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असाधारण

EXTRAORDINARY

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

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

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

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

(No. 14 OF 2013)

[22nd April, 2013.]

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

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

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

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

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

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement

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

(2) It extends to the whole of India.

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

Definitions.

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

(a) "aggrieved woman" means---

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(b) "appropriate Government" means---

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

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

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

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

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

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

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

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

(g) "employer" means---

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

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

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

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

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

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

(i) “Local Committee” means the Local Complaints Committee constituted under section 6;

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

(k) “prescribed” means prescribed by rules made under this Act;

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

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

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) “workplace” includes —

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

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

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house;

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

Prevention of
sexual
harassment.

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

(2) The following circumstances, among other circumstances, if it occurs or is 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

Constitution
of Internal
Complaints
Committee.

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

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

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

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

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

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

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

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

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

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

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

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

(a) contravenes the provisions of section 16; or

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

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

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

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

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

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

Notification
of District
Officer.

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

Constitution
and
jurisdiction of
Local
Complaints
Committee

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

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

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

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

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

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

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

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

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

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

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

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

(a) contravenes the provisions of section 16; or

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

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

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

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

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

Grants and
audit.

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

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

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

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

CHAPTER IV

COMPLAINT

Complaint of
sexual
harassment

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

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

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

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

Conciliation

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

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

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

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

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

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

Inquiry into complaint

45 of 1860.

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

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

45 of 1860.

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

5 of 1908

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

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

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

(c) any other matter which may be prescribed.

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

CHAPTER V

INQUIRY INTO COMPLAINT

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

Action during pendency of inquiry

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

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

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

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

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

Inquiry report.

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

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

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

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

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

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

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

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

Punishment
for false or
malicious
complaint and
false evidence

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

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

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

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

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

Determination of compensation.

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

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

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

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

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

22 of 2005

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

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

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

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

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

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

Appeal

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

CHAPTER VI

DUTIES OF EMPLOYER

19. Every employer shall --

Duties of employer.

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

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

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

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

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

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

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

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

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

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

CHAPTER VII

DUTIES AND POWERS OF DISTRICT OFFICER

Duties and powers of District Officer.

20. The District Officer shall, --

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

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

CHAPTER VIII

MISCELLANEOUS

Committee to submit annual report

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

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

Employer to include information in annual report

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

Appropriate Government to monitor implementation and maintain data

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

Appropriate Government to take measures to publicise the Act

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

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

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

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

Power to call for information and inspection of records

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

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

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

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

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

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

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

Penalty for non-compliance with provisions of Act.

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

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

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

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

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

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

Cognizance of offence by courts

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

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

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

Act not in derogation of any other law.

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

Power of appropriate Government to make rules.

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

(a) the fees or allowances to be paid to the Members under sub-section (1) of section 4;

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

(c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (1) of section 7;

- (d) the person who may make complaint under sub-section (2) of section 9;
- (e) the manner of inquiry under sub-section (1) of section 11;
- (f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- (g) the relief to be recommended under clause (c) of sub-section (1) of section 12;
- (h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- (i) the manner of action to be taken under sub-sections (1) and (2) of section 14;
- (j) the manner of action to be taken under section 17;
- (k) the manner of appeal under sub-section (1) of section 18;
- (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of section 21.

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

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

Power to
remove
difficulties.

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

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

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

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

CORRIGENDA

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

(2 of 2013)

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

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

CORRIGENDUM

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

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

CORRIGENDUM

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

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

CORRIGENDUM

THE APPROPRIATION ACT, 2013
(9 of 2013)

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

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


North Block, New Delhi
Dated July 16th, 2015

OFFICE MEMORANDUM

Subject: Steps for conducting inquiry in case of allegation of Sexual Harassment

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

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


(Mukesh Chaturvedi)
Director (E)

To

The Secretaries of All Ministries/Departments
(as per the standard list)

Copy to:

1. President's Secretariat, New Delhi.
2. Vice-President's Secretariat, New Delhi.
3. The Prime Minister's Office, New Delhi.
4. Cabinet Secretariat, New Delhi.
5. Rajya Sabha Secretariat/Lok Sabha Secretariat, New Delhi.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Secretary, Union Public Service Commission, New Delhi.
8. The Secretary, Staff Selection Commission, New Delhi.
9. All attached offices under the Ministry of Personnel, Public Grievances and Pensions.
10. National Commission for Scheduled Castes, New Delhi.
11. National Commission for Scheduled Tribes, New Delhi.
12. National Commission for OBCs, New Delhi.
13. Secretary, National Council (JCM), 13, Feroze Shah Road, New Delhi.
14. CVOs of all Ministries/Departments.
15. ADG (M&C), Press Information Bureau, DoP&T
- ✓ 16. NIC, Department of Personnel & Training, North Block, New Delhi (for uploading the same on the website of this Ministry under the Head OM's & Orders Establishment Conduct Rules).
17. Hindi Section, DoP&T

Steps for Conduct of Inquiry in Complaints of Sexual Harassment

Complaints Committees

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

What is Sexual Harassment?

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

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

3. The following circumstances, among other circumstances, in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment: -

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

Workplace defined:

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

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

Initial relief

5. The Committee will also have the powers to recommend:-

- (a) to transfer the aggrieved woman or the charged officer to any other workplace; or
- (b) to grant leave to the aggrieved woman up to a period of three months.

(The leave will not be deducted from her leave account.)

Complaints Committee to be Inquiring Authority

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

Need for investigation

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

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

Dual Role

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

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

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

Decision to issue Charge sheet, and conducting Inquiry

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

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

The Inquiry-stages

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

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

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

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

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

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

Examination of Witnesses

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

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

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

Daily Order Sheet

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

Defence Evidence

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

General Examination of the Charged Officer

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

Brief

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

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

Powers of the Committee to make recommendations

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

- (c) to grant such other relief to the aggrieved woman as may be prescribed; or
- (d) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.
- Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs.
- Such compensation will not amount to penalty under Rule 11 of CCS (CCA) Rules in terms of the Explanation (ix) to Rule 11 inserted vide Notification of even Number dated 19-11-2014.
- Committee may recommend action to be taken against complainant, if the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.
- The Committee may also recommend action against any witness if such witness has given false evidence or produced any forged or misleading document.

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

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

Suspension

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

Special provisions to deal with threats or intimidation

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

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

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