



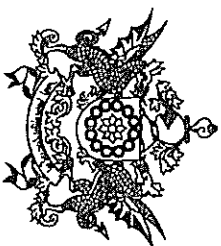
Social Justice, Empowerment and Welfare Department

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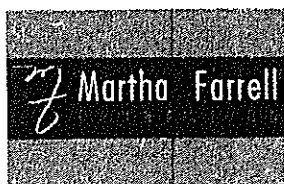


HANDBOOK
FOR
INTERNAL AND LOCAL COMMITTEES
On
Prevention, Prohibition and Redressal
of Sexual Harassment of women
at Workplace

Prepared by Martha Farrell Foundation for Social Justice,
Empowerment and Welfare Department, Government of
Sikkim (2016)



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Disclaimer: *This handbook is only a guide and cannot be
used as a substitute to the law.*

1000

FOREWORD

This handbook is a part of the efforts of the Social Justice, Empowerment and Welfare Department and Sikkim State Women's Commission, Government of Sikkim to clarify the issues and procedures to be followed while dealing with cases of sexual harassment of women at the work place. The Constitution of India guarantees fundamental rights to citizens and the same are enshrined in Articles 14, 15 and 21 of the Constitution of India. Each incident of sexual harassment of women at the work place results in the violation of her fundamental rights. India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted for prevention of sexual harassment against women at the workplaces. The Central Government vide notification SO 3606 (E) appointed 9th December, 2013 as the date on which the provisions of the Act came into force and on the same day, the Central Government made the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013. It specifies the duties of the employer in creating a safe environment for all women employees.

The Social Justice, Empowerment and Welfare Department being as the nodal department is responsible for the implementation of the law in the State and has been facilitating the formation and orientation of Internal and Local Committees.

This handbook has been prepared as an aide for the Internal and Local Committees with the view of providing further clarity on the issue of sexual harassment of women at workplaces as well as a guide on the procedures to be followed during investigation.

**MESSAGE FROM THE HON'BLE MINISTER SOCIAL
JUSTICE EMP. & WELFARE DEPARTMENT**

Women form a major part of the work force today. Their contribution towards nation building, industry, policy etc. is immense. Many working women face sexual harassment at the workplace daily. It is therefore important for us to ensure a safe working environment for them.

I am pleased to present this handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Government realizes that sexual harassment of women at the workplace is a reality and there is a need to institutionalize a sensitive and meaningful mechanism within the state for women workers both in the organized and the unorganized sectors. Internal Committees and Local Committees have been formed at every level to ensure effective and successful implementation of this Act.

I would like to place on record that we commit ourselves towards achievement of 100% compliance to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. This handbook reflects our commitment towards women empowerment by providing clear and user- friendly procedures for implementation of this Act. I am confident that this handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 will be beneficial to everyone.

SMT. TULSI DEVI RAI

MESSAGE FROM THE CHAIRPERSON SIKKIM
STATE COMMISSION FOR WOMEN

I am delighted to share with you this hand book on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 prepared by the Social Justice Empowerment and Welfare Department. This handbook is a milestone towards gender equality and justice in the workplace. It provides comprehensive definition of sexual harassment, workplace and the provisions of the Act.

Sexual Harassment at workplace is a reality; it is discriminatory and affects women's right to life and livelihood. The legislation is a step towards ensuring women's safety and right to livelihood. However legislation alone is not sufficient, all stake holders have to give their support and commitment for effective and successful implementation in preventing sexual harassment at the workplace. Towards this end the Sikkim State Commission for Women would like to show their support and commitment towards making workplaces safe for women.

SMT. REHNA RAI

MESSAGE FROM THE COMMISSIONER - CUM -
SECRETARY
SOCIAL JUSTICE, EMPOWERMENT & WELFARE
DEPARTMENT

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is an extension of the Vishakha Guidelines issued by the Supreme Court of India in 1997. Through this legislation the Government seeks to make workplaces safe and secure for women. The Act is unique due to the fact that it covers all working women from both the organised and unorganised sector. The Act places responsibility on the employer to address the grievances in respect of the sexual harassment at the workplace in a time bound manner.

The Department of Social Justice, Empowerment and Welfare is committed towards implementation of this Act in letter and spirit in order to ensure safe working environment for women. The handbook is designed to be useful to employees, employers, stakeholders and the procedures outlined therein will be useful for the effective implementation of the Act.

I would like to place on record my sincere appreciation for the efforts made by my colleagues in the department and Ms. Nandita from Martha Farrell Foundation to bring out this handbook.

MR. R. TELANG (IAS)

CONTEXT:

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

The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act was passed by the Lok Sabha and the Rajya Sabha on 3rd September 2012 and 26th February 2013 respectively. The Act was notified on 23rd April 2013. This law was enacted to provide protection against sexual harassment of women at workplace and for preventing and addressing complaints of sexual harassment at the workplace. Considering that sexual harassment is an occupational hazard concerning the safety of women at workplaces the Act recognizes that sexual harassment of working women amounts to the violation of a woman's fundamental right to gender equality under Articles 14, 15 and 21 of the Constitution which provide for equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and protection of life and personal liberty.

An instance of Sexual Harassment at the workplace is also the violation of an individual's Fundamental Right to practice any profession and carry out any occupation, trade or business which depends on the availability of a "safe" working environment under Article 19 (1) (g)).

Sexual Harassment at the workplace exists and it is a Human Rights Violation.

The Act includes key definitions and measures to be taken by different stakeholders for preventing and addressing sexual harassment at the workplace.

Section 28 of the Act mentions that its provisions shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, this guidebook should be read along with the Vishakha Guidelines, as well as the rules as notified by the Government.

**SECTION I:
KEY DEFINITIONS AND PROVISIONS OF THE LAW**

Sexual Harassment at Workplace

The Sexual Harassment of Women (Prevention, Prohibition and Redressal) Act 2013 defines sexual harassment to include any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:

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

Sexual harassment at workplace refers to unwelcome sexual advances or verbal or physical conduct of a sexual nature which has the effect of unreasonably interfering with an individual's work performance and/or by creating an intimidating, hostile, abusive or offensive working environment This type of sexual harassment implies seeking sexual favours or making sexual advances in exchange for benefits at work.

Different Forms of Sexual harassment
Verbal Form
<ul style="list-style-type: none">- Gender based insults or sexist remarks- Sexual or gender-based jokes or teasing- Innuendos and taunts- Unwelcome sexual overtone in any manner such as over telephone (obnoxious telephone calls)- Requesting sexual favors

<ul style="list-style-type: none"> - Telling lies or spreading rumors about a person's personal or sex life - Pressure for dates - Comments about clothing, personal behavior, or a person's body - Graphic descriptions of pornography
<p>Non Verbal Form</p> <ul style="list-style-type: none"> - Staring - Sizing up a person's body (looking up and down) - Derogatory gestures of a sexual nature - Sexually suggestive looks - Facial expressions of a sexual nature; winking, licking lips - Stalking
<p>Visual Form</p> <ul style="list-style-type: none"> - Presence of sexual visual material such as posters, cartoons, drawings calendars, pinups, pictures, computer programs of a sexual nature - Written material that is sexual in nature, such as notes, SMS, E-mail containing sexual comments - Objects of a sexual nature
<p>Physical Form</p> <ul style="list-style-type: none"> - Unwelcome hugging, sexual touching or kissing - Forcible physical touch or molestation - Standing too close to or brushing up against another person, leaning over, invading a person's space - Patting, stroking, grabbing or pinching - Blocking someone's path with the purpose of making a sexual advance - Stalking - Rape or attempted rape - Actual or attempted sexual assault, or forced fondling

Sexual harassment is:	Sexual harassment is not:
<ul style="list-style-type: none"> ● A male supervisor asking a female staff to stay back late in the evening, as his wife is away, so that he can spend some time getting to know her better ● A male programme manager asking his newly married female colleague about her sex life ● A female employee being told by her supervisor, that as project funds are low, she will have to share the hotel room with him ● A female worker has said 'No' to her supervisor's advances and now he is constantly finding faults with her work. ● A male boss hugging a female staff and kissing her on the cheek to show his appreciation for her good work ● Male staff displaying pornographic material on their desk top in full view of the other female staff in the unit ● A female staff in an organization is offended and upset by the frequent whistles, and loud comments from some of the security guards at the adjoining institute ● A young woman is stroked on her back by a male colleague as he thought her saree blouse was too low and felt that it had provoked him 	<ul style="list-style-type: none"> ● A female employee being asked to stay back late to complete a project work that is overdue for submission ● A male supervisor issuing a warning to a female subordinate who is always late to work ● Loud talk and sharing of cricket match scores in the office space and disturbing the environment ● Sleeping in the office premises ● Taking personal calls in the office and not completing tasks ● Keeping feet upon the table in office ● Vandalizing office furniture and equipment ● Consuming alcohol in the office premises.

<ul style="list-style-type: none"> ● A male supervisor in a gem factory follows a female worker into the toilet saying she might have concealed stolen articles in her clothing ● While female agricultural labourers work in the field, male employers constantly stare at them and crack obscene jokes ● Female domestic workers are followed closely by the male members of the family in the absence of female family members. 	
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Sexual harassment in the workplace is classified under two main types:

i) Quid Pro Quo: Or This for That; this type of sexual harassment implies seeking sexual favors or making sexual advances in exchange for benefits at work. It exists when there are/is:

- Implicit or explicit requests or demands for unwelcome sexual activity as a term or condition of employment
- Consent to or rejection of unwelcome sexually explicit behaviour or speech is made a condition for employment, or refusal to comply with a 'request' is met with retaliatory action such as dismissal, demotion, difficult work conditions.

ii) Hostile Work Environment: This involves uninvited and unwelcome conducts or behavior of a sexual nature (as described above) making it uncomfortable for a worker to be there. Hostile working environment is usually dependent on circumstances, frequency (repetitive misconduct rather than a single episode of misbehavior), and severity.

Though sexual harassment, is a relatively new term, the origins of it, can be traced back to the times when women initially joined the workforce during the Industrial Revolution. Incidents of sexual harassment have been identified back to the 1830s when increased numbers of women began working in the textile mills in New England.

*-Handbook on Prevention of Sexual Harassment at Workplace
prepared by PRIA for Delhi Commission for women*

Workplace

There has been much debate about the definition of the workplace in the context of sexual harassment. In the past, there have been arguments put forth about the workplace just being the boundary of the premises where employees sit and work, while others have included public places that are frequented by employees in the context of their work.

It is now well accepted that a workplace is any place where working relationships between employer and employee(s) exist, going beyond the physical boundaries of the primary workplace or office building. Therefore in addition to your where working relationships exist and, in addition to your office, it also constitutes:

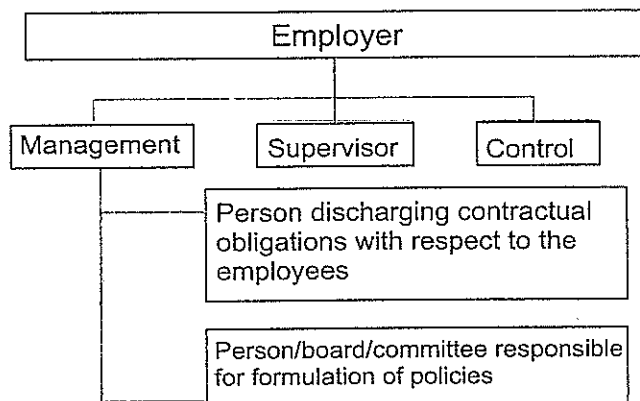
- Workplace of an external client
- Premises of other organizations
- Hotels, restaurants, and other venues during official functions/events
- Work station of other employees
- Lifts in the building
- Restrooms/toilets
- Corridors
- Canteens/cafeteria/entertainment zone
- Official tours/field visits etc.

Definition given under the Sexual Harassment of Women at Workplace Act:

1. Any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit in the public sector; either established/owned, controlled or wholly or partly financed by funds received directly or indirectly by the government or local authority or a government company or corporation or a co-operative society
2. Any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or services
3. Hospitals or nursing homes
4. Any sports institute, stadium, sports complex or competition or games venue, even the residence if used for training, sports or other related activities
5. Any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey
6. Dwelling place or house
7. Workplace of unorganized sector.

Employer

The Employer has been defined under the Act as the individual responsible for management, supervision or control in relation to any department, organization, undertaking, establishment, enterprise, institution (government and private), office, branch or unit of the appropriate Government or a local authority.



Aggrieved woman

As per the definition, an aggrieved woman means:

- A woman of any age irrespective of her employment status who alleges to have been subjected to any act of sexual harassment by respondent in relation to a workplace
- A woman of any age employed in such a dwelling place or house.

Employee

The Act defines an employee as 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

- for remuneration or not, or working on a voluntary basis
- whether terms of employment are expressed or implied.

"Employee" includes a co-worker, a contract worker, probationer, trainee, apprentice or others who may be called by any other such name.

Domestic worker

As per the definition provided in the Act, a domestic worker is 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
- for remuneration whether in cash or kind.

This definition does not include any member of the family of the employer.

Respondent

As per the definition provided in the Act, the respondent means a person against whom the aggrieved woman has made a complaint to the Internal Committee or the Local Committee.

Duties of the Employer

The duties of an employer and/or the appropriate Government towards the prevention of sexual harassment in the workplace have been explicitly laid down in the Act as follows:

- Provide a safe working environment at the workplace which shall include safety from third party (outsiders) coming into the contact at the workplace

- Display penal consequences of sexual harassment
- Display information about the grievance handling mechanisms including about the Internal and Local Committee
- Organize workshops and awareness programmes at regular intervals for sensitizing the employees with the provisions of the Act
- Organize orientation programmes for the members of the Internal and Local Committee
- Treat sexual harassment as misconduct under the service rules and initiate action for such misconduct.

In addition to the above, the Act mentions that Government offices will also be responsible for the following:

- Advance the understanding of the public of the provisions of the Act
- The Central and State Governments are mandated to develop relevant IEC and training materials and organise awareness programmes to advance the understanding of the public on the provisions of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*.
- Formulate orientation and training programmes for the member of the Local Committee.

Responding to and addressing sexual harassment

Internal Committee (IC): Under this Act, all employers (private/government) are mandated to constitute an Internal Committee (IC) at each of the administrative units and offices located at each of its divisional and sub-divisional levels. All employers must provide necessary facilities for the IC to deal with the complaint and to conduct an inquiry.

Local Committee (LC): Central and State Governments are mandated to notify either of the following individuals to be a District Officer for each

District to implement the requirements under the Act:

- District Magistrate
- Additional District Magistrate
- Collector
- Deputy Collector.

Every District Officer must constitute a Local Committee (LC) to receive complaints of sexual harassment from establishments where:

- The Internal Committee (IC) has not been constituted due to having less than 10 employees
- When a complaint is against the individual who is at the senior most position in the organisation
- Unorganised and informal sectors including MNREGA workers

Ensuring that the recommended action by the IC and LC are taken

The Complaints Committee only recommends disciplinary action, and the ultimate decision on this lies with the employer or the disciplinary authority of the organisation that can either choose to accept the suggested actions or change them. Penalties may be imposed based on the recommendations of the Committee and in keeping with the disciplinary norms of the institution.

When an act of sexual harassment amounts to misconduct as defined by the relevant service rules, appropriate disciplinary action (e.g. demotion, transfer, suspension, probation or dismissal) should be initiated by the employer in accordance with those rules. But, when the act of sexual harassment amounts to an offence under the Indian Penal Code, the employer shall initiate action by making a complaint with the appropriate authority. In case the aggrieved is not willing to initiate action under the Indian Penal Code, as a good practice and a measure of caution, the employer can record this in writing from the concerned person.

The employer in the case of the IC or the District Officer in the case of a LC is mandated to act on the recommendation within 60 days of receiving the report by the Committee.

Action to be taken by employer during pendency of inquiry

The Act includes provisions related to action which may be taken by employers during the pendency of an inquiry. Upon a written request made by the aggrieved woman, the Committee may recommend to:

- Transfer the aggrieved or the respondent to any other workplace
- Grant leave to the aggrieved woman up to a period of 3 months, which is in addition to the leave that she is entitled to
- Grant other relief as appropriate.

One of the reasons for this provision is that when an act of sexual harassment is the result of power dynamics at play, the daily proximity of the aggrieved with her "harasser" has a deep and lasting negative impact on the emotional, physical and social functioning of the aggrieved, who is often of a more subordinate position than the accused.

Other things to remember if you are an Employer:

- 1. Provide an environment free from harassment for its employees**
- 2. Take Allegations Seriously**

Listen to the allegations carefully. Get as many specifics as you can, find out what happened, when it happened, ask if there were any witnesses. You must show empathy, yet remain neutral. Remember that it is not the intent of the remark or the action; **it is the impact that it has on the victim that matters.**

3. *Take Immediate Action*

All complaints must be addressed. Conduct your inquiry promptly. Document the complaint with dates, times, places, names and quotes. After hearing the aggrieved's story, repeat relevant facts to her so that she can correct any mistakes if she has made any mistakes inadvertently and she can be assured that the incident was understood properly. Ask her if she would like to add anything. Discuss all the alternatives with her and tell her how and when you will forward the complaint to the Internal Committee. Report the matter to the Internal Committee immediately

4. *Maintain Confidentiality*

Do not discuss the matter with anyone who does not have a need to know.

5. *Pay Attention to the Work Environment*

Be on the alert for off-coloured remarks, jokes or inappropriate behaviour. If you see or hear something that could contribute to a hostile work environment - do something to stop it! Don't wait for the employee to complain.

6. *Liabilities of an Employer*

- Employer is liable if s/he knows or should have known about an incident of sexual harassment it or after it was brought to her/his notice
- Harassment by manager/ co worker

7. *Ask yourself:*

- Do you organize workshops and awareness programmes periodically for sensitizing employees on implications of sexual harassment at the workplace?

- Have you organised orientation programmes for members of IC?
- Do you display conspicuously at the workplace, the penal consequences of indulging in acts that may constitute sexual harassment and the composition of the Internal Committee?
- Have you made changes to the employment contracts to make the employees legally bound for the acts of sexual harassment in the workplace?
- Have you created an Internal Committee (IC) in all offices / branches of the organization to which the act applies?
- Do you submit necessary information pertaining to sexual harassment to specified authorities?
- Do you help your employees to initiate legal action against the perpetrator for sexual harassment (if the perpetrator is not an employee) under criminal law?
- Do you provide necessary facilities to the complaints committee for dealing with sexual harassment instances?

SECTION III: RESPONDING TO AND ADDRESSING SEXUAL HARASSMENT

For effectively responding to and addressing sexual harassment at workplace, it is important to have a grievance handling mechanism that is accessible for all workers.

Internal Committee

l) Composition:

No	Member	Requirement
1	Presiding Officer (Senior female)	Must be a woman employed at a senior level at workplace from amongst the employees. <i>"If there is no senior level woman employed at a senior level; the presiding officer shall be nominated from other offices or administrative units of the workplace. If other offices do not have a senior level employee, the presiding officer shall be nominated from any other workplace of the same employer or other department or organization"</i>
2	Member (Female)	Employees with commitment to the cause of women, experience in social work, or legal knowledge
3	Member (Male)	
4	Third party member	Must be from a third party (e.g. NGO or association) and must have expertise and familiarity with gender issues and sexual harassment. <i>The member appointed from the NGO shall be paid such fees or allowances for holding proceedings of the IC.</i>

ii) Tenure

Presiding officer and every other member of the IC shall hold office for up to 3 years from the date of their nomination. The Presiding officer or

any of the other members can be removed by the Committee before their time period is up, if h/she is found:

- Publishing, communicating or making known to the public, press and media the information related to sexual harassment cases against the legal provisions
- Convicted for an offense under any law or undergoing an inquiry into an offence under any law
- Found guilty in any disciplinary proceedings against him/her
- Abuse his/her position as a member of the committee.

Local Committee

The Social Justice Empowerment and Welfare Department vide notification No. 54/WCDD/2015-16 dated 25-01-2016 has notified all District Collectors of all 4 districts as District officer to exercise their powers and discharge functions under the said Act.

Every District Officer must constitute a Local Committee (LC) to receive complaints of sexual harassment from establishments where the Internal Committee (IC) has not been constituted due to having less than 10 employees.

Each LC is required to prepare an annual report and submit it to the District Officer.

The District Officer will submit a compilation of such reports to the Nodal Department.

The District Officer must 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 it to the concerned LC within 7 days.

i) Composition

No	Member	Requirement
1	Chairperson (Eminent female)	To be nominated from amongst the eminent women in the field of social work and committed to the cause of women
2	Member (Female)	To be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district
3	Member (Female)	To be nominated from amongst non-governmental organizations or associations committed to the cause of women or familiar with the issues relating to sexual harassment:
4	Member (Male)	<ul style="list-style-type: none">• <i>At least one must be a woman.</i>• <i>At least one of the members must have a background of law or legal knowledge</i>• <i>One of the nominees shall be a woman belonging to the scheduled caste, scheduled tribes or the other backward classes or minority community notified by the Central Government"</i>
5	Ex Officio member district	The concerned officer dealing with the social welfare or women and child development in the

ii) Tenure

All members of the committee including the chairperson are expected to hold office for a period not exceeding 3 years from the date of appointment by the District Officer. Committee members are subject to a dismissal if:

- Publishing, communicating or making known to the public, press and media the information related to sexual harassment cases against the legal provisions
- Convicted for an offense under any law or undergoing an inquiry into an offence under any law

- Found guilty in any disciplinary proceedings against him/her
- Abuse his/her position as a member of the committee.

The vacancy that is created through this dismissal is filled by fresh nominations.

Filing a Complaint

According to the Act, a complaint can be made to the Internal Committee, Local Committee or directly with the court of law.

i) Filing a complaint with the Complaints Committee

Place: Aggrieved woman can submit a complaint of sexual harassment to the Internal Committee or the Local Committee. In addition, the Act also states that the aggrieved woman can submit complaints to the designated nodal officer in every block, taluka and tehsil in the rural or tribal area and ward or municipality in the urban area who will forward it to the concerned LC within a period of 7 days.

The jurisdiction of the LC shall extend to the areas of the district where it is constituted.

Time frame: Any aggrieved woman must be allowed to make a complaint within a period of 3 months from the date of the incident. This may be extended to another 3 months if the woman can prove that grave circumstances prevented her from doing the same and the reasons must be recorded. If it's a series of incidents then the complaint must be filed within 3 months from the date of the last incident. If aggrieved woman is unable to make a complaint due to physical or mental incapacity or death, her legal heir may make the complaint.

Form of complaint: Written. Assistance must be provided to the woman if she needs help in writing the complaint.

ii) Filing a complaint at the local police station under the Indian Penal Code

Assistance must be provided to the aggrieved woman should she choose to file a complaint in relation to the offense under the Indian

Penal Code or any other law. The employer shall initiate appropriate action in accordance with the law by lodging a complaint with the appropriate authority when an instance of sexual harassment amounts to a specific offence under the Indian Penal Code, or under any other law.

The following provisions of the Criminal Procedure Code (Cr. PC), 1973 also need to be observed:

- Section 2 (wa) Cr.PC defines "victim" as a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir
- Section 24 provides that the Court may permit the "victim" to engage an advocate of her choice to assist the prosecution.

Other legal remedies for the aggrieved

- A civil suit may be filed for causing mental anguish, physical harassment etc.
- A criminal suit may be filed, citing sections 354 (outraging the modesty of a woman) and 509 (word, gesture, or act insulting a woman's modesty) of IPC
- A complaint based on Indecent Representation of Women (Prohibition) Act, if an individual harasses another with books, films, messages and other pornographic material.

Handling sexual harassment complaints

The Act presents two ways to respond to a sexual harassment complaint: Conciliation and Inquiry.

1) Conciliation

The Act has a provision for the Complaints Committee to take steps to settle matters through conciliation before initiating an inquiry. The

conciliation can only happen at the request of the aggrieved woman and money cannot be the basis of this settlement.

Once the settlement has been agreed upon, a record of the settlement needs to be sent to the employer or the District Officer to take action as specified in the recommendation. The copy of the settlement should be sent to the aggrieved woman and the respondent.

No further enquiries are conducted after the settlement. However, if any of the conditions of the settlement are not complied with by the respondent, the aggrieved can go back to the Committee who will proceed to make an inquiry.

ii) Inquiry into complaint

According to the Act, the complaint mechanism should ensure a time bound treatment of complaints. The IC/LC is bound to complete the inquiry within a time period of 90 days upon receiving the complaint.

While conducting the inquiry procedures of the case, the Committee has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 with respect to the following:

- Summoning and enforcing the attendance of any person
- Examining the individual on oath
- Requiring the discovery and production of documents essential to the case.

The Act also includes provisions for counsellors or any other support services in case either party should ask for one.

According to the Act, if both parties are employees, both parties will be:

- given a fair chance of being heard
- given a report of the findings that will enable them to make their representations before the committee.

The employer should authorize the presiding officer/chair of the IC/LC to procure all documentation and other evidence from appropriate departments during the investigation.

The employer may also initiate action against the perpetrator under the Indian Penal Code or any other law if the aggrieved woman so desires. This is also applicable if the perpetrator is not an employee (third party).

Although the Act does not provide specific steps for handling cases of sexual harassment, each employer or organization should develop and provide detailed guidance on steps for conducting inquiry to the Complaints Committee ensuring safety of all concerned, especially the complainant to avoid victimization, and ensuring consistency and fairness for all cases received. The information on steps should be widely shared with workers, especially the aggrieved woman and the respondent to have a clear understanding on the process.

The information below presents general steps that you may follow in the investigation:

iii) Investigation of the allegations: For ensuring safety of the complainant and fairness for alleged harasser, investigation may be carried out according to the steps as follows:

- The complainant is interviewed to document the details of the incidence
- The allegations are conveyed to the alleged harasser in full
- The alleged harasser is given the opportunity to respond and defend themselves against the allegations
- If there is a disagreement over facts, statements from any witnesses and other relevant evidence are gathered
- Relevant allegations made during the investigation are made known to both the complainant and alleged harasser, with an opportunity to respond.

iv) Examination of witnesses: Although cross-examination of witnesses needs to be conducted in the presence of the accused in ordinary cases, such cross-examination should not be done in the presence of the respondent in the case of an inquiry into allegations of sexual harassment. Sometimes the very presence of the respondent may result in putting pressure upon the witnesses, particularly, if they are children, and may discourage them from coming out with the truth. Moreover, cross-examination in the presence of the respondent would invariably result in disclosing the identity of the aggrieved and/or witnesses, even where it is not necessary to disclose their identity. The necessity of withholding the identity of the aggrieved and/or witnesses of sexual harassment was acknowledged by Supreme Court in *Bidyug Chakraborty*, when it directed cross-examination of the witnesses, by way of interrogatories through a Local Commissioner. The Act also states that the Committee must ensure complete confidentiality of the complainant during the investigation is in the process.

All information collected such as statements from interviews and documents and all steps taken in the investigation must be thoroughly and properly recorded.

v) Examining findings applying the principles of fairness: Cases of sexual harassment are controversial and a highly contentious matters. Acts of sexual harassment in the workplace are usually between two individuals and often behind closed doors, a "private matter" and mostly without any eye witnesses. In cases where sexual harassment is over a prolonged period of time, the aggrieved might not have kept a log of the acts of harassment, dates, times it occurred and a list of witnesses to that specific conduct. It is also possible that when sexual harassment takes place in the open, it might appear as consensual and mutually acceptable behavior to the others in the workplace. In this context it is necessary to understand the different standards that are adopted in dealing with cases of sexual harassment in the workplace.

The most predominant standards include:

1. Reasonable Woman Standard
2. Intent vs. Impact
3. Human Rights
4. Prior Awareness
5. Proof beyond Reasonable Doubt

1. Reasonable Woman Standard

The most common practice to assess sexual harassment in the workplace is to use a Reasonable Woman Standard. It implies that an act(s) of behavior is considered to be sexually harassing if a 'reasonable woman', when put in that situation, would deem it to be so. This standard was adopted in order to avoid decisions being taken that will in all likelihood have a male perspective to it if there are no woman-based standards available. This allowed the decision makers to view the case from the perspective of the aggrieved.

This approach has emerged from the reasonable man standard used earlier where the perspective of a 'reasonable man' was used to determine whether sexual harassment had indeed occurred. This stance was found to be flawed and supported existing male dominant positions of power, which discriminate against women. In today's courts of law across the world, as well as in India, the reasonable woman approach is gaining more acceptance due to its logic and gender sensitive reasoning which supports the view of a woman in ascertaining the occurrence of sexual harassment. Studies reveal that sexual harassment is still endemic in society, often hidden and present in different forms within organisations. Very often, these forms of sexual harassment are so subtle and covert that women do not speak out about them, leading employers and others to believe that the issue is trivial, and therefore does not have to be addressed in a systematic manner. This thinking is intensified by the fact that there is limited awareness that sexual harassment has a deep, negative and long lasting, traumatic

impact on women, mentally, emotionally and physically. Further, given the patriarchal structures of most societies, the issue of sexual harassment within the workplace is one such issue that needs to be highlighted and addressed recognizing the fact that workplaces need to be conducive to the needs of both women and men. Today, sexual harassment within the workplace is viewed as acts of violence against women as well as a violation of human rights. Acts of Sexual Harassment within the workplace have now been recognised as a violation of Human Rights.

Case of Punita K. Sodhi v. Union of India & Ors., W.P. (C) 367/2009 & CMS 828, 11426/2009

Justice Muralidhar raised the bar for workplace discrimination and sexual harassment cases by modifying the long held patterns which discriminated against women who complained of workplace sexual harassment. According to him, "If we only examined whether a reasonable person would engage in alleged harassment conduct, we would run the risk of reinforcing the prevailing level of discrimination. A complete understanding of the view of the aggrieved requires an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women. A male supervisor might believe, for example, that it is legitimate for him to tell a female subordinate that she has a 'great figure' or 'nice legs'. The female subordinate, however, may find such comments offensive. Men tend to view some forms of sexual harassment as 'harmless social interactions' to which only overly-sensitive women would object. The characteristically male view depicts sexual harassment as comparatively harmless amusement. Men, who are rarely victims of sexual assault, may view sexual conduct in a vacuum without a full appreciation of the social setting or the underlying threat of violence that woman may perceive".

2. Intent vs. Impact

'Intent vs. impact' is one of the most crucial standards in assessing sexual harassment. In this framework, the "impact" on the aggrieved is given weightage as opposed to the "intent" of the perpetrator. This view has had significant bearing upon cases of sexual harassment and the consequent decisions that have favoured women. There is emphasis on the purpose or effect of the offensive conduct on another's dignity. Impact not intention is what counts. In a nutshell it is not sufficient reason to excuse an act of sexual harassment merely because someone said "Well, I did not mean it, sorry!"

This approach, combined with the Reasonable Woman Standard approach, are important elements in deciding cases from a third party perspective, along with the cultural context and other prevailing social norms to ensure that justice is meted out.

A case illustrating the use of standards

"A male boss hugging a female staff and kissing her on the cheek, and calling her 'honey' and 'darling' in the office to show his appreciation for her good work' could be a contentious case of sexual harassment.

She has not told her boss that his behaviour is unwelcome, but has shared with him that other staff are sniggering and passing comments about the "boss' praise" and that she is uncomfortable regarding the same.

The boss argues that he has spent several years abroad where kissing and hugging of female staff is a common practice and that she should ignore other colleagues. Besides, he has been 'open' in his behaviour as it has been in the general working hall and in full view of the other staff members.

In his view sexual harassment are acts which are furtive and behind closed doors, therefore, the fact that such behavior is viewed as sexual harassment is not being fair to him. And in his view, it is his way of

thanking her for her good work and a small quick hug and kiss on the cheek is a harmless act that does not warrant being labeled as sexual harassment.

But, the female staff is of the view that in a workplace, appreciation for good work could be in the form of verbal praise, a letter of commendation or even an occasional bouquet of flowers. And, a kiss on the cheek twice or thrice a day, or even in a week is unwelcome behaviour. Further she questions why such appreciation is only reserved for her and not showered on male colleagues for their "good work".

There are two angles to this case:

Intent vs Impact

Irrespective of the intention of the boss to show his appreciation, it is how his behaviour has impacted his female colleague that will be considered. If he persists with such behaviour in spite of being aware of her discomfort, then his behaviour is 'Unwelcome'. The impact on the female is negative.

Reasonable Women Standard

In the Indian context, kissing on the cheek is a gesture of intimacy, with sexual connotations. In the workplace, it is definitely not considered appropriate behaviour, irrespective of the individuals concerned. Cultural sensitivities have been ignored in this context. A public display of kissing and hugging of women in the family is also not the normal standard of acceptable behavior.

Therefore, kissing of another woman in public has definitely crossed boundaries of tolerance of a 'reasonable woman'. The fact that this act was not extended to all staff, including male staff, is a matter to be considered and points to her being singled out for unwanted attention. Refusal to change the behaviour, even after being told of its negative impact, falls within the realm of sexual harassment.(Farrell M. , 2014)

3. Human Rights Approach

In the Guidelines laid down by the Supreme Court in its Vishakha judgment, Point 12 clearly mentions that "These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993".

This approach uses the definition of 'human rights' in Section 2 (d) of the Protection of Human Rights Act, 1993. However, going beyond the law and using a human rights approach shifts the emphasis in assessing a case of sexual harassment. Decisions are no longer taken on the basis on direct evidence or proof that is submitted but on examination of the social context in which such violations occur. The reality that sexual harassment is a 'power game' and often occurs in a relationship of unequal power becomes central to assessing a complaint. The human rights issue also goes beyond an individual perpetrator and takes into account lapses in the work environment that can have detrimental results and negative consequences for the individual, as well as the organization.

4. Prior Awareness Approach

Another approach to understanding whether a particular case is an act of sexual harassment or not is known as 'prior awareness'. This standard assumes that there are two attitudes at play as a reaction to an act of sexual harassment. If the complainant's attitude is of a vulnerable, docile and powerless woman, there is all likelihood of the natural instincts of the decision maker to perceive the woman in question as a victim, which may result in a favourable decision towards her. But, if the complainant's attitude is that of a hostile and aggressive woman, the decision makers are most likely to express an unfavourable decision for the aggrieved, as they view her as a threat to male dominance. This theory underscores once again the importance of developing explicit and shared standards and criteria for the assessment of behaviours as sexual harassment at workplace.

In essence the theory of prior awareness underscores the importance of developing explicit and shared standards and criteria for the assessment of behaviours as sexual harassment at workplace.

5. Proof beyond Reasonable Doubt

The Supreme Court recognized, as in the case of Apparel Export Promotion Council vs A.K. Chopra in 1999, that if evidence and witnesses may not always be forthcoming, reliance has to be placed on the circumstantial evidence and whether it, in overall terms, inspires the confidence of the judges. The terms used for evidence is that of "high probability" or "within reasonable doubt". Which means that It is not required that the Committee obtains 'proof beyond reasonable doubt' to take a decision on whether sexual harassment has occurred. As most incidents of sexual harassment are in private without any solid evidence or eye witnesses, the case should be built upon the strong probability that the accused did sexually harass the complainant is sufficient to take a decision in her favour.

The Supreme Court in its judgment in State of Haryana vs. Rattan Singh reported in 1982 (1) LLJ 46 held that "It is well settled that in a domestic enquiry, the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility".

It has been consistently held by the Supreme Court in a domestic enquiry that the misconduct need not be proved beyond all reasonable doubt, but if there are preponderance of probabilities, that is enough for holding a person guilty of misconduct.(Farrell M. , 2014)

vi. Arriving at the conclusion as to whether the harassment occurred or not

A formal complaint should not be dismissed on the ground that nobody saw or heard the incident/s occur. Given the nature of the conduct, there are often no direct witnesses to acts of sexual harassment. Those

responsible for investigating complaints should consider all available evidence, including any surrounding evidence, and make their finding on the balance of probabilities, that is, that it is more probable than not that the harassment did or did not occur. It is important to note that even if there is not enough evidence for a complaint to be substantiated, it does not mean that the discrimination did not occur or that the complainant is a liar. Findings may be that harassment did or did not occur, or that it was not possible to make a conclusive finding.

vii. Submitting a report with a recommended course of action to the appropriate decision-maker (employer, management, etc)

The onus of preparing the report rests with the Presiding Officer/Chairperson of the Complaints Committee. She may seek the support from other Committee members or other persons in doing so, depending upon the proceedings and the complexities of the case. For example the Presiding officer/Chairperson may deploy the services of a professional to transcribe recorded statements of all witnesses or seek the advice of a lawyer in understanding complex aspects of a case. However, it must be noted that caution must be exercised in maintaining the confidentiality of the case and the identity of the aggrieved at all times.

The report must present all the evidence that has been acquired in the proceedings of the complaint. It shall build up an argument of the conclusion reached in the case and a rationale for the suggested penalty to be imposed if the case of sexual harassment had been proven. The report of the Complaints Committee shall be deemed to be the final inquiry report. In accordance with the Terms of Reference of the Committee, the report shall be submitted by the Chairperson, to the employer/ head of the institution or disciplinary authority for consideration.

The Act mandates that on completion of the inquiry, the ICC and the LCC must send a report of its findings to the employer within a period of 10 days of completion of the inquiry (See Annex for a sample template of Investigation report).

The inquiry report may contain 3 types of verdicts:

1) If the allegation against the respondent has not been proved, the IC/LC recommends to the employer or the District Officer that no action is required to be taken.

2) If the allegation against the respondent has been proved:

- LC can recommend to the District Officer or the IC can recommend to the Employer to take action on sexual harassment as a misconduct in accordance with the provision of service rules; if there are no such service rules then with the rules that have been prescribed
- The committee can also recommend deduction of an appropriate sum of money from the salary of the respondent or ask respondent to pay the sum as compensation to the aggrieved. The amount may be determined by the IC/LC members on the basis of:
 - ❖ the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman
 - ❖ the loss of career opportunities due to the incident of sexual harassment
 - ❖ medical expenses incurred by the aggrieved for physical and psychological treatment
 - ❖ income and financial status of the aggrieved
 - ❖ feasibility of such payment.

3) If the allegation against the respondent has been proved to be a false and malicious complaint, or if the aggrieved or anyone else has produced a false document, the Act provides for a penalty according to the Service Rules.

However, this clause has a safeguard in the form of an inquiry prior to establishing the malicious intent. This means that the onus of proving

that the complaint was of a false and malicious intent lies with the committee. Mere inability to prove the case or a lack of evidence will not attract penalty under this provision.

The decision of the Complaints Committee should be presented in its report and submitted to the head of the institution who will forward the same to the disciplinary authority. This report may also contain suggested penalties for the accused.

Sexual Harassment at workplace is considered misconduct under the Sikkim Government Servants Conduct Rules (1981) and will attract major penalties stated in the Sikkim Government Servants Discipline and Appeal Rules (1985) Vis:

1. Reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay
2. Reduction to a lower time scale
3. Compulsory retirement
4. Removal from service
5. Dismissal from service

viii. Ensuring that the recommended action be taken

The Complaints Committee only recommends disciplinary action, and the ultimate decision on this lies with the employer or the disciplinary authority of the organisation that can either choose to accept the suggested actions or change them. Penalties may be imposed based on the recommendations of the Committee and in keeping with the disciplinary norms of the institution.

When an act of sexual harassment amounts to misconduct as defined by the relevant service rules, appropriate disciplinary action (e.g. demotion, transfer, suspension, probation or dismissal) should be initiated by the employer in accordance with those rules. But, when the act of sexual harassment amounts to an offence under the Indian Penal Code, the employer shall initiate action by making a complaint with the appropriate authority. In case the aggrieved is not willing to initiate action under the Indian Penal Code, as a good practice and a measure of caution, the employer can record this in writing from the concerned person.

The employer in the case of the IC or the District Officer in the case of a LC is mandated to act on the recommendation within 60 days of receiving the report by the Committee.

SECTION III: GOVERNMENT INITIATIVE ON SEXUAL HARASSMENT

The CCS Conduct Rules 1964 has been amended and Section 3-C has been added vide GI Department of Personal & Training Notification No. 11013/10/97-Estt. (A), dated 13th February 1998 which prohibits sexual harassment of working women. This Section speaks thus:

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

According to the Sikkim Government Servants Conduct Rules (1981) Sexual Harassment of working women shall amount to misconduct as defined by these rules and will attract a major penalty.

Purview of the Complaints Committee: As per the Supreme Court order, the Complaints Committee will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee shall be deemed to be the final inquiry report under those rules. Thereafter, the disciplinary authority will act on the report in accordance with the rules. No further inquiries will be conducted. The accused may however, appeal to the higher authority, who in this case, will be the State Complaints Committee.(Delhi Commission for Women , 2011)

CASES

The Government of India has a Constitutional mandate to guarantee gender equality under articles 14, 15 and 16 of the Constitution. India is also a signatory of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), which also guarantees gender equality and non-discrimination, including sexual harassment in the workplace.

Rupen Deol Bajaj & Anr vs. Kanwar Pal Singh Gill & Anr

On July 29, 1988, Mrs. Rupan Deol Bajaj, an Officer of the Indian Administrative Service (I.A.S) belonging to the Punjab Cadre and then working as the Special Secretary, Finance, lodged a complaint with the Inspector General of Police, Chandigarh Union Territory alleging commission of offences under Sections 341, 342, 352, 354, and 509 of the Indian Penal Code (IPC) by Mr. K.P.S. Gill, the then Director General of Police, Punjab on July 18, 1988 at a dinner party. In this case, Rupan Bajaj was slapped on the posterior by Mr. K P S. Gill. Rupan Bajaj filed a suit against him, despite the public opinion that she was blowing it out of proportion, along with the attempts by all the senior officials of the state to suppress the matter. The matter went to Supreme Court. The Supreme Court in January, 1998 laid down its decision of fine of Rs. 2.5 lacs and imprisonment of 3 months to K P S Gill under sections 294 and 509 of the Indian Penal Code.

(Ref: www.indiankanoon.org/doc/579822)

Apparel Export Promotion Council vs. AK. Chopra (1999)

A K. Chopra's case, is the first case in which the Supreme Court applied the law laid down in Vishaka's case and upheld the dismissal of a superior officer of the Delhi based Apparel Export Promotion Council who was found guilty of sexual harassment of a subordinate female employee at the place of work on the ground that it violated her fundamental right guaranteed by Article.21 of the Constitution.

The case is about a woman employee of Apparel Export Promotion Council, who worked as the private secretary to A.K. Chopra, the Chairman of the company. She complained to the Personnel Director that the chairman tried to sexually harass her in Taj Hotel on the pretext of helping her with her work. The company immediately suspended him and ordered a departmental enquiry that confirmed female employee's position. The chairman challenged the disciplinary

committee order in Delhi High Court and the harasser was successful on the ground that the chairman only 'tried to molest' but did not 'in fact molest' the female employee. As against the Judgment, the company once again filed an appeal in the Supreme Court. One of the issues that were deliberated at length by this court was "whether physical contact with the woman was an essential ingredient of a charge of sexual harassment".

The Supreme Court while setting aside the High Court and upholding the dismissal of chairman held that the attempts by the superior to sit close to the female employee and touch her, though unsuccessful, would amount to 'sexual harassment'. The SC also recognized that in such cases, evidence and witnesses may not always be forthcoming. Hence, reliance has to be placed on the circumstantial evidence and whether it, in overall terms, inspires the confidence of the judges. The terms used for evidence is that of "high probability" or "within reasonable doubt".

(Ref: AIR 1999 Supreme Court 625).

D.S. Grewal vs. Vimmi Joshi and Anr.

In this case, a teacher who was employed in a school run by an Army Welfare Society received unwelcome suggestive letters and sexual advances from an army officer who was the Vice Chairman of the school. Despite her complaints to the management, no Complaints Committee was constituted to address her complaint. The management pressured her to withdraw her complaints. Finally, when she did not withdraw her complaints, the management terminated her services. The complainant challenged her termination, alleging sexual harassment as one of the grounds, and the High Court gave a finding that the termination was illegal because a case of sexual harassment was made out. When this matter reached the Supreme Court on appeal, the Court reaffirmed the *Vishaka* definition and held that It is a matter of great regret that the Army which is a disciplined organization failed to

provide a complaint mechanism and ignored the decision of this court which was bound to be given effect to in terms of Article 144 of the Constitution of India. A Complaints Committee as per *Vishakha* [sic] was constituted for the other teachers and the staff but evidently no complaint committee was constituted for entertaining a complaint of this nature. The Supreme Court ruled that the High Court could not have claimed that it was a clear-cut case of sexual harassment of the petitioner without a proper enquiry. The Court directed that, as no Complaints Committee had been constituted, which was imperative in character, the High Court should appoint a three-member committee headed by a woman, and, in the event that it is found that the writ petitioner was subjected to sexual harassment, a report may be sent to the Army Authorities for initiation of a disciplinary action against the appellants on the basis of such a finding. Further the Army was directed to bear the cost of forming and running such a Complaints Committee and the school's management was required by the Supreme Court to reimburse all the costs incurred by the complainant including the legal counsel fees.

(Ref: Article by Daphne Barak-Erez and Jayna Kothari titled When Sexual Harassment Law Goes East: Feminism, Legal Transplantation And Social Change In Stanford Journal of International Law; pg.188)

Medha Kotwal Lele vs. Union of India and others

The petitioners Dr. Medha Kotwal Lele, have documented incidents of sexual harassment of women where the Vishaka Guidelines and Supreme Court judgment were completely ignored. One case was that of a master's student at the University of Baroda who was allegedly sexually harassed by her guide since 1995. On her complaint the Vice-Chancellor of the University appointed a committee to investigate the charges. However the procedures followed were not in conformity with the Guidelines outlined by the Supreme Court. No women's NGO, familiar with the issue of sexual harassment was involved in the investigation as required by the Guidelines and the investigation

conducted by the Committee was not run with a view to expose the truth but rather to defend the status quo in the most anti-woman fashion. Furthermore, delays in dealing with complaint lead to continued workplace harassment, directed at the victim. On a wider country-wide level, the petitioners also noted that the complaints committees, instead of being active and influential are often formed as an ad-hoc measure, only after harassment has taken place. This is in contravention of the Guidelines, which sees the committee as also playing a preventative role with regard to sexual harassment. The state Governments have also failed to take effective steps for prevention and redressal of complaints of sexual harassment in the private sector under the Industrial Employment (Standing Orders) Act, 1946. The Supreme Court admitted the writ and ordered all State Governments to file affidavits regarding all measures taken by them to comply with the Vishaka Guidelines in August 2000. The Supreme Court has made a number of orders in this case. In April 2004 in response to the petitioners' contention that the complaint committees were ineffective, the Court held that a complaint committee's report "shall be deemed to be an inquiry report," based on which disciplinary action can be taken. In January 2006 the Supreme Court ordered the chief secretaries of each state to appoint a state-level officer who is in charge of and concerned with the welfare of women in each state so they may coordinate the implementation of the Guidelines, particularly in relation to the setting up of complaint committees. The Court further ordered the Labour Commissioner of each state to take steps to ensure that the required committees are established in factories, shops and commercial establishments, where the Court noted the Guidelines were not being complied with.

The petition is still on going.

(Ref: HRLN website)

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