b.(ix) if not satisfied by the recommendations or non-implementation of such recommendations, the complainant and the respondent can appeal to a tribunal/court within 90 days

## 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 recommendation

## 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. 5000/- to be collected by the employer.

Exception: Dissemination of information regarding the justice secure 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.

## **5. MONITORING**

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

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

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

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

### **5.1 Inspection**

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

### **5.2 Annual Report**

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

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

- a. No. of complaints received;
- b. No. of complaints disposed of;
- c. No. of cases pending for more than 90 days; ;
- d. No of workshops/awareness programmes carried out;
- e. Nature of action taken by the employer/DO

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

### **5.3 Penalties**

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

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

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

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

Monitoring is a critical yardsticks 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.

## 6. GLOBAL NORMS AND GOOD PRACTICES

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

1. Recognition that workplace sexual harassment is a form of human rights violation.
2. Recognition that sexual harassment is a form of gender specific violence.
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.” 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.”
5. Eliminating violence against women and advancing women’s equality includes the right to be free from workplace sexual harassment.”
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.”
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.”

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 instant, through a fair, informed, user friendly process of redress.

Prioritizing prevention and establishing a redress mechanism, which comprises of 50 per cent women, a women 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.

(10)

**Sub:- Constitution of Standing Complaints Committee – reg.**

In continuation to the Office Memoranda of even number dated 3.6.2015 and 2.7.2015 notifying the complaints Committee for redressal of complaints regarding any sexual harassment at workplace made by a woman employee at any of the CSIR Labs/Instts. against any of the Directors of the CSIR Labs/Instts. situated all over India, the Vice-President, CSIR is please to re-constitute the Standing Complaints Committee comprising the following officers:

- |   |             |
|---|-------------|
| 1. Dr. Soumya Swaminathan,<br>Secretary, Department of Health Research & DG, ICMR,<br>V Ramalin gaswami Bhawan, Ansari Nagar,<br>New Delhi – 110029.        | Chairperson |
| 2. Dr. (Ms.) Lakshmi Kantam,<br>Professor of Eminence,<br>Deptt.of Chemical Sciences,<br>Tezpur University, Napaam,<br>Sonitpur – 784028                    | Member      |
| 3. Dr. C.M. Tripathi,<br>Director,<br>CSIR- Central Institute of Medicinal and Aromatic Plants<br>PO – CIMAP, Near Kukrail Picnic Spot,<br>Lucknow – 226015 | Member      |
| 4. Prof, (Dr.) Nahid Zafar Shaikh,<br>Member, Maulana Azad Education Foundation (MAEF)<br>104, Green Park, Ekta Marg,<br>Ratnagiri – 415612                 | Member      |

*Copy of CSIR letter No. 15.11(48)/2014-Vig.dated 23.9.2016*

(11)

**Sub:-Delegation of Powers to Directors of Labs./Instts. regarding constitution of internal Complaints Committee to inquire into allegations of sexual harassment against CCOs**

During the past, it has been observed that a number of cases are being referred by the various Labs./Instts. relating to allegations of sexual harassment at work place leveled against the 'Common Cadre Officers' of Admn. Finance, Purchase and Stenographic Cadre of CSIR Hqrs. posted in the various labs/Instts. Of CSIR

After the promulgation of the "Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act and Rules, 2013, the Internal Complaints Committee conducts the investigation into the allegations made against the employees. The ICC is a Standing Committee constituted at the Lab/Instt level by the Director of the concerned Lab / Instt.

As per the provisions contained in the Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act & Rules, 2013" and further elaborated vide DoPT, OM No. 11013/2/2014-Estt (A -III) dated 16/07/2015, the ICC conducts the investigation in two stages.

**Stage- I:** On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The Complaints Committee conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant.

If it becomes necessary to issue a Charge Memo, the Disciplinary Authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore this is a very important part of the investigation.

**Stage-II:** This stage is initiated if prima facie, a case exists. In this stage, a charge memo is issued to the charged officer in accordance with the Rule 14(2) of the Central Civil Services (Classifications, Control and Appeal) Rules, 1965, Therefore, in the second stage, the ICC act as an Inquiring Authority. It is necessary that, the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.

#### **Standard Operating Procedure for conducting enquiries in respect of CCOs.**

With the objective of speeding up the process of inquiry into allegations of sexual harassment, I am directed to convey the approval of the Director General, CSIR to delegate the power to the Directors of Labs/Instts. for constituting the ICC in respect of Common Cadre Officers (CCOs) posted in their Labs/Instts, against whom the allegations of such a nature have been leveled.

Thereafter, if the conclusive finding of the stage I of the inquiry by the ICC are to the effect that the charges of sexual harassment leveled against the concerned CCO are found to be prima facie having substance, then the inquiry would proceed to stage-II which is initiated with the issuance of a charge memo under Rule 14 of CCS (CCA) Rules, 1965 which can only be issued by or on behalf of the Disciplinary Authority which in the case of CCOs would be either the Joint Secretary (Admn) or the DG, CSIR, depending on the rank of the Charged Officer. Hence, the finding of the ICC (Stage I) in respect of CCOs shall be forwarded to the respective Disciplinary Authority at CSIR Hqrs, which would examine the case before arriving at a decision to initiate a



departmental inquiry under Rule 14 of the CCS (CCA) Rules, 1965, as applicable to Council Servants.

However, after the issuance of the Charge Memo to the Charged Officer by the Disciplinary Authority, the Inquiry will revert back to the same ICC of the concerned Lab. for holding stage II of the Enquiry,

In the event of the ICC report holding that the charges against the CCO are found proved/partially proved or if the allegations are malicious or otherwise, the said report along with complete documents of the case will be forwarded to the Disciplinary Authority for further necessary action as per Rule 15 of the CCS (CCA) Rules as made applicable to the Council Servants.

The inquiry proceedings (stage-I&II) shall be completed within a period of Ninety days as mandated under section 11 (4) of the "Sexual Harassment of Woman at Work Place (Prevention, Prohibition and Redressal) Act & Rules, 2013".

The Schedule of Appointing / Disciplinary Authorities under the CCS (CCA) Rules, 1965 as notified vide CSIR letter No, 15-1(19)67-Vig. dated 19/09/2006 is as follows;

S.No.	Rank of the Officer	Disciplinary Authority
1.	SO(Gen), SO (S&P), SO(F&A), P.S.	Joint Secretary (Admn.)
2.	Sr. DY. Secy./Sr. COA/Sr. Dy. FA/Sr. COFA/Sr. COSP, Dy. Secy./COA/Dy. FA/COFA/COSP, US/AO/FAO/SPO and other officers of corresponding rank viz. Legal Adviser, Sr. Hindi Officer etc.	Director General, CSIR

Hindi version follows.

*Copy of CSIR letter No. 5-1(335)/2016-PD/Monitoring dated 4.10.2016*

(12)

**Sub:- Constitution of Standing Complaints Committee.**

Reference is invited to OM No. 15-11(48)/2014-Vig., dated 23.9.2016 regarding the Constitution of Standing Complaints Committee for redressal of complaint of sexual harassment at workplace made by a woman employee at any of the CSIR Labs/Instts. against any of the Directors of the CSIR Labs/Instt. situated all over India.

In the aforesaid OM, Dr. C.M. Tripathi has been inadvertently shown as member of the Standing Complaints Committee.

Therefore, “Dr. C.M. Tripathi” may be read as “ Prof. Anil Kumar Tripathi”

Rest of the contents of OM dated 23.9.2016 shall remain unaltered.

*Copy of CSIR letter No 15-11(48)/2014-Vig. dated 25.11.2016*

**(13)**

**Sub:- Reorganization of Administrative Wings of CSIR Hqrs. – reg.**

With reference to this office OM of even number dated 1.2.2016 on the above subject, the Complaints Handling Section, was assigned the following work:-

- i. Dealing with all Complaints, Holding of Preliminary Inquiry/FFC/Investigation and other related matters
  - ii. Holding of all inquiries in cases relating to sexual harassment.
2. It is clarified the complaints having vigilance angle will be dealt by CVO, CSIR, ab-initio.
  3. All other complaints will be dealt by Complaints Handling Section till the stage where it is established that prima-facie case exists for further action as per CCS (CCA) Rules, 1965. Thereafter, such cases will be transferred by Complaints Handling Section to the respective nodal Section for further submission to Disciplinary Authority as per Rules, i.e. E-I/HR-I Section for Common Cadre Officer of the level of Section Officers or equivalent, where Joint Secretary (Admn), CSIR is the Disciplinary Authority and to CVO, CSIR in case of Common Cadre Officers of the level of Under Secretary or equivalent and above and Chief Scientists where Disciplinary Authority is DG, CSIR and President, CSIR, respectively.
  4. Further, pursuant to issue of CSIR OM No. 5-1(335)/2016-PD/Monitoring dated 4.10.2016 for complaints pertaining to sexual harassment at work place the Director of Laboratories/Institutes will correspond with HR-I and CVO, CSIR for officers as per delineation stated in Para 3.

This issues with the approval of DG, CSIR.

*Copy of CSIR letter No. 3-US(HR)/Reorg/2015-E.I dated 9.12.2016*

(14)

**Sub:- Prevention of Sexual Harassment of working women at workplace – Seniority of the Chairperson of the Complaint Committee – reg.**

I am directed to forward herewith following Office Memoranda for information, guidance and compliance.

S.No.	Office Memorandum	Subject
1.	Ministry of Personnel, Public Grievances, and Pensions, DoPT OM No. 11013/2/2014-Estt.A-III dated 9.9.2016	Prevention of Sexual Harassment of working women at workplace – Seniority of the Chairperson of the Complaint Committee – reg.
2.	Ministry of Personnel, Public Grievances, and Pensions, DoPT OM No. 11013/4/2016-Estt.A-III dated 20.7.2016	Classification of the Definition of Members of Family in the context of Rule 4 reg.

*Copy of CSIR letter No. 5-1(17)2008-PD dated 27.12.2016*

No. 11013/2/2014-Estt.A-III dated 9.9.2016 of Govt. of India, Ministry of Personnel, Public Grievances, and Pensions, DoPT

The undersigned is directed to refer to the DoPT OM no. 11013/2/2014-Estt. A-III dated 16<sup>th</sup> July, 2015 as the Para 1 of the Guide attached to the OM, it was clarified that the Complaints Committee set up to inquiry into charges of sexual harassment should be headed by a women and at least half of its members should also be women. In case a women officer of sufficiently senior level is not available in a particular office, an officer from another office may be so appointed, it was also indicated the to prevent the possibility of any undue pressure, the Complaints Committee should also involve a third party either NGO or some other body which is familiar with the issue of sexual harassment.

2. The issue of legality of a committee conducting inquiry against an officer against whom there are allegations of sexual harassment but where the Chairperson happens to be junior in rank to the suspect officer has been examined. It is clarified that there is no bar either in the CCS (CCA) Rules or under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 to the Chairperson of the Complaints Committee being junior to the suspect officer or the charged officer. Hon'ble Allahabad High Court has in Smt. Shobha Goswami vs. State of U.P. And 2 Ors, in WRIT- A No. – 31659 of 2015 observed as follows:

“ In my opinion, there is nothing in the Scheme of the section which requires the lady member to be senior in rank to the officer against whom the allegation of sexual

harassment are brought. The language of Section 4 of the Act only requires the lady member to the Senior Level”.

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

3. Further, to ensure fair inquiry, Ministries/Department may also consider transferring the suspect officer/charged officer to another office to obviate any risk of that officer using the authority of this office to influence the proceedings of the Complaints Committee.
4. Hindi version will follow.

(15)

**Sub: Central Civil Services (Conduct) Rules, 1961 – Guidelines regarding prevention of sexual harassment of women at the workplace – reg.**

I am directed to forward herewith following Office Memorandum for information, guidance and compliance.

S.No.	Office Memorandum	Subject
1.	Ministry of Personnel, Public Grievances, and Pensions, DoPT OM No. 11013/7/2016-Estt. A-III dated 22.12.2016	Central Civil Services (Conduct) Rules, 1961 – Guidelines regarding prevention of sexual harassment of women at the workplace – reg.

*Copy of CSIR letter No. 5-1(17)/2008-PD dated 9.1.2017*

F.No. 11013/7/2016-Estt. A-III dated 22.12.2016 of Government of India, Ministry of Personnel, Public Grievances & Pensions, DoPT.

The undersigned is directed to refer to the DoPT OM number No 11013/2/2014-Estt. A-III, dated the 16<sup>th</sup> July, 2015 etc., vide which need for effective mechanism to ensure that inquiries in the case of allegations of sexual harassment are conducted as per the prescribed procedure and that they are monitored have been issued. Recently, a meeting was held under the Chairmanship of Minister, Women and Child Development wherein concern was expressed that the inquiries in such cases are taking unduly long time. It has, therefore, been decided that the following further steps may be taken to ensure that the inquiry are conducted expeditiously and the aggrieved women are not subjected to victimization:

1. As already conveyed vide OM dated 2<sup>nd</sup> February, 2015 all Ministries/Departments shall include in their Annual Reports information related to the number of such cases and their disposal.
2. As fare as practicable, the inquiry in such cases should be completed within 1 month and in no case should it take more that 90 days as per the limit prescribed iunder the

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

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

(16)

**Sub: Central Civil Services (Leave) Amendment Rules, 2017 – reg.**

I am directed to forward herewith following Gazette Notification issued by Government of India for information, guidance and compliance.

S.No.	Gazette Notification	Subject
1.	Government of India, Ministry of Personnel, Public Grievances and Pensions Notification G.S.R. 251(E) dated 15.3.2017.	Central Civil Services (Leave) Amendment Rules, 2017 – reg.

*Copy of CSIR letter No. 5-1(17)/2008-PD dated 19.4.2017*

Dated 15.3.2017 of Ministry of Personnel, Public Grievances and Pensions, DoPT

**Notification**

G.S.R. 251(E) – In exercise of the powers conferred by the proviso to article 309 read with clause (5) of article 148 of the Constitution and after with the Comptroller and Auditor General of India in relation to the persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Leave) Rules, 1972, namely:-

1. (1) These rules may be called the Central Civil Services (Leave) Amendment Rules, 2017.  
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Central Civil Services (Leave) Rules, 1972, for rule 48 the following rule shall be substituted, namely:-

“48, Special Leave connected to inquiry of sexual harassment – Leave upto a period of 90 days may be granted to an aggrieved female Government Servant on the recommendation of the Internal Committee or the Local Committee, as the case may be, during the pendency of inquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the leave granted to the aggrieved female Government Servant under this rule shall not be debited against the leave account”.

[F.No. 13026/2/2016-Estt.(L)]  
GYANENDRA DEV TRIPATHI, Jt. Secy.

**Footnote:** The principal rules were published vide Notification Number S.O. 940, dated the 8<sup>th</sup> April, 1972 and were last amended vide Notification number G.S.R. 711(E) dated the 8<sup>th</sup> October, 2014.

**Note:** The principal rules were published in the Gazette of India, Extraordinary, Part-II Section 3, Sub-section (i), vide no. S.O. 940 dated the 8<sup>th</sup> April, 1972 and have been subsequently amended as follows:

S.No.	No. of the notification	Date	GSR. No.	GSR date
1.	16(3)-E.IV(A)/71	11.1.1972	2724	4.11.1972
2.	4(7)-E.IV(A)/72	30.4.1973	1399	19.5.1973
3.	5(15)-E.IV(A)/73	13.7.1973	821	14.8.1973
4.	14(10)-E.IV(A)/73	11.6.1974	Not readily available	
5.	5(8)-E.IV(A)/73	19.7.1974	818	3.8.1974
6.	14(8)-E.IV(A)/74	2.11.1974	1242	23.11.1974
7.	16(3)-E.IV(A)/74	20.12.1974	1374	28.12.1974
8.	16(5)-E.IV(A)/74	11.4.1975	526	26.4.1975
9.	16(8)-E.IV(A)/74	26.5.1975	686	7.6.1975
10.	4(1)-E.IV(A)/74	24.6.1975	834	12.7.1975
11.	16(8)-E.IV(A)/74	20.9.1975	2876	27.12.1975
12.	5(7)-E.IV(A)/75	2.12.1975	2877	27.12.1975
13.	5(16)-E.IV(A)/73	15.1.1976	Not readily available	
14.	16(6)-E.IV(A)/74	31.7.1976	1184	14.8.1975
15.	16(3)-E.IV(A)/76	7.10.1976	1587	13.11.1976
16.	4(9)-E.IV(A)/76	14.3.1977	611	14.5.1977
17.	14(11)-E.IV(A)/76	12.9.1978	1159	23.9.1978
18.	14025/1/78-E.IV(A)	4.10.1978	1255	21.10.1978

(17)

**Sub: Constitution of Internal Complaints Committee to consider complaints sexual harassment at CSIR Hqrs.**

**Ref: 1) Office Memorandum of even number dated 20.7.2016**  
**2) Office Memorandum of even number dated 08.9.2016**

Consequent upon superannuation of Dr. Madhu Dixit, Director, CSIR-CDRI, Lucknow and Presiding Officer of the Internal Complaints Committee of CSIR Hqrs., Vice President, CSIR has been pleased to nominate Dr. Ranjana Mehrotra, Chief Scientist, CSIR-NPL and Member of the aforesaid Committee as its Presiding Officer.

Further, the Vice President, CSIR has also nominated Dr. Mitali Mukerjee, Sr. Principal Scientist of CSIR-IGIB onto the aforesaid Committee as Member.

*Copy of CSIR letter No. 6-11(87)/2013-E.II (Women) dated 8.12.2017*