

Disclaimer

The Handbook on “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 with The Gender Sensitisation & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013 is the compilation of the relevant Act, Regulations and relevant Provisions of the Constitution of India and Indian Penal Code issued by the GSICC for the convenience of the community covered by the Regulations. This Handbook is issued by the Competent Authority of the Supreme Court of India on Administrative side.

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Sd/-

Nisha Bhardwaj
Registrar
Member Secretary, GSICC



A HANDBOOK

on

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

with

The Gender Sensitisation & Sexual Harassment of
Women at the Supreme Court of India
(Prevention, Prohibition and Redressal),
Regulations, 2013

and

Relevant provisions of the Constitution of
India and Indian Penal Code

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at the Supreme Court of India

(Prevention, Prohibition and Redressal),

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Relevant provisions of
the Constitution of India and

Indian Penal Code

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FOREWORD

The sexual harassment of a woman at the work place is incompatible with the dignity and honour of women and needs to be eliminated. Convention on Elimination of all forms of Discrimination Against Women (CEDAW), 1997 and the Beijing Declaration direct all State parties to take appropriate measures to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women.

In the absence of enacted laws and for the effective enforcement of basic human right of gender equality and guarantee against sexual harassment at workplace, in *Vishakha and Ors. vs. State of Rajasthan*, (1997) 6 SCC 241, the Supreme Court laid down guidelines to prevent sexual harassment at workplace to be followed by all the institutions, until a law is enacted. The guidelines were not only in furtherance of constitutional goals of equality but also in furtherance of international standards such as CEDAW. With the enhanced participation of women in the cumulative workforce of our country, there arises an imperative need to provide a conducive working environment for women to prevent any form of abuse including Gender Injustice.

After sixteen years of Vishakha case, the guidelines were given statutory flavour by enacting the law on sexual harassment, "The Sexual Harassment of Women at

Workplace (Prevention, Prohibition and Redressal) Act, 2013". The Act is enacted to provide protection against sexual harassment of women at work place and prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. The Act makes it mandatory for every employer/institution to constitute an Internal Complaints Committee which entertains the complaints made by any aggrieved woman.

The Supreme Court of India has been vigilant in protecting the rights of women by adopting a gender-sensitive approach and in consonance with the provisions of the Act has framed the Gender Sensitization and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013.

I am glad to note that GSICC, Supreme Court of India has brought out a "Handbook" containing "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013" with "The Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013" and relevant provisions of the Constitution of India and Indian Penal Code. I hope that this handbook will prove to be a useful and handy reference for the lawyers, employees and all concerned.



(T.S. THAKUR)

JUSTICE R. BANUMATHI



JUDGE, SUPREME COURT OF INDIA
New Delhi, the June 28, 2016

PREFACE

The Constitution of India safeguards woman's rights by putting her at par with man socially, politically and economically. The principle of gender equality is enshrined in the Constitution in its Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. However, there is a wide gap between the goals enunciated in the laws and policies and the social reality regarding status of women in India. The existence of large number of laws, for protecting woman reflects the concern of the legislature to protect them.

Sexual harassment at the workplace is a form of gender-specific violence against women. Like other forms of violence it undermines the inherent dignity of the woman who is subjected to it. It is an act of sex discrimination which is an impediment to a woman's right to equal opportunity, dignity, safety and security at the workplace. Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) directs States to take appropriate measures to eliminate discrimination against women in the field of employment and ensure that the women have the right to protection of health and safety in working conditions. India has ratified CEDAW and has an obligation to ensure that women are not subjected to sexual harassment at the workplace.

In *Vishaka and Ors. V. State of Rajasthan*, (1997) 6 SCC 241, drawing extensively from the rights guaranteed under the Constitution and international treaties & conventions on

the foundation that, "gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right", the Supreme Court accepted that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment at work place and that enactment of such legislation will take considerable time. Therefore, the Supreme Court laid down a series of guidelines to prevent sexual harassment of women at workplace.

Taking into consideration the guidelines framed by the Supreme Court, the Parliament enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act provides definitions of certain expressions that are used in the enactment for proper understanding. It stipulates that a complaint of sexual harassment at workplace has to be made by an aggrieved woman or by her legal heirs. It also mandates formation of two types of Committees that would inquire into a complaint of sexual harassment by an aggrieved woman at the workplace. After the inquiry into the complaint is made by either of the Committees, a report of its findings has to be provided to the employer or the District Officer, as the case may be, and such report has to be made available to the parties within a period of ten days of its completion. Where either of the Committees concludes after the inquiry that the allegations of sexual harassment against the respondent has been proved, then it has to recommend to the employer/district officer to take action for sexual harassment as misconduct in accordance with the provisions of the service rules.

There is also a provision for conciliation before initiation of inquiry at the behest of the aggrieved woman. Also, every offence under this Act is non-cognizable and courts not lower

to that of a Metropolitan Magistrate or Judicial Magistrate cannot take cognizance of the offence on a complaint by the aggrieved woman or any person authorized by the Committees.

The Act mandates the employer to ensure that there is a safe working environment. This can be achieved by prioritising workplace safety; displaying the penal consequences of sexual harassment; constitution of the internal Committee and organising awareness programmes for employees and members of the internal committee on the provisions of the Act. This Handbook has been developed by Gender Sensitisation and Internal Complaints Committee to achieve the objects of the Act by creating awareness among the employees of the Supreme Court and members of the legal fraternity and advocates' clerks.

We take this opportunity to thank Hon'ble Dr. Justice T.S.Thakur, Chief Justice of India for his support and good wishes. I thank Hon'ble Justice Prafulla C. Pant and the members of the committee viz. Ms. Indu Malhotra, Ms. Mahalakshmi Pavani, Ms. V. Mohana, Prof. (Dr.) G. Mohan Gopal and Ms. Bharti Ali and all the volunteers for their support and encouragement in bringing out this handbook.

Gender Sensitisation and Internal Complaints Committee (GSICC) of the Supreme Court of India wishes that this handbook will be of great help for all the readers. We welcome suggestions and comments for improving the quality and help create awareness.

R Banumathi

Justice R. Banumathi

Chairperson

**Gender Sensitisation and Internal Complaints Committee
Supreme Court of India**

Contents

S. No.	Description	Page Nos.
1.	Introduction	1-5
2.	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013	6-35
3.	Framing of Regulations with the Gender Sensitisation and Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013	36-59
4.	Relevant provisions of the Constitution of India and Indian Penal Code	60-66
5.	No More Harassment-Change in Gender Discourse by Ms. Pinky Anand, Addl Solicitor General	67-70
6.	Overview of Sexual Harassment and Gender Sensitization by Ms. Indu Malhotra, Sr. Advocate	71-74
7.	Composition of GSICC	75-76
8.	Equality Quotes and Quotable Quotes	77-78
9.	Women Helpline Number	79

Introduction

Gender Discrimination is a situation where someone is put in a disadvantageous position because of their gender and sex. Such discrimination is extensively faced by women across the globe. The Convention on the Elimination of All Forms of Discrimination Against Women, 1979, defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."

Equal rights for women has been a crucial part of the human rights movement and most of the nations are committed towards providing equal opportunities and rights to women. Discrimination free environment is quintessential to safeguard the rights of women. Law plays an important role in achieving this objective.

Article 14 to 16 of the Constitution of India stipulates that the State shall not discriminate against anyone on the basis of sex. Apart from these articles, Article 39, 40 and 42 and the Directive Principles of State Policy state certain measures needed to achieve gender equality. The Parliament has enacted several legislations to meet this goal. Some of these are:

- Child Marriage Prohibition Act, 1929
- Dowry Prohibition Act, 1961

- Maternity Benefits Act, 1961
- Equal Remuneration Act, 1976
- The Indecent Representation of Women (Prohibition) Act, 1986
- The Commission of Sati (Prevention) Act, 1987
- Protection of Women from Domestic Violence Act, 2005

The Indian judiciary has delivered a plethora of judgments protecting women rights. Women rights jurisprudence in India witnessed a milestone development in the Supreme Court judgment of *Vishaka vs. State of Rajasthan*¹, wherein the court laid down binding and enforceable set of guidelines to eradicate sexual harassment of women at the workplace until legislation was enacted for the purpose. The court did this on the premise that in the event of a vacuum in domestic law, and where there is no conflict between international law and domestic law, international law can be invoked as the law of the land. The decision was in consonance with India's obligation under CEDAW. These obligations entail that the Member States should strive to end discrimination against women through following measures:

- incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and,

¹(1997) 6 SCC 241

- ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

These guidelines paved way for the enactment of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, that aims to ensure healthy working environment to women.

While this legislation is a landmark development, the judiciary too has rendered certain important decisions on the concept of sexual harassment. These decisions have strengthened the legal framework on gender equality. Some of them have been discussed below.

In *Additional District and Sessions Judge 'X' vs. High Court of M.P.*², the Court held that the issue of sexual harassment has a variety of fine connotations. Its evaluation may sometimes depend upon the sensitivity of the person concerned. And also whether, the perception of the harassed individual was known to the one against whom the accusing finger is pointed. Hence it is concluded that each case will have to be decided on its merits. Whether the perception of the harassed individual was conveyed to the person accused would be very material in a case falling in the realm of oversensitivity. In that, it would not be open for him to thereafter, defend himself by projecting that he had not sexually harassed the person concerned, because in his understanding the alleged action was not offensive.

Similarly in *K.Narmatha vs. Home Secretary*³, it was opined that all allegations of sexual harassment should be submitted to a Complaints Committee even if those allegations

²(2015) 4 SCC 91

³(2011)1 MLJ 495

appeared vexatious and baseless. The court reasoned that since there could be a possibility of "compelling interest" at

⁴(2009) 2 SCC 210.

⁵Usha C.S. vs. Madras Refineries (2001) I MLJ 802.

⁶Rupan Deol Bajaj v. Kanwar Pal Singh Gill (1995) 6 SCC 194.

⁷(1999) 1 MHLJ 489.

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

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

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

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

Chapter I

Preliminary

1. Short title, extent and commencement :-

- (1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions :-

In this Act, unless the context otherwise requires,—

- (a) "aggrieved woman" means—
 - (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
 - (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;
- (b) "appropriate Government" means—
 - (i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly—
 - (A) by the Central Government or the Union

territory administration, the Central Government;

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

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

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

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

(e) "domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) "employee" means a person employed at a workplace for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(g) "employer" means—

- (i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;
- (ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

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

- (iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;
- (iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

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

3. Prevention of sexual harassment.-

- (1) No woman shall be subjected to sexual harassment at any workplace.
- (2) 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 her employment; or
 - (ii) implied or explicit threat of detrimental treatment in her employment; or
 - (iii) implied or explicit threat about her present or future employment status; or
 - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
 - (v) humiliating treatment likely to affect her health or safety.

Chapter II
**Constitution of
Internal Complaints Committee**

4. Constitution of Internal Complaints Committee.-

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

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

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

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

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

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

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

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

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

- (3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.
- (4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.
- (5) Where the Presiding Officer or any Member of the Internal Committee,-
 - (a) contravenes the provisions of section 16; or
 - (b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or
 - (c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or
 - (d) has so abused his position as to render his continuance in office prejudicial to the public interest.

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

Chapter III

Constitution of Local Complaints Committee

5. Notification of District Officer.-

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

6. Constitution and jurisdiction of Local Complaints Committee-

- (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.
- (2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.
- (3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

7. Composition, tenure and other terms and conditions of Local Complaints Committee.-

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

- (a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;
- (b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- (c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

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

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

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

(2) The Chairperson and every Member of the Local

Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

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

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

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

8. Grants and audit.-

- (1) The Central Government may, after due

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

- (2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.
- (3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.
- (4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

Chapter IV

Complaint

9. Complaint of sexual harassment.-

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

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

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

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

10. Conciliation.-

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

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

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

specified in the recommendation.

- (3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (ii) to the aggrieved woman and the respondent.
- (4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. Inquiry Into complaint.-

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

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

complaint or, as the case may be, forward the complaint to the police:

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

- (2) Notwithstanding anything contained in section 509 of the Indian Penal Code,(45 of 1860), the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.
- (3) For the purpose of making an inquiry under sub-section (*i*), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908(5 of 1908), when trying a suit in respect of the following matters, namely:—
 - (a) summoning and enforcing the attendance of any person and examining him on oath;
 - (b) requiring the discovery and production of documents; and
 - (c) any other matter which may be prescribed.
- (4) The inquiry under sub-section (*i*) shall be completed within a period of ninety days.

Chapter V

Inquiry into Complaint

12. Action during pendency of inquiry.-

- (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—
 - (a) transfer the aggrieved woman or the respondent to any other workplace; or
 - (b) grant leave to the aggrieved woman up to a period of three months; or
 - (c) grant such other relief to the aggrieved woman as may be prescribed.
- (2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.
- (3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

13. Inquiry report.-

- (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the

case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

- (2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.
- (3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—
 - (i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
 - (ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due

to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

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

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

14. Punishment for false or malicious complaint and false evidence.-

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

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

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

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

15. Determination of compensation.-

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

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- (b) the loss in the career opportunity due to the incident of sexual harassment;
- (c) medical expenses incurred by the victim for physical or psychiatric treatment;
- (d) the income and financial status of the respondent;

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

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

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

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

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

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

manner as may be prescribed.

18. Appeal.-

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

Chapter VI

Duties of Employer

19. Duties of employer.-

Every employer shall—

- (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- (b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under subsection (i) of section 4;

- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- (f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;
- (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code(45 of 1860) or any other law for the time being in force;
- (h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- (i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- (j) monitor the timely submission of reports by the Internal Committee.

Chapter VII

Duties and Powers of District Officer

20. Duties and powers of District Officer.-

The District Officer shall,—

- (a) monitor the timely submission of reports furnished by the Local Committee;
- (b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

Chapter VIII

Miscellaneous

21. Committee to submit annual report.-

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

22. Employer to include information in annual report.-

The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report

is required to be prepared, intimate such number of cases, if any, to the District Officer.

23. Appropriate Government to monitor implementation and maintain data.-

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

24. Appropriate Government to take measures to publicise the Act.-

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

- (a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace;
- (b) formulate orientation and training programmes for the members of the Local Complaints Committee.

25. Power to call for information and inspection of records.-

- (1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,—
 - (a) call upon any employer or District Officer to furnish in writing such information relating to

sexual harassment as it may require;

- (b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.
- (2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

26. Penalty for non-compliance with provisions of Act.-

- (1) Where the employer fails to—
- (a) constitute an Internal Committee under sub-section (1) of section 4;
 - (b) take action under sections 13, 14 and 22; and
 - (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under.

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

- (2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to-
- (i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the

same offence:

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

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

27. Cognizance of offence by courts.-

- (1) No court shall take cognizance of any offence punishable under this Act or any rules made there under, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.
- (2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.
- (3) Every offence under this Act shall be non-cognizable.

28. Act not in derogation of any other law.-

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

29. Power of appropriate Government to make rules.-

- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - (a) the fees or allowances to be paid to the Members under sub-section (4) of section 4;
 - (b) nomination of members under clause (c) of sub-section (i) of section 7;
 - (c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;
 - (d) the person who may make complaint under sub-section (2) of section 9;
 - (e) the manner of inquiry under sub-section (I) of section 11;
 - (f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
 - (g) the relief to be recommended under clause (c) of sub-section (i) of section 12;
 - (h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;
 - (I) the manner of action to be taken under sub-sections (1) and (2) of section 14;
 - (j) the manner of action to be taken under section 17;

- (k) the manner of appeal under sub-section (1) of section 18;
 - (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
 - (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (I) of section 21.
- (3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
- (4) Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

30. Power to remove difficulties.-

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

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

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

Framing of the Regulations for the Prevention, Prohibition and Redressal of Sexual Harassment at the precincts of Supreme Court of India

Sensitization against discrimination on the basis of gender, protection against sexual harassment and the right to work with dignity are human rights universally recognized by international conventions and instruments such as CEDAW.

The UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), which was ratified by the Government of India on 25 June 1993, also includes:

- (a) A definition of sexual harassment;
- (b) Shifting accountability from individuals to institutions;
- (c) Prioritizing prevention; and,
- (d) Provision for an innovative redressal mechanism.

A need was felt that it is expedient to make provisions giving effect to the Constitution of India and the said Convention for protection of women against sexual harassment at the Supreme Court precincts. It was also felt necessary to provide for gender sensitization in the working environment, prevention and redressal of complaints of sexual harassment and matters

connected therewith or incidental thereto.

According to the decision in *Vishaka and others v. State of Rajasthan and others*¹, it is necessary to provide for the protection of women from sexual harassment at work places.

In the judgment of the Supreme Court in *Medha Kotwal Lele*

*v. Union of India & others*⁸, the necessity of protecting women from any form of indecency, indignity and disrespect in all places (in their homes as well as outside), is emphasized and it has been directed to provide new initiatives for education and advancement of women and girls in all spheres of life. Further directions in the said judgment include, direction with regard to the need of the instructions/circulars to be issued by all statutory bodies such as the Bar Council of India, Bar Associations and State Bar Councils. Liberty is also granted to approach the respective courts, and directions are issued to the courts to effectively consider the grievances raised in this regard.

Following upon and in conformity with the above, in Writ Petition (Civil) No. 162 of 2013, *Ms. Binu Tamta & Ors. v. High Court of Delhi*⁹ the Supreme Court of India appointed a Committee for Framing Regulations to Ensure a Safe Working Environment for Women in the precincts of the Supreme Court. The said Committee accordingly framed regulations to redress grievances of sexual harassment within the precincts of the Supreme Court of India and for the redressal of any complaint that may be filed in this regard.

The draft Regulations were placed before the Court on 3 July 2013, and the Supreme Court directed further consideration of the Regulations by the parties concerned and the Attorney General for India.

Upon consideration of all the views, the Supreme Court, by order dated 17 July 2013, was pleased to approve the said Regulations, authorizing the issuance of the same, and ordered enforcement of the Regulations, inter alia, in terms of

⁸(2013) 1 SCC 297

⁹(2014) 13 SCC 257

Article 142 of the Constitution of India to render complete justice.

These Regulations titled as “The Gender Sensitisation & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013” have been published as a comprehensive code for prevention of sexual harassment of women within the precincts of the Supreme Court of India and for redressal of any complaint that may be lodged in the Supreme Court.

The Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013

“WHERE AS Gender discrimination and sexual harassment results in violation of the fundamental right of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution of India and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment under Article 19(1) (g) of the Constitution of India.”

Chapter I

PRELIMINARY

- 1. Short title, extent and commencement** - (1) These Regulations may be called the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India(Prevention, Prohibition and Redressal) Regulations, 2013.

(2) They shall come into force on such date as the Chief Justice of India may, by notification in the Official Gazette, appoint.
- 2. Definitions** - In these Regulations, unless the context otherwise requires —
 - (a) "aggrieved woman" means, in relation to the Supreme Court, any female, of any age, whether employed or not, who claims to have been subjected to any act of sexual harassment by any person in the

Supreme Court of India precincts, but does not include any female who is already governed by the Supreme Court service regulations;

- (b) "appropriate Authority" means in relation to the Supreme Court of India, the sitting Chief Justice of India;
- (c) "Chairperson" means the Chairperson of the Supreme Court Gender Sensitization and Internal Complaints Committee (GSICC);
- (d) "Chief Justice of India" in context of the present Regulations means the sitting Chief Justice of India;
- (e) "habitual Respondent" is a person against whom a previous Complaint of sexual harassment has been received by the GSICC on earlier occasion, irrespective of whether the matter was resolved with or without an inquiry and except where the Respondent has been exonerated in the previous complaint;
- (f) "GSICC" means the Supreme Court Gender Sensitisation and Internal Complaints Committee constituted under Regulation 4;
- (g) "Internal sub-Committee" means the sub-committee set up under Regulation 9;
- (h) "Member" means a Member of the GSICC;
- (i) "Prescribed" means prescribed by the present Regulations;
- (j) "Respondent" means a person against whom the aggrieved woman has made a Complaint under the

present Regulations;

- (k) "Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely :—
- (i) physical contact and advances ;
 - (ii) a demand or request for sexual favours;
 - (iii) making sexually coloured remarks;
 - (iv) showing or exhibiting pornography and/or sexually explicit material by any means;
 - (v) sending undesirable sexually coloured oral or written messages, text messages, e-mail messages, or any such messages by electronic, manual or other means;
 - (vi) stalking or consistently following aggrieved woman in the Supreme Court precincts and outside;
 - (vii) voyeurism including overt or tacit observation by the Respondent by any means of the aggrieved woman in her private moments;
 - viii) any conduct whereby the Respondent takes advantage of his position and subjects the aggrieved woman to any form of sexual harassment and seeks sexual favours specially while holding out career advancements whether explicitly or implicitly, as an incentive or a natural result of submitting to the insinuations/demands of the Respondent;

- (ix) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;
 - (x) implied or explicit promise of preferential treatment in her legal career;
 - (xi) implied or explicit threat of detrimental treatment in her legal career;
 - (xii) implied or explicit threat about her present or future legal career;
 - (xiii) interferes with her work or creating an intimidating or offensive or hostile work environment for her; or
 - (xiv) any treatment having a sexual colour or content likely to affect her emotional and/or physical health or safety.
- (l) “Supreme Court of India precincts” means the whole premises of the Supreme Court including the Court Block, open grounds, parking, old and new Chamber Blocks, libraries, canteens, bar-rooms, health centers and/or any other part of the premises under the control of the Hon'ble Chief Justice of India;
- (m) “Volunteer” means lawyers or other persons enlisted by the GSICC without any remuneration basis for carrying out the objects and purpose of these Regulations.

3. Prevention of sexual harassment - No woman shall be subjected to sexual harassment at the Supreme Court of India precincts.

Chapter II

COMPOSITION & CONSTITUTION OF GENDER SENSITISATION & INTERNAL COMPLAINTS COMMITTEE

4. **Constitution of the Gender Sensitization & Internal Complaints Committee** – (1) The Supreme Court GSICC is constituted herein to fulfill a very important public function of sensitizing the public to gender issues and to address any complaints made with regard to sexual harassment at the Supreme Court precincts.
- (2) The Chief Justice of India shall, by an order in writing, constitute a Committee to be known as the "Supreme Court Gender Sensitisation and Internal Complaints Committee" (GSICC) which shall consist of not less than 7 members and not more than 13 members and shall include the following as far as practicable :
- (a) one or two Judges of the Supreme Court in terms of the judgment in the case of Vishaka (supra), one of whom shall be the Chairperson of the Committee, to be nominated by the Chief Justice of India;
 - (b) one or two senior members of the Supreme Court Bar, with at least 20 years of membership of the Supreme Court Bar Association or the Supreme Court Advocates-on-Record Association to be nominated by the Hon'ble Chief Justice of India, one of whom being a woman;

- (c) one or two members to be elected by General Ballot of the Supreme Court Bar Association who shall be registered member of the Supreme Court Bar Association for at least 10 years out of whom at least one shall be a woman;
- (d) one woman member being a member of the Advocates-on-Record Association elected by General Ballot of the Advocates-on-Record Association;
- (e) one woman member being a member of the Supreme Court Clerks Association elected by General Ballot of the Supreme Court Clerks Association;
- (f) at least one and at the most two outside members to be nominated by the Chief Justice of India.

persons who are associated with the Social Welfare Department or non-government organization having experience in the field of social justice, women empowerment, and/or gender justice, out of whom at least one member shall be a woman;

- (g) one woman officer in the service of the Supreme Court of India not below the rank of a Deputy Registrar to be nominated by the Hon'ble Chief Justice of India, who shall function as the Member Secretary of the GSICC; and
- (h) any other member that the Chief Justice of India may deem fit to nominate.

Provided that it shall be ensured that the majority of the members of GSICC shall be woman members.

- (4) The outside Member appointed under Clause 4(2)(f)

shall be paid such fees or allowances from the allocated funds for holding the proceedings of the GSICC as may be prescribed.

(5) Where the Chairperson or any Member of the GSICC—

- (a) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him/her;
- (b) fails to constitute an Internal sub-Committee to inquire into a particular Complaint;
- (c) fails to take action under Regulation 11;
- (d) contravenes or attempts to contravene or abets contravention of other provisions of these Regulations or any notifications/orders issued thereunder; or
- (e) in the opinion of the Chief Justice of India has so abused his/her position as to render his/her continuance in office prejudicial to the exercise of functions of the GSICC;

such Chairperson or Member, as the case may be, shall stand removed forthwith from the GSICC by a written order of the Chief Justice of India and the vacancy so created shall be filled by fresh nomination/election in accordance with the provisions of these Regulations

5. Term of Gender Sensitization & Internal Complaints Committee members –

The term of each member of the GSICC shall be for two years, subject to the member being elected/nominated for a maximum period of two terms, and a member who has been removed under Regulation 4(5) shall not be eligible for re-nomination or re-election.

6. Meetings Of The Gender Sensitisation & Internal Complaints Committee -

- (1) The GSICC shall meet at least once in four months in a calendar year.
- (2) Members shall be intimated of meetings and agenda in writing and/or by electronic communication by the Member Secretary.
- (3) Minutes of all meetings shall be recorded, confirmed and adopted. The Member Secretary shall circulate the minutes of a meeting and the Resolutions so passed to all Members of the GSICC within 7 days of the holding of the meeting or the passing of the Resolution.
- (4) The Ordinary Meeting shall be called by the Chairperson with minimum seven days notice to all members.

Any member of the GSICC may at any time request the Chairperson to call an Emergency Meeting with a notice of Forty-Eight hours. However, this will not prevent the Chairperson from convening an emergency meeting without 48 hours notice.

- (6) The quorum for all Meetings shall be one-third of the members of the GSICC. In the event the quorum is not completed for any meeting, an adjourned

meeting shall be held within the next 10 days following, for which no quorum shall be required .

- (7) All motions shall be carried by a simple majority of those present and voting at all meetings, except where it is specifically provided for.

Whenever a Complaint is received or a Report of the Internal sub-Committee is submitted, the Member-Secretary shall within a period of 7 days request the Chairperson to call either an Ordinary or Emergency Meeting to take action on the same, and the Chairperson shall call a meeting for this purpose not later than 15 days from the date of the Complaint or the Report.

If a Member does not attend 3 consecutive meetings he/she shall be liable to removal forthwith by the Chief Justice of India, and the vacancy so created shall be filled in accordance with Regulation

7. Functions of The Gender Sensitization & Internal Complaints Committee -

- (1) GSICC shall be responsible for framing a Policy from time to time and its implementation with regard to gender sensitization and prevention and redressal of Sexual Harassment in the Supreme Court.
- (2) **Gender Sensitization and Orientation:** GSICC shall take the following steps with regard to gender sensitization and orientation:-
 - (i) GSICC will ensure the prominent publicity of the Policy on gender sensitization and prevention and redressal of Sexual

Harassment in the Supreme Court of India in all places in the Supreme Court precincts such as the Court Building, old and new Chamber Blocks, library, health centre, canteens etc.

- (ii) GSICC will organize programmes for the gender sensitization of the Supreme Court community through workshops, seminars, posters, film shows, debates, displays, etc.
- (iii) GSICC shall submit an Annual Report by December 31 every year to the Chief Justice of India which shall be made public outlining the activities undertaken by it and charting out a blueprint for the activities/steps to be taken up in the following year along with necessary budget allowances required by it. The GSICC shall include in its Annual Report the number of cases filed, if any, and their disposal under these Regulations in the annual report.
- (iv) GSICC may enlist the help of NGO's, associations, volunteers, lawyers, lawyer's bodies, or the concerned legal services authorities to carry out these programmes.
- (v) GSICC will enlist and activate an adequately representative team of volunteers and shall ensure the widespread publicity of the contact details (both official and personal) of all its members and volunteers. The services of such volunteers shall be available at all times to any aggrieved woman or any person in need of consultation or guidance. Volunteers will also assist in the gender sensitization, crisis

mediation and crises management duties of GSICC, but shall not participate in the task of formal redressal of complaints under these Regulations and Procedures.

- (vi) GSICC will organize and train members and volunteers to equip them to handle sexual harassment cases including legal and medical aspects of aid.

(3) Crisis Management and Mediation - GSICC shall ensure that there is quick and responsive crises management, counselling and mediation available to all aggrieved women expeditiously which shall include the following activities:-

- (i) GSICC will assist in the mediation of crises arising out of incidents of sexual harassment at the Supreme Court precincts.
- (ii) No mediation shall conclude without approval of the GSICC, and the mediated settlement shall be effected and be enforceable only upon it being duly approved by the GSICC which shall satisfy itself that the said mediation settlement is voluntary, fair, unbiased, and free from any extraneous consideration or influence.

GSICC will coordinate with the Supreme Court security services to devise ways and means by which a system of prevention of and crisis management that is both gender-sensitive as well as prompt and effective is put in place. It will maintain regular contact through the Member Secretary with

the Supreme Court security services to ensure that in crises arising out of incidents of sexual harassment, GSICC members, and/or the volunteers identified by it, shall be intimated of such incidents without delay.

- (4) Complaint Redressal** - The GSICC shall ensure that every complaint of an aggrieved woman is adequately dealt with in accordance with the established procedure and with complete sensitivity. The GSICC shall have the power to inquire into and pass orders against the Respondent/deviant/delinquent in a complaint made in relation to any form of sexual harassment in the entire precincts of the Hon'ble Supreme Court.

Chapter III

COMPLAINT & INQUIRY INTO COMPLAINT

- 8. Complaint of Sexual Harassment** - (1) Any aggrieved woman may make a complaint in writing of sexual harassment at the Supreme Court of India precincts to the GSICC through the Member Secretary in accordance with the form and procedure so notified by it.

Provided that where the aggrieved woman is unable to make such a complaint in writing due to any reason, the Member of the GSICC or volunteer, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

- (2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental

incapacity or death or for any other reason, her legal heir or such other person directly concerned with her interests may make a complaint under this Regulation.

- 9. Inquiry into complaint -** (1) On receiving a complaint and upon being satisfied with regard to the genuineness of the Complaint, the GSICC shall constitute an Internal Sub-Committee to conduct a fact finding inquiry, which shall comprise of three members of the GSICC itself, or such other persons as to be so nominated by the GSICC in its meeting, with majority members being women, and at least one person being an outside member.

(2) The Internal sub-Committee shall conduct an inquiry and shall hear and duly record the statements of the aggrieved woman, the Respondent, and any other person the said parties wish to examine, subject to the provisions of Regulation 13(2), and thereafter it shall prepare a Report and enclose therein the complete proceedings of the Inquiry.

(3) The fact finding inquiry into a Complaint shall be conducted and completed within 90 days of the Constitution of the Internal Sub-Committee.

Provided that the validity of any inquiry shall not be called into question upon the inquiry not being completed with the stipulated period due to reasons beyond the control of the Internal sub-Committee.

- 10. Inquiry Report -** (1) On the completion of an inquiry under these Regulations, the Internal sub-Committee shall provide the Inquiry Report of its findings along with the complete record of the inquiry proceedings including the pleadings and all the material on record to the GSICC

within a period of ten days from the date of completion of the inquiry and such Report shall also be made available to the concerned parties.

(2) Where the Internal sub-Committee arrives at the conclusion that the allegation against the Respondent has not been proved, it shall recommend to the GSICC that no action is required to be taken in the matter.

(3) Where the Internal sub-Committee arrives at the conclusion that the allegation against the Respondent has been proved, it shall recommend to the GSICC to take appropriate action for gender discrimination and/or sexual harassment.

(4) Upon consideration of the material on record and the Inquiry Report of the Internal Sub-Committee, if more than two-thirds of the members of the GSICC differ from the conclusion of the Internal sub-Committee, the GSICC shall after hearing the aggrieved woman and Respondent in person, record its reasons to so differ and take consequent action accordingly.

(5) The GSICC shall pass orders either accepting or rejecting the Inquiry Report of the Internal Sub-Committee and thereafter pass consequent orders that may be appropriate and necessary for putting an end to the sexual harassment and take all steps to secure justice to the victim of sexual harassment within 45 working days of submission of the Inquiry Report of the Internal sub-Committee, excluding the period of holidays, and/or vacation of the Supreme Court.

Provided that the validity of the orders of the GSICC shall not be called into question upon the same not being

passed within the stipulated time.

11. Orders on Inquiry Report - (1) Subject to Regulation 9(1) above, the GSICC shall have the power to pass the following orders to secure justice to the victim of sexual harassment:

- (a) admonition;
- (b) admonition with publication of such admonition in the Court precincts including cause lists and Supreme Court Website;
- (c) prohibition from harassing the victim in any manner including, but not limited to, prohibition from communicating with her in any manner such as phones, messages, electronic means, physical or other means for a specified period; and
- (d) subject to Regulation 11(2), pass all orders, directions, and/or direct taking steps necessary for putting an end to the sexual harassment of the aggrieved woman.

(2) GSICC will also have the power to recommend to the Chief Justice of India to pass orders against the Respondent including, but not limited, to the following:

- (a) debarment of entry into the Supreme Court precincts for a specified period extending upto a maximum period of one year; and
- (b) in appropriate cases, to recommend filing of a criminal complaint and/or a disciplinary complaint before the concerned disciplinary authority governing the Respondent (including the concerned Bar Council) for taking appropriate action, and the

Chief Justice of India may pass orders thereon subject to Regulation 12.

(3) The GSICC shall pass orders on the Inquiry Report and/or shall make recommendations to the Chief Justice of India within 45 working days of the submission of the Inquiry Report, excluding the period of vacation of the Supreme Court and communicate the same to the parties forthwith.

(4) The GSICC and the Internal sub-Committee shall have the jurisdiction to inquire into a complaint and take any action thereon notwithstanding that any criminal complaint or any other complaint under any other law (including a disciplinary proceeding under the Advocates Act, 1961) may have been filed with respect to the same complaint/actions.

(5) The orders of the CJI and the GSICC shall be final and binding on the parties.

12. Representation - (1) Any person aggrieved by the order passed (or not passed) by the GSICC under Regulation 11(1), or recommendation made by the GSICC to the Chief Justice of India under Regulation 11(2), or non-implementation of such orders or action may make a representation to the Chief Justice of India who shall have the power to set aside or modify the orders passed or the recommendation made as the Chief Justice may deem fit, and also have the power to issue such orders or directions that may be necessary to secure complete justice to the victim of sexual harassment.

The representation under Regulation 12(1) shall be preferred within a period of ninety days of

communication of the order or recommendation.

13. Restraint Order - (1) On the receipt of a Complaint and during the pendency of an Inquiry, on a written request made by the aggrieved woman, the GSICC if it considers it fit and proper may recommend specific interim measures to be taken in a signed decision to the Chief Justice of India, who on receipt thereof may pass such interim orders that may be required for the personal safety and for safeguarding the dignity of the aggrieved woman, and both the aggrieved woman and the Respondent shall be bound by the same.

(2) Upon disobedience, defiance or violation of the order passed under clause (1) above by the Respondent, the GSICC shall close and/or strike off the defence of the Respondent and pass final orders under Regulation 10(5) and Regulation 11.

Chapter IV

POWERS & DUTIES

14. Powers of GSICC & Internal sub-Committee - (1) The GSICC shall have the power to issue circulars/notifications prescribing its procedure and for the purpose of carrying out and implementing the provisions of the present Regulations in their spirit and intent.

(2) The GSICC shall have the power to pass any orders to be able to carry out the objectives and mandate of the present Regulations including directing any party or person to take any suitable action.

(3) For the purpose of making an inquiry, the GSICC and the Internal sub-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.

(4) The GSICC by Resolution to be passed by two-thirds majority may remove any member of the Internal sub-Committee and appoint a new member in his/her place, only if it is of the view that such a member has acted prejudicially to the principles of natural-justice, fair play and has acted with bias in the conduct of the Inquiry.

(5) The GSICC shall at all times have supervisory powers over the Internal sub-Committee and it may issue directions to the Internal sub-Committee from time to time in accordance with the provisions of the present Regulations.

15. Duties - The GSICC in coordination with and with the assistance of the office of the Supreme Court shall—

- (a) take measures to provide a safe working environment at the Supreme Court of India precincts;
- (b) display at any conspicuous place in the Supreme Court of India and on its web-site, the penal

consequences of sexual harassments and the order constituting the Internal Committee under the present Regulations;

- (c) display at any conspicuous place in the Supreme Court of India and on its web-site, the status and outcome of complaints of sexual harassment;
- (d) organize workshops and awareness programmes at regular intervals for sensitizing the persons carrying out work at the Supreme Court premises with the provisions of the present Regulations and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (e) provide necessary facilities to the Internal sub-Committee for dealing with the complaint and conducting an inquiry;
- (f) assist in securing the attendance of respondent and witnesses before the Internal sub-Committee;
- (g) obtain such information for the Internal sub-Committee as it may require having regard to the complaint;
- (h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the Respondent and/or the perpetrator;
- (i) monitor the timely submission of reports by the Internal Sub-Committee; and
- (j) take any other action and/or measures to ensure an effective and meaningful implementation of the present Regulations.

Chapter V

MISCELLANEOUS

16. Confidentiality – (1) The contents of the complaint made under the present Regulations, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to the inquiry proceedings, recommendations of the GSICC and the action taken by the GSICC shall be confidential and shall not be published, communicated or made known to the public, press and media in any manner except upon the aggrieved woman submitting a specific request to do so in writing and upon the GSICC acceding to the said request.

(2) Upon the Respondent being found guilty, information may be disseminated regarding the justice secured to any victim of sexual harassment under these Regulations without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Protection of action taken in good faith- No suit, prosecution or other legal proceedings shall lie against the CJI, GSICC and the Internal sub-Committee or its members in respect of anything which is done or intended to be done in good faith in pursuance of these Regulations, and the circulars/orders/ notifications issued thereunder.

18. Allocation of funds - The Chief Justice of India may, subject to the availability of financial and other resources allocate and provide suitable funds as may be prescribed

- (a) for the effective implementation of the present Regulations;
- (b) for development of relevant information, education, communication and training materials, for organization of awareness programmes, and for advancement of the understanding of the public of the provisions of these Regulations; or
- (c) for organizing orientation and training programmes for the members of the GSICC, Internal sub-Committees, volunteers, counselors etc.

19. Regulations not in derogation of any other law - (1)

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

(2) The provisions of the present Regulations shall not bar any Court from taking cognizance of any offence punishable under any other enactment or law.

RELEVANT PROVISIONS OF THE CONSTITUTION OF INDIA RELATING TO GENDER EQUALITY

14. Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the

Scheduled Castes and the Scheduled Tribes.

(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.

16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory) prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of

citizens which, in the opinion of the State, is not adequately represented in the services under the State.

[(4A) Nothing in this article shall prevent the State from making any provision for reservation [in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty percent reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

19. Protection of certain rights regarding freedom of speech, etc.

(1) All citizens shall have the right—

(g) to practise any profession, or to carry on any occupation, trade or business.

21. Protection of life and personal liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

51(A) Fundamental duties

It shall be the duty of every citizen of India—

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

RELEVANT PROVISIONS OF THE INDIAN PENAL CODE WHICH SPECIFICALLY DEALS WITH OFFENCES RELATING TO SEXUAL HARASSMENT

354A. Sexual harassment and punishment for sexual harassment.

1. A man committing any of the following acts—
 - i. Physical contact and advances involving unwelcome and explicit sexual overtures; or
 - ii. A demand or request for sexual favours; or
 - iii. Showing pornography against the will of a woman; or
 - iv. Making sexually colored remarks, shall be guilty of the offence of sexual harassment.
2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both

354B. Assault or use of criminal force to woman with intent to disrobe.

Any man who assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to seven years, and shall also be liable to fine.

354C.Voyeurism.

Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

Explanation 1:

For the purpose of this section, "private act" includes an act of watching carried out in a place which, in the circumstances, would reasonably be expected to provide privacy and where the victim's genitals, posterior or breasts are exposed or covered only in underwear; or the victim is using a lavatory; or the victim is doing a sexual act that is not of a kind ordinarily done in public.

Explanation 2:

Where the victim consents to the capture of the images or any act, but not to their dissemination to third persons and where such image or act is disseminated, such dissemination shall be considered an offence under this section.

354D. Stalking.

1. Any man who—
 - i. Follows a woman and contacts, or attempts to contact such woman to foster personal interaction

repeatedly despite a clear indication of disinterest by such woman; or

- ii. Monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

Provided that such conduct shall not amount to stalking if the man who pursued it proves that—

- i. It was pursued for the purpose of preventing or detecting crime and the man accused of stalking had been entrusted with the responsibility of prevention and detection of crime by the State; or
 - ii. It was pursued under any law or to comply with any condition or requirement imposed by any person under any law; or
 - iii. In the particular circumstances such conduct was reasonable and justified.
2. Whoever commits the offence of stalking shall be punished on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

NO MORE HARASSMENT-CHANGE IN GENDER DISCOURSE

Pinky Anand
Additional Solicitor General

Gender Sensitization issues have come to the forefront as a result of sustained pressure of activism. Inequalities were rampant and gender subjugation of women had become a sore thumb leading to democratic imbalances.

Social prejudices not only led to adverse social consequences but also substantially diluted the contribution of women to productive workforce of the nation. It is not easy to change social prejudices speedily. This process has its own fallouts and time lines that cannot be tolerated in any State. If one were to wait for social change to happen over the course of time, it would have taken forever.

Fortunately the legal system has provided the necessary impetus and addressed this area of concern and propelled the system forward. Dramatic changes were made in laws. New laws were brought into force. Just to mention a few: Dowry Prohibition Act was brought to put to an end to the demand of Dowry; Sati Act was brought to curb widow-burning practice.

Judicial Activism has actively contributed to the correction of imbalance. This was done by innovative strategies as evidenced in Vishakha's judgment where the Apex Court formulated detailed guidelines. Subsequently, the guidelines found statutory recognition in the shape of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, which incorporated all guidelines pioneered by the Apex Court. The judgment was unprecedented for several reasons: the Supreme Court

acknowledged and relied to a great extent on international treaties that had not been transformed into municipal law; the Supreme Court provided the first authoritative decision on 'sexual harassment' in India; and confronted with a statutory vacuum, it went creative on the path of 'judicial legislation'. I may say that this judgment gave one of the biggest thrust to recognizing the economic potential of women and their role in the productive workforce. It was a paradigm shift and will go down the annals of legal jurisprudence and gender discourse.

Unlike predecessor reforms, the force of international agreements such as the UDHR, CEDAW encompassed in Vishakha have rejuvenated Equality enough to provide a positive, tested blueprint to alter how legislation can truly and effectively respond to women's equality concerns at work.

The Vishakha judgment clearly placed a positive onus on employers and other 'responsible persons' to prevent sexual harassment at work. Creating an onus to prevent inappropriate behaviour has demonstrated the possibility of orienting employers and others towards attitudinal change.

Under the Protection of Human Right Act, 1993 "human rights" has been defined as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women as to live with dignity is a human right guaranteed by our Constitution.

Women are an ambit of our workforce that has not yet been optimally utilized due to setbacks finding their reasons set in a centuries old vantage point, and once these are overcome, the

productivity of the population at large would increase and benefit the employee as well as the employer. This productive capacity and ability of women should come to fore without any hindrance to facilitate their inclusion hence, making it a journey from being an exception to the norm. Between 1980 and 2009, the global rate of female labor force participation rose from 50.2 percent to 51.8 per- cent, while the male rate fell from 82.0 percent to 77.7 percent, which is teetering towards improvement but nonetheless, is still staggeringly slow.

Women till date have barely got an opportunity to represent themselves in practices such as capital markets, shipping and Delhi-based real estate. Since independence, only 6 women judges have been elevated to Supreme Court. Amongst 611 Judges in the High Courts across the country, only 9% are women judges. Out of the 20 current members of Bar Council of India, none is a woman. No Chairperson or Vice Chairperson of BCI till date has ever been a woman. However, the number of women enrolled for engineering has doubled since 2001 and the rate of women enrolling for higher education is now 70% higher than at the beginning of 21st century. While the numbers clearly suggest massive improvement, the path to true equality is hardly a short one. There is a favorable change in terms of representation of women in the employment ratio but it is also an opportunity to take stock of how far we still have to travel to create an equal and inclusive society.

'The Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013' gave conception to the setting up of a Supreme court Gender Sensitization Committee, which even though was need of the hour, and has been slightly delayed but is heartily welcome to function in furtherance of

the objective of the Act. The setting up of the Committee itself acts as a protective shield by deterring wrong doers. There is a feeling of security for victims with the presence of an institutional system in place to address possible aggravations.

In addition, on appropriate occasions the Committee can intervene and with the assistance from the office of the Supreme Court perform its duties, including providing a safe working environment in the Supreme Court, organizing workshops and awareness programs at regular intervals for sensitizing the persons carrying out work in the court premises and any other measure to ensure the effective implementation of present regulations. Volunteers chosen by advocate members of the Committee will be provided training by NGO's to equip and enable them in dealing with issues they may come across and act as a bridge between the Committee and the victim.

We welcome the initiative and hope that sexual harassment at Supreme Court becomes a distant past!

*** The views expressed in this article are the personal views of the author.**

OVERVIEW OF SEXUAL HARASSMENT AND GENDER SENSITIZATION

by **INDU MALHOTRA**
Sr. Advocate/ GSICC Member

The autonomy to choose one's profession or the right to self-determination is an important facet of gender justice. The freedom to practise any profession, trade or business is guaranteed by Article 19(1)(g) of the Constitution, and is an important constituent of the right to life under Article 21, and the right to equality under Article 14. Equality in employment can be seriously impaired when women are subjected to gender-based harassment at the workplace. Sexual harassment creates an intimidating, hostile and offensive work environment. It undermines the right of a woman to practice her profession, occupation, trade or business with dignity.

Surveys have revealed that workplace sexual harassment is quite common, and one of the most difficult and insidious issues to tackle, since victims being in a position of vulnerability, are apprehensive of jeopardising their careers, or even losing their jobs, if they dare to report. It is substantially under-reported out of fear of reprisal that reporting may lead to retaliation, and worsen the work environment. Most often such an apprehension results in inordinate delay in reporting such incidents, which is then construed against the victim.

The issue of sexual harassment of women at the workplace in India first got judicial recognition in the case of Vishakha vs. State of Rajasthan¹⁰. The Supreme Court, sought to fill the

¹⁰(1997) 6 SCC 241

vacuum in the existing legislation by framing guidelines under Art. 141 to prevent sexual harassment at all workplaces. The guidelines provided a mechanism for redressal of grievances, and were made applicable to all employers, whether in the private, government or public sector, who were directed to incorporate the same in their conduct and discipline rules. The commission of an act constituting sexual harassment would be treated as a disciplinary offence.

Subsequently, in *Apparel Export Promotion Council vs. A.K. Chopra*¹¹, the definition of what constitutes sexual harassment was expanded by the following words: 'any action or gesture which, whether directly or by implication, aims at or has the tendency to outrage the modesty of a female employee, must fall under the general concept of the definition of sexual harassment'. The court read into the definition of sexual harassment conduct, the term 'outraging the modesty of a woman'.

In *Medha Kotwal Lele vs. Union of India*¹², a three judge bench directed that the complaints committees envisaged in the Vishakha case, will be deemed to be an inquiry authority for the purposes of the Central Civil Services (Conduct) Rules, 1964, and the report of the complaints committee shall be deemed to be an inquiry under the CCS Rules. The disciplinary authority will act on the report in accordance with the rules. The court directed that similar amendments be carried out in the Industrial Employment (Standing Orders) Rules.

The codification of the law, however, came much later with the passing of The Sexual Harassment of Women at

¹¹(1999) 1 SCC 759

¹²(2013) 1 SCC 297

Workplace (Prevention, Prohibition and Redressal) Act, 2013 which was brought into force on 9.12.2013. The statutory definition of “sexual harassment” in the Act is an inclusive one, and covers a wide spectrum of behavioral conduct which would constitute unwelcome acts or behaviour, whether direct or by implication. It would cover subtle solicitations and verbal innuendos. Such conduct may be physical, verbal or non-verbal. Physical contact of the perpetrator is not an essential ingredient of sexual harassment. To constitute 'sexual harassment' the conduct must be unwelcome sexual conduct; and 'harassment' would imply instilling fear, or the fear of reprisal.

Modern technologies of communication like e-mail, voicemail and sms which have revolutionized modes of communication, are sometimes used to download inappropriate or pornographic content containing sexually explicit material, and sent to recipients. This would also be covered by the definition of sexual harassment.

To ensure that a fair enquiry is conducted, and to prevent misuse of the provisions, it is necessary that the enquiry is fair and just to both parties, and conforms to the principles of natural justice. The complainant must be required to corroborate the complaint by independent material or oral testimony. The alleged perpetrator must equally be provided with an adequate and reasonable opportunity to defend himself, as he is entitled to protect his reputation particularly in a case where a complaint may not have been made in good faith, or actuated by ulterior motives. Reputation is an inherent component of Article 21.¹³ The enquiry must be based on an objective determination of the facts of the case,

¹³Subramaniam Swamy vs. Union of India (2016) SCC Online SC 550.

rather than merely the subjective perception of the complainant. It is necessary that the test of a reasonable person is used to determine whether the conduct is of an unwelcome nature having sexual overtones. It is sometimes difficult to determine whether a particular conduct or remark is sexually offensive as there may be difficult perceptions of people who come from different cultures and backgrounds.

Sexual harassment can sometimes even be suffered by men in certain situations. The UGC has recently framed India's first gender-neutral regulations in 2016, which has made sexual harassment a gender-neutral offence. Under these regulations, male students and students of the third gender in universities can also now lodge complaints of sexual harassment, who may be vulnerable to various forms of sexual harassment, humiliation and exploitation.

It is necessary that gender sensitization and training is imparted in organisations as to what would constitute workplace sexual harassment, so that people are able to identify unwanted sexual behaviors, especially when people come from diverse cultures and backgrounds. Apart from training, it is also advisable that the workplaces offer counselling to the complainant, and the alleged perpetrator, to prevent escalation of disputes.

***The views expressed in this article are the personal views of the author.**

**COMPOSITION OF THE GENDER
SENSITISATION AND INTERNAL
COMPLAINTS COMMITTEE (GSICC) OF
THE SUPREME COURT OF INDIA**

Sl. No.	Name & Address with Email ID	Post	Phone No.
1	Hon'ble Mrs. Justice R. Banumathi Judge, Supreme Court of India	Chairperson	011-23017059
2	Hon'ble Mr. Justice A.M. Khanwilkar, Judge Supreme Court of India	Member	011-23012377
3	Ms. Nisha Bhardwaj, Registrar [Officer in service of the Supreme Court of India] Email ID : reg.nishabhardwaj@sci.nic.in	Member Secretary	9810612211 011-23381581 23384447 (F)
4	Ms. Indu Malhotra, Sr. Advocate (Sr. Member of the Supreme Court Bar) Chamber No. 59, New Lawyer's Chambers, Supreme Court Compound, New Delhi. Email ID : indu.malhotra@gmail.com	Member	9810026757 011-46585555 011-23389900
5	Ms. Mahalakshmi Pavani, Sr. Advocate (Representative of the Supreme Court Bar Association) Office: Chamber 82, Lawyers Chambers, Supreme Court, New Delhi-110001 or Residence: Nagatirumala, G-55, Sector-44, Noida-201301 Email ID : mahalakshmpavani@hotmail.com	Member	9810229493 0120-2511655 0120-2511715
6	Ms. V. Mohana, Sr. Advocate [Representative of Supreme Court Bar Association] 69, Lawyers Chambers, Supreme Court, New Delhi. R/o E-14, Dronacharya Apartments, Mayur Vihar-I Extn. Email ID : vmohana@yahoo.com	Member	9868110575 011-23386286

Sl. No.	Name & Address with Email ID	Post	Phone No.
7	Mr. P.P. Malhotra, Sr. Advocate and Former Additional Solicitor General, (Sr. Member of the Supreme Court Bar Association) [Nominee of Hon'ble the Chief Justice of India under clause 4(2)(h)] Office: 100, Lawyers Chamber, Supreme Court, New Delhi, R/o-21, Uday Park, New Delhi -110049 Email ID: ppmasgsupremecourt@gmail.com	Member	9810021210
8	Ms. Jyotika Kalra, Advocate-on-Record (Representative of Supreme Court Advocate-on - Record Association) Office: 8-Todermal Lane, Bengali Market, New Delhi-110001 Email ID : kjyotika@gmail.com	Member	09911335676
9	Ms. Madhu Chauhan (Representative of Supreme Court Clerks Association) Room No.112, 1st Floor, Seetalvard Chamber, Supreme Court, New Delhi. Email ID : madhuassociates1000@gmail.com	Member	8826546433
10	Prof.(Dr.) G. Mohan Gopal, Former Director, National Judicial Academy [Nominee of the Chief Justice of India under clause 4(2)(h)] Jawahar Bhawan, Dr. Rajendra Pd. Road, New Delhi-110001. Email ID : mohangopal@gmail.com	Member	9540939693 011-23312456
11	Ms. Bharti Ali Co-Director, HAQ: Centre for Child Rights [Nominee of the Chief Justice of India under clause 4(2)(f)] B-1/2, G.F., Malviya Nagar, New Delhi. Email ID: bharti@haqrc.org	Member	9871849521 011-26673599

Information regarding co-ordinators/volunteers refer to “<http://sci.nic.in>”

Equality Quotes and Quotable Quotes

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

- Article 1, Universal Declaration of Human Rights [UDHR]

“My idea of society is that while we are born equal, meaning that we have a right to equal opportunity, all have not the same capacity.”

- **Mahatma Gandhi**

“Of all the evils for which man has made himself responsible, none is so degrading, so shockingly, so brutal as his abuse of the better half of humanity, the female sex.”

- **Mahatma Gandhi**

“The day a woman can walk freely on the roads at night that day we can say that India has achieved independence.”

- **Mahatma Gandhi**

Gender injustice is a social impairment and therefore has to be corrected in social attitudes and behaviour.

-**Mohammad Hamid Ansari**

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse...”

-**Justice J.S. Verma, Former Chief Justice of India,**

“Fight for gender equality is not a fight against men. It is a

fight against traditions that have chained them- a fight against attitudes that are ingrained in the society –it is a fight against system. The society must rise to the occasion. It must recognize & accept the fact that men and women are equal partners in life. They are individuals who have their own identity”.

-Dr. Justice A.S. Anand, Former Chief Justice of India

Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance”.

-Kofi Annan

“A gender-equal society would be one where the word 'gender' does not exist: where everyone can be themselves”.

-Gloria Steinem (American feminist, journalist, and social and political activist)

“What a country needs to do is be fair to all its citizens - whether people are of a different ethnicity or gender”.

-Chinua Achebe (Nigerian novelist, poet and professor)

“I'm not telling women to be like men. I'm telling us to evaluate what men and women do in the workforce and at home without the gender bias”.

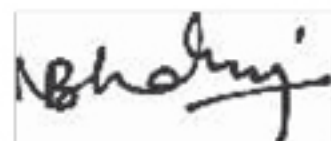
-Sheryl Sandberg (American technology executive, activist and author. Chief Operating Officer of facebook)

**DELHI POLICE -
WOMEN HELPLINE NUMBERS**

New Delhi District

SL No.	Name of Police Station	Women Helpdesk No.
1	PS Chanakya Puri	23015195
2	PS Tuglak Road	23015501
3	PS Tilak Marg	23387002
4	PS Barakhamba Road	23363899
5	PS Connaught Place	23363898
6	PS Mandir Marg	23343800
7	PS Parliament Street	23361102

In order to achieve the aims and object of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the Gender Sensitisation and Internal Complaints Committee, constituted by Hon'ble the Chief Justice of India, has, for the first time, published this handbook for the purpose of creating awareness among the employees of the Registry of the Supreme Court of India and members of the legal fraternity as also clerks of the advocates. Therefore, any suggestions/comments for improving the quality of this Handbook and for creating awareness as regards sexual harassment in the precincts of the Supreme Court of India are welcome and the suggestions/comments may kindly be sent to the undermentioned.



Nisha Bhardwaj
Member-Secretary
Gender Sensitisation &
Internal Complaints Committee
Tel. 23381581(O)
9810612211(M)

