



TRAINING MODULE
FOR
TWO DAY WORKSHOP
ON
SEXUAL HARASSMENT OF WOMEN AT WORKPLACE
(PREVENTION, PROHIBITION AND REDRESSAL)
ACT, 2013

INSTITUTE OF SECRETARIAT TRAINING & MANAGEMENT
(AN ISO 9001:2015 CERTIFIED INSTITUTION)
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES & PENSION
(DEPARTMENT OF PERSONNEL & TRAINING)
GOVERNMENT OF INDIA

PREFACE

Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and the subsequent Rules have been framed and put to operations on 9th December, 2013. However, the effective use of this legislation is possible only through awareness generations among the masses. A large chunk of Government work force is still in the dark about the provisions and effectiveness of the statute.

While training intervention is certainly not a panacea to this problem, we believe regular training programmes will create awareness among the people. There are not many organizations who have the capacity to conduct quality training programme covering topics as varied as rights of the victims at one end and duties of representatives of employer while processing subject complaints – on the other. HR Managers also need to be trained to be responsible for sensitizing all the employees about the fine line between healthy mixing of colleagues of different sexes and the behaviour amounting to sexual harassment. ISTM has been conducting Gender Sensitization programmes for a long time. This time, the focus is on the specific issue of sexual harassment at workplace – its prevention and redressal of complaints if it happens.

The ISTM invites all Ministries and Departments of Government of India to get their officials handling with this subject as well as others trained, whenever a training programme on this subject is announced.

I would like to convey my sincere thanks to Ms. Risha Syed, Legal Consultant, Ministry of WCD, Mr. M. S. Kasana, Retd. Joint Director (ISTM), Dr. L.R Aggarwal, Retd. Director, Government of India, and others for their contribution and valuable input in the development of this training module.

Dr. Sunita H Khurana

Director, ISTM

TWO DAYS WORKSHOP ON SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

Aim: To equip the government officers with knowledge on the subject to prevent sexual harassment and develop in them professional competence for implementation of the statute i.e. the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Objectives: Participants will be able to list out / describe / define:

- 1) Gender Issues
- 2) Gender Discrimination
- 3) Sexual Harassment
- 4) Workplace
- 5) Related Judicial Pronouncements
- 6) Recommendations of Department Related Parliamentary Standing Committee
- 7) Provisions of the Act
- 8) Constitution of Internal Complaints Committee (ICC)
- 9) Duties and Roles of ICC Presiding Officer / Member
- 10) Third Party Harassment
- 11) Role of an Employer
- 12) Preventive Policies (organization)
- 13) Organizational Best Practices
- 14) Conduct and Service Rules
- 15) Steps to Conduct Inquiry

SESSION PLAN

DAY	SESSION		TOPIC	Faculty	
Day I	Forenoon (3 Sessions)	9.15 am to 10.30 am	<ul style="list-style-type: none"> Registration, Inauguration/Introduction Workshop overview and expectation sharing 	*	
		TEA BREAK 10.30 AM TO 10.45 AM			
		SESSION - II 10.45 am to 12.00 noon	<ul style="list-style-type: none"> Gender Issues including Gender Discrimination Sexual Harassment and Gender Discrimination Dimensions and types of SHWP Concept and importance of prevention of SHWP 	*	
	SESSION - III 12.15 pm to 1.30 pm	<ul style="list-style-type: none"> Vishaka Guidelines and other important judicial pronouncements 	*		
	LUNCH BREAK 1.30 PM TO 2.30 PM				
	Afternoon (2 Sessions)	SESSION - IV 2.30 pm to 3.30 pm	<ul style="list-style-type: none"> SHWWP (PPR) Act, 2013 	*	
TEA BREAK 3.30 PM TO 3.45 PM					
SESSION - V 3.45 pm to 4.45 pm		<ul style="list-style-type: none"> SHWWP (PPR) Act, 2013 (contd.) Relevant provisions in the Act (with or without Service Rules) Fair Procedure 	*		
Day II	Forenoon (3 Sessions)	SESSION - I 9.15 am to 10.30 am	<ul style="list-style-type: none"> SHWWP Act, 2013 in the light of Service and Conduct Rules 	*	
		TEA BREAK 11.00 AM TO 11.30 AM			
		SESSIONS- II & III 10.45 am to 1.30 pm	<ul style="list-style-type: none"> Medha Kotwal Lele case – implications Steps to conduct inquiry as per DoPT OM No.11013/2/2014 Estt (A-III) dated 16th July, 2015 and other subsequent decisions 		
	LUNCH BREAK 1.30 PM TO 2.30 PM				
	Afternoon (2 Sessions)	SESSION - IV 2.30 pm to 3.30 pm	<ul style="list-style-type: none"> Mock Inquiry Session of ICC 	*	
		TEA BREAK 3.45 PM TO 4.45 PM			
SESSION - V 3.45 pm to 5.30 pm		<ul style="list-style-type: none"> Mock Inquiry Session of ICC Valediction 	* faculty to be decided on programme to programme basis		

DAY 1

DAY 1 – SESSION 1

REGISTRATION	REGISTRATION OF TRAINEES AND DISTRIBUTION OF KITS
SESSION 1	Introductory Session: Welcome and Introduction to the Course
INTRODUCTORY SESSION	<ul style="list-style-type: none">• Welcome the Trainees• Introductory address by Director, ISTM• Briefing on objectives, schedule and activities• Self introduction and expectation sharing by trainees• Briefing on trainers' expectations
ICE-BREAKING EXERCISE	<ul style="list-style-type: none">• Ice-breaking exercise / games
DURATION	75 minutes
TRAINING METHOD & MATERIAL	Self-information dissemination, pen and paper, pre-written flip-charts, material for ice-breaking exercise
LEARNING OUTCOME	The trainees will be able to describe the objectives of the course

ICE BREAKING EXERCISE

Pre-training activity for Trainers

- Get catch words relating to each of the objectives of the Course printed in bold big font capital letters on hard A4 size colour sheets (use four light colours: yellow, pink, blue and green)
- Cut each of the sheets diagonally to get two halves of triangular shape, with incomplete writings on them
- Mix all such triangular halves in a box together
- Make sure, there are as many halves as number of trainees – if their number is odd, keep one half for you

Activity

- Request each of the trainees to come and pick up one triangular half randomly from the box
- Ask them to look for their respective partners having the matching triangular half
- Once they find their partners, give them two minutes to know each other
- Request them to come forward in pair and introduce the partner and show the objective
- All with same colour will form a group – thus there will be four groups who will sit together

DAY 1 – SESSION 2

SESSION 2	SEXUAL HARASSMENT AT WORKPLACE IS A FORM OF GENDER DISCRIMINATION
OBJECTIVE	To understand the concept of gender discrimination, sexual harassment, workplace and two basic types of sexual harassment at workplace and how it is related to gender discrimination
CONTENT	<ul style="list-style-type: none"> • Gender • Gender role perceptions / stereotypes • Gender discrimination • Harassment – per se • Sexual Harassment • Quid Pro Quo and Hostile Environment • How Sexual Harassment at Workplace is a form of Gender discrimination • Two fold benefit of organizations in avoiding such discriminations • Watch an incident and tell whether it's a case of sexual harassment • Impact is more important than intent
DURATION	75 minutes
TRAINING METHOD & MATERIAL	Lecture cum discussion, Video clips “ <i>Aab Khamoshi Kyun?</i> ” Group exercise to decide whether there was an instance of Sexual harassment at work place in the incident depicted; if yes, what type was it. Each group has to present their views in plenary. Debriefing to establish that impact is more important than intent. Group discussion on why organizations should take steps to avoid sexual harassment at work place
LEARNING OUTCOME	The trainees will be able to describe:- <ul style="list-style-type: none"> • What is SHWP? • What are types SHWP and identify them in a given situation and • How organizations are benefitted avoiding SHWP?

Materialⁱ for Day-1 Session-2

Gender Concepts

Sex: The biological difference between men and women, boys and girls – the physical attributes with which we are born.

Gender: Culturally and socially constructed roles, responsibilities, privileges, relations and expectations of women, men, boys and girls. Gender is not another word for women. Gender is also not another word for sexual difference.

Gender roles: The different tasks and responsibilities and expectations that society defines and allocates to men, women, boys and girls. These are not necessarily determined by biological differences and therefore can change with time and in different situations.

Gender bias: An approach that treats boys and girls differently. For instance differential treatment seeking behaviour in case of illness.

Gender equity: An approach that results in just/ fair treatment of women and men, and recognition and appreciation of both women's and men's potential. For instance giving bicycles to girls to enable them to travel to a distant school and thereby reduce gender gaps in the drop-out rate.

Gender mainstreaming: The process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres, so that women and men benefit equally, and inequality is not perpetuated. The ultimate goal of mainstreaming is to achieve gender equality.

Gender neutral: An approach to planning and policy making that assumes that the impact on women, men, girls and boys as if they were part of one homogeneous group. For instance, although men are usually taller than women, fixing the height of the podium in conference halls on the basis of the height of men.

Practical gender needs: Needs which are related to satisfying basic and material needs of women and men, girls and boys for their day-to-day survival, and which do not change gender patterns. For instance public provisioning of water inside the home or providing access to creche facilities at the workplace.

Strategic gender needs: Needs that are related to changing the situation of marginalised people, especially women. Strategic needs may include training women to become Mates at MGNREGA worksites or giving registering land in the name of women and men as with joint *pattas* or addressing issues of domestic violence, legal rights, equal wages, and women's control over resources.

Gender gap: Differences between men and women in levels of achievement or access. This could for example be access to education or health care and treatment services or differentials in wages paid to women and men. These differentials may result from customary practices, religious biases, social assumption, myths or taboos, among others. **Gender discrimination:** Where one gender is favoured and the other becomes disadvantaged e.g. sex selective abortion. **Gender oppression:** Where one gender dominates the other unjustly or even cruelly. For instance, domestic violence, rape, sexual harassment.

Gender stereotyping: The assignment of roles, tasks and responsibilities to a particular gender on the basis of preconceived prejudices. For instance the assumption that masons can only be men or that nurses are necessarily women¹.

A note on third gender: Transgender (TG) is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also take in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who describe themselves as “third gender” and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since Hijras do not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional “third gender”. Among Hijras, there are emasculated (castrated, nirvana) men, non-emasculated men (not castrated/akva/akka) and inter-sexed persons (hermaphrodites). TG also includes persons who intend to undergo Sex Re-Assignment Surgery (SRS) or have undergone SRS to align their biological sex with their gender identity in order to become male or female. They are generally called transsexual persons. Further, there are persons who like to cross-dress in clothing of opposite gender, i.e. transvestites. Resultantly, the term “transgender”, in contemporary usage, has become an umbrella term that is used to describe a wide range of identities and experiences, including but not limited to pre-operative, post-operative and non-operative

¹ Source of the above definitions: Ministry of Women and Child Development, Government of India

transsexual people, who strongly identify with the gender opposite to their biological sex; male and female².

A working definition of Gender: People are born female or male or transgender, but are forced to learn to be girls and boys who grow into women and men. They are taught appropriate behaviour and attitudes according to defined gender roles and activities. This learned behaviour is what makes up gender identity, and determines gender roles.

Gender Role Perception: Gender is a dynamic concept. Gender roles for women and men vary greatly from one culture to another; and from one social group to another within the same culture. Race, class, economic circumstances, age — all of these influence what is considered appropriate for women and men. Furthermore, as culture is dynamic and socio-economic conditions change over time, so gender patterns change with them. Different roles and characteristics are assigned to people not only on the basis of their gender, but of their race, caste, class, ethnic background and age. Our social analysis becomes finer, our social interventions more finely tuned, when we are aware of all the complex ways in which society slots people into different categories and roles, and of the ways these roles can be the basis of both cooperation and conflict. For neither women nor men form a homogeneous group in any society. Women may come into conflict with each other because of racial difference, or women of different nationalities or class groups may find solidarity in their gender identity.

Gender Discrimination: As the worst fall out of disparity and mind blocks in the area of role perception, comes the vice of gender discrimination. The three most prominent facets of sexual discrimination are a) Societal Perpetration; b) Domestic Violence and c) Sexual Harassment at Workplace. There are socially accepted expressions like “*boys are boys*” and norms supporting dowry, still prevalent in society. They highlight the unfortunate social approval towards sexual discrimination. So far as domestic violence is concerned, even after a decade since the Protection of Women from Domestic Violence Act was passed in 2005, there is no significant change in the crime rate against women. As per data published by National Crime Records Bureau (NCRB), dowry death was 0.3% of the total number of crimes, as defined under Indian Penal Code (IPC), in 2013. The figure remains the same in 2014. In fact, crime against women as percentage of total number of crimes committed in India has increased from 11.7% in 2013 to 11.9% in 2014. However, perhaps the most

² Source: National Legal Service Authority vs Union of India & Ors WP(C) No.604 of 2013

unreported amongst these crimes are the ones amounting to “sexual harassment at workplace”. For one, there was no clear law on the subject before 2013 and for the other, many women used to desist reporting. Even now, it is believed that a good number of them don’t report incidents of sexual harassment for reasons ranging from love to terror.

SEXUAL HARASSMENT AT WORKPLACE

Forms of Sexual Harassment at Workplace

Sexual Harassment has traditionally been divided into two well-known forms: -

- Quid pro Quo;
 - Hostile work environment
- i. **‘Quid Pro Quo’** literally means ‘this for that’. Applying this to sexual harassment, it means seeking sexual favours or advances in exchange for work benefits such as promises of promotion, higher pay, academic advancements etc. This type of sexual harassment mostly holds a woman to ransom as her refusal to comply with a ‘request’ can be met with retaliatory action such as dismissal, demotion, memos, tarnished work record and difficult work conditions.
- ii. **‘Hostile work environment’** is a less clear yet more pervasive form of sexual harassment. It commonly involves conditions of work or behaviour towards a female worker, which make it unbearable for her to be there. While the worker is never promised or denied anything in this context, unwelcome sexual harassment occurs simply because she is a woman.

Understanding Instances of Sexual Harassment

A number of surveys revealed that a number of unwelcome actions by fellow colleagues are causing harassment among women workers. Prominent of them are:

- a) Derogatory comments of sexual nature or based on gender;
- b) Presence of sexual visual material or pornographic material such as posters, cartoons, drawings, calendars, pinups, pictures, computer programs of sexual nature;
- c) Written material that is sexual in nature, such as notes or e-mail containing sexual comments;
- d) Comments about clothing, personal behavior, or a person’s body;
- e) Patting, stroking grabbing or pinching one’s body;
- f) Obscene phone calls;
- g) Telling lies or spreading rumors about a person’s personal or sex life;
- h) Rape or attempted rape and so on.

Impact and Consequences

While it was being increasingly found difficult to find any legal remedy against such sexual overtures, nobody could deny the ill effects they cause on overall work atmosphere and productivity of any

organization. The menace was causing innumerable incidents of harassment also in the unorganized sectors. Any workplace coming under the grip of this growing evil had cumulative effects on the whole organization; its impact on individual women was multiple and added up to losses for the organization as a whole.

Whenever sexual harassment had become so unpleasant and make a worker's life miserable, she would seek redressal under the extant law such as Section 354 (outraging of modesty) or Section 509 (insulting of modesty) of the Indian Penal Code, 1890. She would also seek alternative employment. The employer would on its part, incur significant costs in defending its image and in finding suitable replacements for both the errant and the harassed members of its workforce. Generally, therefore, it had been in the interest of employers that the working environment provides that the workers are treated with dignity.

Looking from the angle of human resources, sexual harassment causes a range of ill effects like:

- a) Self-blame and guilt;
- b) Insomnia or other sleep disturbances;
- c) Depression;
- d) Anxiety, fear, decreased interest in work;
- e) Restlessness, uncertainty about future;
- f) Physical or emotional withdrawal from friends, family and co-workers and so on.

DAY 1 – SESSION 3

SESSION 3	VISHAKA GUIDELINES AND OTHER IMPORTANT JUDICIAL PRONOUNCEMENTS
OBJECTIVE	To understand the genesis of Sexual Harassment of Women at Workplace Act and judicial interventions
CONTENT	<ul style="list-style-type: none">• Promulgation of the Law• “Sexual Harassment” first time recognized as a crime – outcome of Rupan Deol Bajaj Vs. K P S Gill Case• “Sexual Harassment at Workplace” defined – outcome of Vishaka Vs. State of Rajasthan Case• “Physical contact is not an essential ingredient” – Sexual Harassment further defined – outcome of Apparel Export Promotion Council Case
DURATION	75 minutes
TRAINING METHOD & MATERIAL	Lecture, Power Point Presentation, Flip Chart, Audio-Video Clips
LEARNING OUTCOME	Participants will understand: - <ul style="list-style-type: none">• Gradual promulgation of law about “Sexual Harassment” through various judicial interventions;• Definition of “Sexual Harassment at Workplace” given in the Vishaka case.

Materialⁱⁱ for Day-1 Session-3

Promulgation of the Law

Until the mid 1990s the concept of sexual harassment at workplace was not recognized by Indian Courts as such. There were, however, some notable exceptions. In *Rupan Deol Bajaj vs. Kanwar Pal Singh Gill* (1995) the Court recognized sexual harassment as a crime falling squarely under Section 354 of the Indian Penal Code, by interpreting “outraging the modesty of a woman” to include outraging the dignity of a woman. Later in 1997, in its landmark judgment in *Vishaka vs State of Rajasthan and Ors* case, Supreme Court for the first time defined sexual harassment at workplace. In yet another important case *Apparel Export Council Vs. A. K. Copra* case, Supreme Court clarified that physical contact is not an essential ingredient of sexual harassment. We shall understand the synopsis of these matters in the following paragraph:

Synopsis of Rupan Deol Bajaj Judgment [1996 AIR 309, 1995 SCC (6) 194]

On 29th July, 1988 a senior lady officer of the Indian Administrative Service belonging to the Punjab Cadre and working at the relevant time as the Special Secretary, Finance lodged a complaint with the Inspector General of Police, Chandigarh that the accused, who was the Director General of Police, Punjab had outraged her modesty at a dinner party. As per the FIR lodged by the complainant, she along with her husband who was also a senior IAS officer of the Punjab cadre went on 18 July, 1988 in the evening to the residence of one K, a colleague of theirs, in response to an invitation for dinner. Reaching there about 9 p.m. they found 20-25 couples present, including the accused, who had come without his wife, and some other senior government officers. The party was arranged in the lawn at the back of the house. As per tradition in Indian homes, the ladies were sitting segregated in a large semi-circle, and men in another large semi-circle with the groups facing each other. The complainant further alleged:

“Around 10.00 p.m. Dr. (C) and (the accused) walked across to the circle of the ladies and joined them occupying the only two vacant chairs available, almost on opposite sides of the semi-circle. (The accused) took a vacant chair about 5 to 6 chairs to the left of him, got up, and started leaving and going into the house. I was talking to Mrs (B) and Mrs (Bh), sitting on my right, and did not notice, or come to know, that those ladies were getting up and vacating their chairs because he had misbehaved with them.

(The accused) called out to me where I was sitting and said: 'Mrs... come and sit here, I want to talk to you about something.' I got up from my chair to go and sit next to him. When I was about to sit down, he suddenly pulled the cane chair on which I was going to sit close to his chair. I felt a little surprised. I put the chair back at its original place and was about to sit down again when he repeated his action of pulling the chair close to his chair. I realized that something was very wrong and without sitting down I immediately left and went back and sat in my original place between the other ladies. Mrs (B), Mrs (Bh), Mrs (P) and Mrs (S) were occupying seats on my right and Mrs (N) was sitting to the left of me at that time.

After about 10 minutes (the accused) got up from his seat and came and stood directly in front of me, standing straight but so close that his legs were about four inches from my knees. He made an action with the crook of his finger asking me to stand and said: 'you get up. You come along with me.' I strongly objected to his behaviour and told him: Mr....! How dare you! You are behaving in an obnoxious manner, go away from here.' Whereupon he repeated his words like a command and said: 'you get up! Get up immediately and come along with me.' I looked to the other ladies, all the ladies looked shocked and speechless. I felt apprehensive and frightened, as he had blocked my way and I could not get up from my chair without my body touching his body. I then immediately drew my chair back about a foot and half, quickly got up and turned to get out of the circle through the space between mine and Mrs (B)'s chair whereupon he slapped me on the posterior. This was done in the full presence of the ladies and gentlemen."

The complainant then made a complaint to the host and told him that the behaviour of the accused was obnoxious and that he was not fit for decent company. The accused was then gently removed from the place. The complainant made a complaint to the Joint Director, Intelligence Bureau who was present there. She also narrated the incident to her husband who was present there. The next day she met the Chief Secretary and recounted the entire incident to him and requested him to take suitable action against the accused. She also met the Advisor to the Governor in this regard. On 29 July 1988 she gave a written complainant to the police. The complaint was treated as the first information report (FIR), and a case was registered, but no further steps were taken. After about four months, the complainant's husband filed a complaint before the Chief Judicial Magistrate, Chandigarh alleging commission of offences punishable under section 341, 342, 352, 354, 355 and 509 IPC.

Some relevant provisions

Sections 354 and 509 IPC read as follows:

354. Assault or criminal force to woman with intent to outrage her modesty: - Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.'

509. Word, gesture or act intended to insult the modesty of a woman. - Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, but such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

Punjab and Haryana High Court holds that allegations made in the FIR do not disclose any cognizable offences

The accused moved the Punjab and Haryana High Court by filing a petition under Section 482 CrPC for quashing the FIR and the complaint. The High Court allowed the petition filed by the accused under Section 482 CrPC and quashed both the FIR and the complaint. The main reasons held by the High Court for this action were that the allegations made therein had not disclosed any cognizable offence; the allegations were unnatural and improbable; and the nature of harm allegedly caused to the complainant did not entitle her to complain about the same in view of Section 95 IPC.

“A gross error of law”, said the Supreme Court

The complainant challenged the High Court’s order before the Supreme Court where the main point was whether the above allegations would constitute any or all of the offences for which the case was registered.

In the absence of any definition of the word “modesty” in the IPC, the Supreme Court “*profitably look(ed) into its dictionary meaning*”. According to Dictionary, modesty is the quality of being modest and in relation to woman “decorous in manner and conduct; not...lewd; shame fast”; “freedom from coarseness, indelicacy or indecency; a regard for propriety in dress, speech or conduct” etc.

The Supreme Court also relied on its decision in *State of Punjab v. Major Singh (Major Singh)* in which Mudholkar J, who along with Bachawat J spoke for the majority, held that when any act done to or in the presence of a woman is clearly suggestive of sex according to the common notions of

mankind, that must fall within the mischief of Section 354 IPC. Bachawat J said that the essence of a woman's modesty is her sex and from her very birth she possesses the modesty, which is the attribute of her sex.

Finally, the Supreme Court held that “[I]t cannot but be held that the alleged act of Mr... in slapping Mrs... on her posterior amounted to outraging of her modesty’ for it was not only an affront to the normal sense of feminine decency but also an affront to the dignity of the lady- ‘sexual overtones’ or not, notwithstanding”.

Synopsis of Vishaka Judgment [(1997) 6 SCC 241, AIR 1997 SC. 3011]

In 1992, Bhanwari Devi a woman employed as a Saathin in Government of Rajasthan, was working within the community to spread awareness about ending child marriage. Her brutal gang-rape was a revenge, a form of punishment for organizing the community to oppose child marriage.

“Vishaka” – conglomerate of women’s organizations working in Rajasthan, along with three other women’s organizations active in the campaign to bring the perpetrators to justice, filed a Writ Petition in the Supreme Court. The Supreme Court used the opportunity to address the one long pending issue – the glaring lacunae in the law which left the women workers in the country without any remedy, when sexually harassed at work.

In response to the increasing outrage regarding sexual harassment of working women and noting the dearth of legislative responses to such acts, the Supreme Court relied upon the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) which was ratified by India and created a binding and enforceable set of guidelines designed to eradicate sexual harassment of women at workplace.

In the matter of *Vishaka & Others* vs State of Rajasthan, Supreme Court defined sexual harassment at workplace, for the first time in 1997 and promulgated measures to curb it by strongly advocating a code of conduct in every workplace. Though often referred to as a set of guidelines, this was no less than a law. Because, the Supreme Court pronounced:

“...(in) the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This

is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.”

In this epic judgment, the Supreme Court also recognized it as a Human Rights issue and pointed out the legal vacuum to address the concern of the sexually harassed women, when it pronounced:

“HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

So far undefined term “Sexual Harassment” was unambiguously defined for the first time. As the Supreme Court defines:

“..For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;*
- b) a demand or request for sexual favours;*
- c) sexually coloured remarks;*
- d) showing pornography;*
- e) any other unwelcome physical verbal or non-verbal conduct of sexual nature.*

Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.”

The complaint handling mechanism, complaints committee formation, awareness generation is the other aspects mentioned in this judgment as well. In an effect, a whole window of possibilities opened

up for all sectors to consolidate their action in a unified effort to uproot sexual harassment from its origin and provide healthy work atmosphere for women.

Post *Vishaka* judgment, Supreme Court noticed two important gaps in attitude of the employers in their dealings with the complaints of sexual harassment cases. First, the definition of sexual harassment was being taken merely literally, without going into its spirit and there had been hardly any compliance to the international commitment made by India and its ratification of “The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)” – adopted by United Nations General Assembly in 1979³.

Synopsis of Apparel Export Promotion Council v. A. K. Chopra Judgment (AIR 1999 SC 625)

In its *Apparel Export Promotion Council v. A. K. Chopra* Judgment, Supreme Court clarified that Sexual harassment is not confined to unwelcome physical contact alone on the part of the perpetrator and that physical contact of the perpetrator with the victim is not an essential ingredient of “sexual harassment”.

“The perpetrator worked as a Private Secretary to the Chairman of the Apparel Export Promotion Council, the appellant. The victim, a lady, was employed with the appellant as a clerk-cum-typist. She was not competent or trained to take dictation. The perpetrator, however, insisted that she go with him to the business centre of a hotel for taking dictation from the Chairman and type out the matter. Under the perpetrator’s pressure she went to take dictation from the Chairman. While the victim was waiting for the Director, the perpetrator tried to sit too close to her and despite her objection, did not give up his objectionable behavior. The victim later on took dictation from the Director. The perpetrator told her to type it at the business centre of the hotel, which was located in the basement of the hotel. He offered to help her so that the Director did not find fault with her typing. He volunteered to show her the business centre for getting the matter typed and, taking advantage of the isolated place, again tried to sit close to her and touch her despite her objection. After the Director corrected the draft-typed matter and asked the victim to retype it, the perpetrator again went with her to the business centre and repeated his overtures. The victim told the perpetrator that she would leave the place if he continued to behave like that. However, the perpetrator did not stop. Though he went out from the business centre for a while, he again came back and resumed his objectionable acts.”

³ Source: Ministry of Woman & Child Development, Government of India

The appellant Council dismissed the perpetrator for causing “sexual harassment” to the victim. In the departmental enquiry that preceded the perpetrator’s dismissal, the enquiry officer concluded that the perpetrator had “molested” the victim and tried to touch her person with ulterior motives despite reprimands by her. A Single Judge of the Delhi High Court, on the reason that the perpetrator had only tried to molest the victim, but did not in fact molest her, allowed the perpetrator’s writ petition against his dismissal. On appeal, a Division Bench of the Delhi High Court upheld the Single Judge’s order. The Division Bench even reasoned that the perpetrator had “not managed to make the slightest physical contact with the lady” and thus had not actually molested her. In fact, based on the evidence, the Division Bench even expressed its inability to agree that the perpetrator had even attempted to molest the victim as there had been no physical contact.

Setting aside the High Court’s Judgment, the Supreme Court said that the perpetrator “acted in a manner which demonstrated unwelcome sexual advances, both directly and by implication”, and his actions “created an intimidating and hostile working environment” for the victim. Dr. A.S. Anand C.J held that the victim had used the expression “molestation” in her complaint in a general sense, which she had duly explained and elaborated in her evidence in the enquiry. “Assuming for the sake of argument”, said the Judge, “that the (perpetrator) did not manage to establish any ‘physical contact’ with (the victim)”, (even though one witness had deposed having seen the perpetrator put his hand on the hand of the victim), it did not mean that the perpetrator had not made any objectionable overtures with sexual overtones”.

The Supreme Court held the dictionary meaning of the word “molestation” or “physical assault” as irrelevant. The court said, “The entire episode reveal(s) that the (perpetrator) had harassed, pestered and subjected (the victim) by a conduct which (was) against moral sanctions and which projected unwelcome sexual advances”. The court held that the material on the record clearly established “an unwelcome sexually-determined behavior” on the part of the perpetrator against the victim, which was also an attempt to outrage her modesty. Such an action on the part of the perpetrator was “squarely covered” by the term “sexual harassment”.

The Supreme Court said, “Any action or gesture, whether directly or by implication, (sic) aims at or has the tendency to outrage the modesty of a female employee, must fall under the general record clearly established that the perpetrator caused sexual harassment to the victim, taking advantage of his superior position in the Council. Glossing over the observations of the High Court to the effect that the perpetrator did not “actually molest” the victim but only “tried to molest” her and, therefore, his removal from service was not warranted, the Supreme Court said: “.....*The High Court’s*

observations] rebel against realism and lose their sanctity and credibility. In the instant case, the behavior of the (perpetrator) did not cease to be outrageous for want of an actual assault or touch by ignored the superior officer.... The High Court overlooked the ground realities and ignored the fact that the conduct of the (perpetrator) against his junior female employee... was wholly against moral sanctions, decency and was offensive to her modesty.... The act of the (perpetrator) was unbecoming of good conduct and behavior expected from a superior officer and undoubtedly amounted to sexual harassment (of the victim)....”

DAY 1 – SESSION 4 & 5

SESSION 4 & 5	SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013
OBJECTIVE	To generate awareness about the provisions of the Act
CONTENT	<ul style="list-style-type: none"> • Concept of Civil Law and Criminal Law • Definition of “aggrieved Woman”, “employee”, “employer” and “workplace” • Civil remedies available under the Act • Complaint Mechanism • Internal Complaints Committee • Local Complaints Committee • Disqualification • Filing of Complaint • Interim Orders • Monetary Compensation • Conciliation • Confidentiality • Prosecution for False Complaints • Appeal • Duties of the Employer • Duties of the State and its functionaries
DURATION	120 minutes
TRAINING METHOD & MATERIAL	Lecture, Power Point Presentation, Flip Chart, Audio-Video Clips
LEARNING OUTCOME	Participants will become fully conversant about the Act and procedures laid down in it.

Materialⁱⁱⁱ for Day-1 Sessions 4 & 5

Concept of Civil Law and Criminal law

Civil law broadly falls into two categories: statutory and common law. Common law is judge-made law. In India, the common law from England is generally used as precedent. Tort and contract law fall into this category. Statutory laws, on the other hand are the result of statutes enacted by the Parliament. Such statutes override any common law in existence to the extent that they cover the same legal terrain.

In India, prior to the enactment of the 2013 Act, the only civil statute which could be used to address sexual harassment at workplace to a limited extent, was the Indecent Representation of Women (Prohibition) Act, 1987 (IRWA). The IRWA works to hold companies liable for the harassment of women through the use of books, photographs, painting, films, pamphlets, packages etc. containing indecent representation of women. Thus far, IRWA has not been used to penalize behaviour constituting sexual harassment whereby the women are involuntarily forced to view such materials at the workplace. The enactment of the 2013 Act is, therefore, a long overdue intervention by Parliament in the area of Civil law.

Criminal Remedy available under Criminal Amendment Act, 2013

Following the brutal gang-rape of a young woman physiotherapist in Delhi, resulting in her death in December 2012, and overwhelming protests across the country thereafter, Parliament amended the criminal law relating to sexual offences. In April 2013, the suggestions put forth by some writ petitions, more than a decade earlier, were finally implemented in a series of amendments to the criminal laws relating to sexual offences against women, with the enactment of the Criminal Laws (Amendment) Act, 2013. These amendments have broadened the definition of rape; increased quantum of punishment for several sex related offences, and created new offences such as the offence of 'sexual harassment' under section 354A IPC. Important amendments have also been made which streamline the criminal procedures as well as strengthen the laws of evidence.

The IPC provisions which may be used in the case of sexual harassment at the workplace are given in the following table. In order to invoke the operation of penal provisions, it is required that the charges must be proved beyond reasonable doubts and must have all ingredients of the offence.

Sections 107-109	Abetment
Sections 120A and 120B	Criminal conspiracy
Section 166A	Public servant disobeying direction under law
Sections 292-294	Obscenity
Section 306	Abetment of suicide
Sections 319-331	Relating to hurt and grievous hurt
Sections 326A and 326B	Causing grievous hurt by use of acid, etc.
Sections 339-348	Wrongful restraint and wrongful confinement
Section 354	Assault or use of criminal force to woman with intent to outrage her modesty
Section 354A	Sexual harassment
Section 354B	Assault or use of criminal force with intent to disrobe
Section 354C	Voyeurism
Section 354D	Stalking
Section 375 and related provisions	Rape
Section 376C	Sexual intercourse by a person in authority
Sections 415-417	Cheating
Sections 499-500	Defamation
Sections 503, 506 and 507	Criminal intimidation
Section 508	Act caused by inducing the person to believe that he will be rendered the object of divine displeasure.
Section 509	Word, gesture or act intended to insult the modesty of a woman
Section 511	Attempt to commit an offence.

Important Provisions under the SHWWP Act & Rules, 2013

A. Complaint Authorities & Procedure

Definition of “sexual harassment at workplace” and “work place” originated from Vishaka judgment, hence does not require any special mention. The statute places an obligation on all employers, both public and private sectors to set up an Internal Complaints Committee (ICC).

In case the offices of the workplace located in different places, then a separate ICC is to be constituted at each location. Failure to set up such committees is a non-cognizable offence under the law. Women grievance cells or likes which were in existence prior to enactment of the SHWWP Act cannot substitute the ICC, unless they fulfill all the statutory requirements mentioned in the Act.

These Complaints Committees serve double purposes, namely, to enquire into complaints of sexual harassment at the workplace, and also to generate awareness and take preventive steps in order to ensure that the work environment is conducive to the participation of women employees.

Section 4 of the 2013 Act prescribes composition of the ICC as under:

- i) The Presiding Officer, who shall be a woman employed at a senior level at workplace from amongst the employees;
- ii) It Should have not less than two members from amongst employees who are committed to the cause of women;
- iii) It should have one external NGO member committed to the cause of women, or familiar with the issues relating to sexual harassment.

The phrase 'person familiar with the issues relating to sexual harassment' has been explained in the 2013 Rules with the following deeming provisions:

- a. *a social worker with at least five years' experience in the field of social work in the area of empowerment of women, and in particular sexual harassment at the workplace, or*
- b. *a person familiar with labour, service, civil or criminal law;*
- iv) At least one half of the members of the ICC must be women. The members are nominated by the employer for a period upto three years from the date of their nomination as may be specified by the employer.

The term 'Employer' is defined in Section 2 of the 2013 Act, as "in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office etc. and also under appropriate situations person responsible for management, supervision and control of the workplace and in case of 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(s) employed and the nature of employment etc.

Section 6 of the 2013 Act further provides for the establishment of 'Local Complaints Committee (LCC) at the District level to receive complaints of sexual harassment from establishments which have not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Section 9 of the 2013 Act read with **Rule 6 and 7** of the 2013 Rules, talks about the complaint mechanism. Broadly speaking according to these provisions, complaints may be lodged

aggrieved woman or any of her relatives, friends, co-workers or any officer of the National Commission for Women or State Commission for Women, any qualified psychologist or psychiatrist or any person who has knowledge of the incident, with her relative or friend or a special educator etc. or with her written consent and even when the aggrieved woman is dead, a complaint may be filed by any person who has knowledge of the incident with written consent of her legal heir. Even if the complaint is not possible to be given in writing, ICC or LCC as the case may be is mandated to render all possible assistance to make it in writing. Thus, tremendous flexibility is provided in the law, so far as filing of the complaint is concerned.

The complainant has to submit six copies of the complaint along with all supporting documents within a period of three months from the date of incident / last date of the series of incidents happened on different dates as the case may be. The ICC has the authority to extend the time limit by another three months on reasonable ground to be recorded in writing.

Sections 11 to 13 of the 2013 Act deal with inquiry into complaint where it provides a mechanism for redressal of complaints of sexual harassment at workplace. Reflecting the Vishaka guidelines in this respect, the procedure of the enquiry is easy to understand, and at the same time adheres to the rules of natural justice, so that the respondent is given adequate opportunity to defend himself.

For government sectors where Service Rules are already in existence, the relevant Service Rules are to be followed. In all other organizations where there are no service rules, the procedure provided in the 2013 Act and the 2013 Rules are to be followed, with emphasis on the principles of natural justice.

Upon receipt of the complaint, or at any stage of the at the request of the aggrieved woman, the ICC/LCC is to consider whether an interim protective order is necessary to be passed;

After receiving the complaint, one copy of the same should be sent to the respondent within seven working days. The respondent has the right to file his reply in writing along with the list of documents he seeks to rely upon and a list of the witness he wishes to examine (within ten working days). Thereafter, the complainant as well as the respondent will be given an opportunity to lead evidence, both documentary as well as through witnesses, and also to cross examine the witnesses presented by the other party. At any given time during the conduct of the enquiry, a minimum of three members of the ICC or LCC must be present, which must include the Presiding Officer or Chairperson;

The ICC/LCC may also permit the parties to address arguments; if either the complainant or the respondent fail to appear without sufficient cause, for three consecutive hearings, the committee has the power to terminate the proceedings or give an ex-parte decision on the complaint. Before passing

such an order, however, the ICC/LCC is required to give fifteen days notice in writing to the concerned.

Thereafter, the ICC/LCC shall provide, within ten days of completion of examination of evidence, a report of its findings regarding whether sexual harassment has been proved or not, to the employer or the District Officer as the case may be, along with its reasons for the same;

Importantly, the report of the ICC/LCC is in the nature of recommendations to the employer/ District Officer. It is the employer/ District Officer which takes "action" (in the nature of punishment) on the said recommendations. When the ICC/LCC arrives at a conclusion that misconduct in the nature of sexual harassment at the workplace has been proved, it shall recommend to the employer/ District Officer that action be taken against the respondent. The action against the respondent has been listed in the 2013 Rules as follows:

- a written apology;
- a warning;
- reprimand or censure;
- withholding of pay rise or increments;
- withholding of pay rise or increments;
- termination from service;
- counseling;
- community service.

A copy of the report of the ICC/LCC must be provided to the concerned parties, that is, to the complainant and the respondent.

In order to provide interim protection to the aggrieved woman from the interference of the respondent the law empowers the ICC/LCC to issue certain interim orders during the pendency of the inquiry on the written request of the complainant. These orders could be of the following nature:

- transfer of the aggrieved woman or of the respondent to another workplace;
- grant of leave to the aggrieved woman for a period up to three months;
- restraint on the respondent from reporting on the work performance of the aggrieved woman, or from writing her confidential report, and assigning the said task to another officer;

- restraint on the respondent from supervising the academic activity of the aggrieved woman, in case of an educational institution;
- such other relief as may be prescribed in the applicable law, such as service rules or standing orders or any other law.

These interim orders, if passed by the ICC/LCC are to be necessarily followed by the employer and a compliance report is to be submitted to the ICC, unless they are in direct contradiction with the existing service law.

Section 13 of the 2013 Act enables the ICC/LCC to recommend monetary compensation to the aggrieved woman (or her heirs) in case it arrives at a decision that sexual harassment has taken place. This is in addition to disciplinary action recommended. The 2013 Act enables the employer/ District Officer to deduct the sum from the salary or wages of the respondent, or where this is not possible because of cessation of employment, be recovered as arrears of land revenue, stating that this provision shall apply "notwithstanding anything in the service rules applicable to the respondent". Thus, this recommendation becomes binding on the employer.

Section 15 of the 2013 Act gives basic guidelines for the purpose of calculating the sum of money to be awarded to the complainant as compensation, as follows:

- a. mental trauma, pain, suffering and emotional distress;
- b. loss in career opportunity;
- c. medical expenses (physical and psychiatric);
- d. the income and financial status of the respondent;
- e. the compensation amount can be paid in lump sum or installments.

Section 10 of the 2013 Act provides that before initiating an enquiry under Section 11, the ICC/LCC has the option to take steps to settle the matter through a conciliation process. It may be noted that the law specifically provides that this step is initiated only "at the request of the aggrieved woman". It is for the employer to be cautious that such provision in the law, purporting to protect the rights of women is not used to pressurize women to "settle" the matter.

Section 16 & 17 of the 2013 Act, together provide an important confidentiality obligation upon all persons who are involved in the proceedings to protect the identity and addresses of the aggrieved woman, the respondent and the witnesses. There is also a complete embargo on publication, communication or making known of all information relating to the conciliation proceedings and the enquiry proceedings, including the action taken, to the public, the press or the media in any manner.

Violation of this provision invites penalty in accordance with the applicable service rules, or in the manner prescribed. The 2013 Rules while prescribing the penalty for the violation of this provision, fixes the amount at Rupees five thousand.

Section 14 of the 2013 Act read with **Rule 10** of the 2013 Rules provides for punishment of the complainant or any other person concerned in the event of false or malicious complaints, or the production of false or misleading document or evidence. The proviso to section 14 clarifies that mere inability to substantiate a complaint or provide adequate proof will not attract action against the complainant under this provision. There is an important distinction in law between a false/ malicious allegation and an allegation which is "not proved". The 2013 Act also makes it a criminal offence on the part of the employer if it fails to take action against such aggrieved woman or witness who takes recourse of falsehood.

Employers are to remain extra-cautious remembering that ICC is a non-judicial body whereas sexual harassment, whether quid pro quo or creating hostile work environment in nature, is a form of violence which is often perpetrated in circumstances of power imbalance and aimed at vulnerable women in private and hence this provision should in no way curtail the fundamental rights of women to equality (Article 14), freedom from discrimination on the ground of their sex (Article 15), right to life with dignity (Article 21) and the right to freedom of employment and thereby becomes a “red tag” provision.

In so far as provision for appeal is concerned, both the 2013 Act in **Section 18** and the 2013 Rules in **Rule 11** make it clear that where there are existing appellate mechanism in the concerned Service Rules, those have to be followed. In all other situations, the appellate authority under the Industrial Employment (Standing Orders) Act, 1946, is designated to entertain appeals under this law. The appellate authority would differ in different States depending on the State notification. Insofar as adjudication of disputes in the Central sphere is concerned, the Central government has notified and established the Central Government Industrial Tribunal-cum-Labour Courts (CGIT-cum-LCs). There are 22 such CGIT-cum-LCs set up in various States, which are headed by Presiding Officers who are selected from amongst serving or retired High Court Judges and District/ Additional District Judges. The 2013 Act and the 2013 Rules expand the jurisdiction of such CGIT-cum-LCs, to the extent that they are enabled to entertain appeals under the 2013 Act which would ordinarily have remained outside their jurisdiction under employment law. The appeal is to be filed within 90 days from the date of the action/recommendation appealed against.

Appeal can be filed in the following situations where the :

- i. Committee arrives at a finding that the allegation of sexual harassment at the workplace has not been proved, and therefore recommends in its report to the employer/ District Officer that no action is required against the respondent;
- ii. Committee arrives at a conclusion that the allegation of sexual harassment at the workplace has been proved, and recommends to the employer to take action against the respondent for sexual harassment as misconduct.
- iii. Committee arrives a conclusion that the allegation of sexual harassment at workplace has been proved, and recommends to the employer to deduct appropriate sums from the salary or wages of the respondent to be paid to the aggrieved woman,
- iv. Committee arrives at a conclusion that the allegation of sexual harassment at the workplace is malicious or false or based upon a forged or misleading document;
- v. Committee arrives at a conclusion that a witness has given false evidence or produced a forged or misleading document;
- vi. Penalty is imposed on any person entrusted with the duty to handle or deal with the complaint, who has violated the confidentiality provisions of the law;
- vii. Employer fails to implement any of the recommendations of the Committee aforesaid within the prescribed time-limit.

Section 19 of the 2013 Act enumerates very important “*Duties of Employer*”. Those are:

- 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 harassment; and the order constituting the ICC 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 ICC in manner as may be prescribed;
- d. provide necessary facilities to the ICC or the I-CC, as the case may be, for dealing with the complaint and conducting an inquiry;
- e. assist in securing the attendance of the respondent and witness before the ICC or the LCC, as the case may be;
- f. make available such information to the ICC or the LCC, as the case may be, as it may require having regard to the complaint made under sub-section (I) of section 9;

- g. provide assistance to the woman if she so chooses to file a complaint in relation to the offences under the Indian Penal Code, 1860 or any other law for the time being in force;
- h. cause to initiate action, under the IPC or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- i. treat sexual harassment as a misconduct under the services rules and initiate action for such misconduct;
- j. monitor the timely submission of reports by the Internal Committee.

Under **Section 21** it is the duty of the ICC to submit an annual report, which includes the number of cases filed/disposed of every calendar year to the employer. The employer has a statutory obligation to ensure this report is included in the annual report of the organization under **Section 22** of the Act.

The 2013 Act also specifies obligations of the State governments. The most important of these obligations is the appointment of the District Officer. The responsibilities of the District administration commence only with the notification of a District Officer by the appropriate government, who will thereafter exercise the powers and discharge functions under the 2013 Act. This District Officer could be a District Magistrate or Additional District Magistrate or Collector or Deputy Collector. Therefore, until such a notification is issued, it would be quite difficult for any such officer to take any initiative in the matter. Other functions of the appropriate government include:

- monitoring of the implementation of the 2013 Act and maintaining data on the institution and disposal of complaints;
- development of relevant information, education, communication and training materials, and organizing of awareness programmes, subject to availability of funds;
- formulation and conduct of training programmes for members of the LCC, subject to availability of funds;
- calling upon any employer or District Officer to furnish any information regarding sexual harassment at the workplace it may request;
- inspection of records and of a workplace with regard to sexual harassment at the workplace, through an authorized officer, and to give a report;
- auditing by the Accountant General of the State of the accounts of the agencies receiving and utilizing the grants made to it by the Central Government or otherwise.

The District Officer also has statutory obligations under the 2013 Act, including:

- constitution of the LCC at the District level and nominating the Chairperson and members of the said committee along with their terms of office.
- designation of nodal officers in every Block, Taluka and Tehsil in rural areas, and ward or municipality in urban areas, to receive complaints and forward them to the LCC.
- ensuring that the recommendations of the LCC with regard to interim protection to the complainant are complied with, and a compliance report is sent to the LCC.
- receiving the report of findings and recommendations of the LCC, taking a decision on the action to be taken upon the said reports, and taking such action within the statutory time frame.
- monitoring the timely submission of annual reports by the LCC.
- preparation and forwarding of report consolidating all the annual reports received to the State government;
- taking such measures as may be necessary to engage NGOs for creation of awareness on sexual harassment at the workplace and the rights of women.

At the end of these sessions, case of **Rupesh Hari Vs. Kusumlata** (WP 6549 of 2016) may be discussed briefly. Mr. Rupesh Hari was held guilty of an act of sexual harassment, in the form of sending objectionable SMSs to Ms. Kusumlata – his colleague. In the beginning, he denied the charge. Later he submitted that the aggrieved woman made this false complaint to get herself transferred from Delhi. But, when as an interim measure under Section 12 of the 2013 Act, he was transferred to Jabalpur from Delhi – he challenged the order in the Tribunal. When the challenge was rejected by the Tribunal, he filed a petition seeking quashing of the transfer order on the ground of its causing acute hardship and his having very old parents to whom he was duty bound.

The excerpts from the judgment of the Court are given below:

“We have heard learned counsel for the parties. In this case, a complaint was made by the lady regarding sexual harassment by the petitioner. The Committee has made the following observation:

“The Committee, after going through the oral and written evidence, has arrived at the conclusion that, the behavior of Mr. Rupesh Hari, JE(QA) in incessantly messaging Ms. Kusumlata, AE (QA) on her phone with inappropriate contents, against her wish is an unwelcome gesture and hence can be termed as Sexual Harassment within the meaning of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. While arriving at this conclusion, the Committee takes into cognizance the impact which the behaviour of Mr. Rupesh Hari, has caused on the mental frame of Ms.

Kusumlata having the potential to interfere with her work environment creating an intimidating/offensive/hostile work environment as she was repeatedly humiliated by receiving messages from Mr. Rupesh Hari, that too late in the night."

After the observations of the Committee, the petitioner herein stands transferred from New Delhi to Jabalpur.

It would be useful to reproduce Section 12 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

"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-

- (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)

(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 subsection (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be. "

In view of the finding of the Committee and taking into consideration Rule 12 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, we find that the Tribunal has correctly applied the law to the facts of the present case. Consequently, we find no infirmity in the orders dated 25.04.2016 and 23.05.2016 passed by the learned Tribunal.

At this stage, learned counsel for the petitioner submits that he may be permitted to make one last representation to the respondents setting out the ground of acute hardship, more particularly with regard to the old age of his parents, who are solely dependent on him.

The writ petition is accordingly dismissed as not pressed. Leave is granted to the petitioner to make a representation, as aforesaid. It is, however, made clear that rejection of the representation of the petitioner will not give any fresh cause of action to him."

EXERCISE

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

Q1. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force from 2013.

- a) 9 December
- b) 16 December
- c) 2 October
- d) 10 October

Q2. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 did not supersede the Vishaka Guidelines for prevention of sexual harassment introduced by the Supreme Court of India.

- a) TRUE
- b) FALSE

Q3. According to SH Act, sexual harassment is any unwelcome sexually determined behavior.

- a) TRUE
- b) FALSE

Q4. Sexual Harassment takes place if a person subjects another person to an unwelcome act of physical intimacy, like grabbing, brushing, touching, pinching etc.

- a) TRUE
- b) FALSE

Q5. Sexual Harassment takes place if a person makes an unwelcome remark with sexual connotations like sexually explicit compliments/cracking loud jokes and making sexist remarks etc.

- a) TRUE
- b) FALSE

Q6. Sexual Harassment takes place if supervisor requests sexual favours from a junior in return for promotion or other benefits or threatens to sack for non-cooperation.

- a) TRUE
- b) FALSE

Q7. Any workplace with more than employees needs to form Internal Complaints Committee under SH Act, 2013.

- a) 10
- b) 20
- c) 15
- d) 5

Q8. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 covers any female who is

- a) Student
- b) Visiting a workplace
- c) Working woman
- d) All of these

Q9. Employers who fail to comply with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 will be punished with a fine of up to

- a) Rs. 50,000
- b) Rs. 5,00,000

DAY 2

DAY 2 – SESSION 1

SESSION 1	PROVISIONS IN CCS (CCA) RULES & CCS(CONDUCT) RULES AND FAIRNESS IN PROCEDURE
OBJECTIVE	To understand the SHWWP Act, 2013 in the light of Service Rules and Conduct Rules provision
CONTENT	<ul style="list-style-type: none">• Rule 3(C) of CCS(Conduct) Rules• Rule 14 and 16 of CCS(CCA) Rules• Definition of Employer• Conciliation Report of ICC• Inquiry Report of ICC
DURATION	75 minutes
TRAINING METHOD & MATERIAL	Two small case studies – one when service law is existing and the other when not. Each to be discussed in two groups for 35 minutes (about 15 minutes, each). Presentation in plenary 25 minutes. Debrief for 10 minutes.
LEARNING OUTCOME	At the end of this session the participants will be able to:- <ul style="list-style-type: none">• Describe Rule 3(C) of the Conduct Rules• List out the inbuilt mechanism of fairness in procedure under CCS(CCA) Rules• Describe check points to ensure Principle of Natural Justice when its employees are not covered under any specific service rule

“She did it on purpose”

(A CASE STUDY ON SEXUAL HARASSMENT)

A newly recruited IPS officer Ms. K was under training in Police Academy. She was married. During her training she met Mr. P. He was unmarried. P started showing special interest in K, but K was tactful enough to duck his innocuous advances.

One day, shortly after they finished their theory input sessions, arms training started in the open. It was found that P had been already an expert marksman, who knew every part of a gun very well. P started giving K extra training side by side. As a result K could take up shooting very quickly. At the end of the day, their instructor permitted them to go away from rest of their groups to practice.

When away from the group, P tried to pull K close to his body and kiss her. In the resulting commotion, K fell on the ground but somehow was able to free herself from P. She felt very bad. It was in fact her marriage anniversary day. She visited the office of the Head of the training institute to complain. The head called P, rebuked him and asked K to lodge a written complaint immediately with the Internal Committee.

In the evening, before she could settle down and write her complaint, K’s husband paid her a surprise visit. She felt elated and relieved. She narrated the whole incident to her husband who got very angry but didn’t lose his apparent cool. Instead, he sought permission from the authority to have dinner in the mess as a guest of his wife. The permission was granted.

After finishing his dinner, the husband found P sitting in the mess hall and thrashed him badly. Police came but no FIR was lodged at the behest of the head of the institute. The husband left the campus.

Next morning, when K reached the Internal Committee with her written complaint, she came to know that P had already made a complaint against her, before the highest authority, alleging that she sought sexual favour from him and when denied, got him rebuked by the head and thrashed by her husband, before a hall full of people. In his complaint, P further alleged that “**she did it on purpose**”. K lodged her complaint any way.

Task: You are a member of the ICC. The Chairperson asks for your opinion.

“I Owe You Some Peace of Mind”

A CASE STUDY ON SEXUAL HARASSMENT

B works in a message parlor. Other than her, three girls and two boys work there. The owner of the parlor doubles up as the front office manager cum accountant. He has her family living nearby.

Everybody knows that B looks the best in the lot. She is short but fair. During last four months of her career, after a short training, B could bring solace to her hard working mother. The mother works as a cook in four households. When B got the job, the salary was fixed at a rate which was more than half of what her mother earns from all the four places. That was a big relief. The father would have been pleased, had he been alive. The road accident changed their lives. Now, it seems to be coming back to track. Her younger brother is happy too.

The owner is a distant relative of her mother. He spares no chance to remind her of the favour though. But everybody admits he is a good jolly fellow. A bit too good to B? Could be. Otherwise, why should he pay B the highest? Talk to her sweetly? And often play father to her, holding her shoulder arms rather softly? Or, for that matter, why do his hands move too close to her breasts? Well, one shouldn't allow dirty thoughts. It's surely all because of his relation to their family. After all, he is more than three times as old as she is – in fact older than her own grandpa, who seems heavily loathing the very idea of her working. He wants her to be married fast and just like that.

So, when one day the owner asks B to give him a head massage, she is not surprised. Everybody else is gone. No customer is waiting. The owner is complaining of headache. But why is he pulling her hand to his chest? Then to his belly? And Oh No! He is now touching her inappropriately. In fact, he is groping her. One part of her mind feels funny. The other part feels ashamed. Fear grows in the remaining part and grows too big to allow this anymore.

So, B reacts. With a red face, she jerks the owners lewd hands off her. When she runs out, she can hear the owner murmurs *“Can't you give me some piece of mind? Dear B, after all I owe you some.....”*

The mother supports her act and tells her to cheer up. She has heard that law is there to protect her. She plans to bring it to you, as she knows that you work for the Government and has solutions to problems like this.

Task: **Please prepare your piece of advice for B and her mother.**

DAY 2 - SESSION 2 & 3

SESSION 2 & 3	Medha Kotwal Lele Case – Implications Steps to Conduct Inquiry
OBJECTIVE	<ul style="list-style-type: none">• Describe implications of Medha Kotwal Lele Judgment of Hon’ble Supreme Court of India to understand the importance of the Internal Complaints Committee Report• Understand steps to conduct inquiry as prescribed by the Department of Personnel & Training, Government of India
CONTENT	<ul style="list-style-type: none">• Case law – Medha Kotwal Lele• Steps to conduct inquiry DoPT OM No. 11013/2/2014 EoH (A III) dated 16th July, 2015
DURATION	150 Minutes
TRAINING METHOD	Lecture Group discussion. Guided reading Case studies
LEARNING OUTCOME/ TAKE AWAY	Mechanism to implement the statute in the organization.

Material^{iv} for Day-2 Session-1, 2 & 3

Questions are often asked about how binding are the recommendations of the ICC upon the employers when there are well defined Service Rules. Undoubtedly, the Vishaka guidelines were long been the only substantial piece of law and the Supreme Court made it clear in Medha Kotwal case that they are binding on the employers. It would be proper here to look at the guidelines given by the apex court in this matter:

Directions of the Supreme Court in Medha Kotwal Lele Case [(2013) 1 SCC 297]

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

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

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

The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints

Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

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

To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture and Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order.

We are of the view that if there is any non-compliance or non-adherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard....”

It may also be relevant here to look at the outcome of **Seema Lepcha Vs. State of Sikkim** case [(2013) 11 SCC 647]:

“... In Medha Kotwal case, the Court directed that the Complaints Committees shall be deemed to be the inquiry authority for the purpose of the Central Civil Services (Conduct) Rules, 1964 and that the report of the Complaints Committees will be deemed to be the inquiry report under the Rules.

Having gone through the affidavits filed by the Chief Secretary of the State and Shri J.K. Rai, we are satisfied that the State Government has taken the steps necessary for implementing the guidelines and norms laid down by this Court in Vishaka case and the directions given in Medha Kotwal case. Therefore, the appeal is disposed of with the following directions:

- 1. The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance with the guidelines framed by this Court in Vishaka case and the directions*

given in Medha Kotwal case by getting the same published in the newspapers having maximum circulation in the State after every two months.

- 2. Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka case and the directions given in Medha Kotwal case.*
- 3. Social Welfare Department and the Legal Services Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the government departments of the State and its agencies/instrumentalities, but also for the private companies.”*

STEPS TO CONDUCT INQUIRY

After the enactment of the 2013 Act and the 2013 Rules, it is now made very clear that the concerned Disciplinary Authority has to follow the Service Rule provisions to reach the finality of a proceedings initiated against a proven act of sexual harassment. We may, therefore, look at various aspects of two of the most prominent service rules in operations in the government sector, in the light of the provisions made in the 2013 Act and the 2013 Rules and try to make out the procedural steps as prescribed by the Department of Personnel & Training, Government of India.

The implementation of the law by employers, in letter and spirit, begins with the constitution of the complaints committee, and encouraging women to report sexual harassment in the workplace. The law imposes a duty on the complaints committee, to conduct an inquiry on receiving a complaint, and this write up expounds upon how to conduct an inquiry, what are the principles to be followed in conducting an inquiry; and the different stages in conducting the inquiry following principles of natural justice, in which both parties are given an opportunity to be heard.

The Act in Section 11 provides two different procedures to be followed for conducting an inquiry- if the respondent is an employee then the inquiry shall be conducted in accordance with the service rules; and where no service rules exist then the inquiry shall be held as per manner prescribed in the Rules; or in the case of a domestic worker, the LCC shall forward the complaint to the police, within seven days for registering the case under section 509 of the IPC, and any other relevant provisions of the said Code. This write up focus on inquiry into complaint when Respondent is Government employee.

INQUIRY INTO COMPLAINT WHEN RESPONDENT IS GOVERNMENT EMPLOYEE

The Government is a model employer and is the source of most of the employment opportunities in the country. The rules that are followed in the government sector percolate to the private sector. Part XIV of the Constitution relates to the terms of employment in respect of persons appointed in connection with the affairs of the State. Any action against the employees of the Union Government and the State Governments should conform to these constitutional provisions, which confer certain protections on government servants. These provisions are applicable only to the employees of the various ministries, departments and attached and subordinate offices. Further, the employees, being citizens of the country also enjoy fundamental rights guaranteed under Part III of the Constitution, and can enforce them through the writ jurisdiction of the Courts. In addition to the constitutional provisions, there are certain rules which are applicable to the conduct of the proceedings for taking action against erring employees.

Provisions of Part XIV of the Constitution do not apply to the employees of semi government organizations i.e. Public Sector Undertakings and Autonomous Bodies and Societies controlled by the Government. However, as these organisations can be brought within the definition of the term ‘State’ as contained in Article 12 of the constitution, the employees of these organisations are protected against the violation of their fundamental rights by the orders of their employer. The action of the employer can be challenged by the employees of these organisations on the grounds of arbitrariness, etc., hence these organisations also have their own sets of rules for processing cases for conducting the disciplinary proceedings against their employees.

A. SERVICE RULES

There are two sets of Service Rules, viz., Central Civil Service (Conduct) Rules 1964 (herein after referred to as) and CCS (Conduct) Rules Central Civil Services (Classification, Control and Appeal) Rules 1965 (hereinafter referred to as the CCS CCA Rules) which cover a majority of the Central Government employees, besides, several other Rules which are applicable to various sections of employees in a number of services. The CCS (Conduct) Rules 1964 defines and regulate the conduct of Government Employees to be observed and delineates what ought to be the conduct/behaviors of the Government employee and what are the conduct/behaviors that are prohibited. Rule 3-C of the CCS (Conduct) Rules 1964 expressly prohibits sexual harassment with Rule 3C 2(a) defining what constitute sexual harassment, 3C 2(s) defining circumstances connected with an act of sexual harassment and 3C 2(c) defining what constitutes workplace.

In case an employee violates these CCS (Conduct) Rules, action is prescribed under CCS (CCA) Rules.

(i) Amendment in the CCS (Conduct) Rules

Pursuant to the guidelines in Vishaka, the CCS (Conduct) Rules, 1964 were amended in 1998 to incorporate Rule 3-C which prohibits sexual harassment of working women. In 2014, the present government felt it necessary to send the message of zero tolerance towards sexual harassment in the workplace, and made further amendment in the CCS (Conduct) Rules by introducing stricter rules for checking sexual harassment in government workplaces.

The government has amended the CCS (Conduct) Rules, 1964 to expand the circumstances which may be construed as sexual harassment, the government has made it plain that any implied or explicit promise of preferential employment or any such threat of detrimental employment or her present

employment status may amount to sexual harassment of a woman government employee; including indulging in any humiliating treatment likely to affect a woman employee's health or safety. "Interference with her work or creating an intimidating or offensive or hostile work environment for her, "is now listed as amounting to sexual harassment as per the new provisions.

(ii) Conduct of inquiry as per RULE 14 of the Central Civil Services (Classification, Control & Appeal) (CCS CCA) Rules 1965

(a) **Definition of sexual harassment-** The amended Rule 3C of the CCS (Conduct) Rules, 1964 prohibits sexual harassment of women at the workplace by any Government servant, and makes every Government servant who is incharge of a work place duty bound to take appropriate steps to prevent sexual harassment to any woman at such work place. For the purpose of this rule, sexual harassment is defined as-

“sexual harassment” includes physical contact and advances; demand or request for sexual favours; or sexually coloured remarks; showing any pornography; or any other welcome physical, verbal, non- verbal conduct of a sexual nature.

The definition is expanded to include certain circumstances that may amount to sexual harassment- promise of preferential treatment or threat of detrimental treatment in employment; threat about her present or future employment status; interference with her work or creating an intimidating or offensive or hostile work environment for her; or humiliating treatment likely to affect her health or safety.

(b) **Inquiring Authority-** The proviso to Rule 14(2) of the CCS CCA Rules 1965 provides that the complaints committee established in each Ministry or Department or office enquiring into such complaints shall be deemed to be the inquiring authority appointed by the disciplinary authority, and the committee shall hold the inquiry so far as practicable in accordance with the procedure laid down in those rules. The Committee constituted in each Ministry/ Department/ office under the CCS (Conduct) Rules, 1964 shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the complaints committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure laid down in these rules.

Note- The Sexual Harassment Act of 2013 in Section 11 states that in case of respondent being an employee, then the inquiry into the complaint should be made in accordance with the provisions of the service rules applicable; but in the Act procedure of the inquiry is not delineated, hence Rule 14 CCS (CCA) Rules, 1965 is followed.

(c) **Powers of committee-** The Committee has the powers to recommend to the employer, transfer of the aggrieved woman or the charged officer; grant leave to the aggrieved woman up to a period of three months, which is in addition to the leave she would be otherwise entitled 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.

(d) **Relief to aggrieved woman during pendency of inquiry-** During the pendency of the inquiry, the aggrieved woman being vulnerable, may need to be protected from the respondent. In view of the same the Section 12 of the Sexual Harassment Act of 2013 makes provisions for the committee to exercise its powers on the written request of the woman for her transfer or that of the respondent to any other workplace. Thus in consonance with Section 12, in a fresh set of instructions, the Centre has stated that the Complaint Committee examining a sexual harassment complaint will have the power to recommend- as initial relief- a three-month paid leave for the aggrieved woman, which will not be deducted from her leave account. The Committee will also have the authority to recommend the transfer of the complainant or the accused to another workplace.

(e) **Minutes-** It is important to prepare minutes of the proceedings of every meeting of the complaints committee. The minutes should contain the date of meeting and serial number so that it is possible to gauge the number of meetings held during the inquiry. The minutes should also contain names of members present along with their signature. The Complaints Committee has the power to issue interim directions, at any stage if the need arises.

(f) **Confidentiality-** As per Section 16 of the Sexual Harassment Act of 2013 the identity and addresses of the aggrieved woman, respondent and the witness, information relating to conciliation and inquiry proceedings, recommendations of the committee, and action taken by the employer are confidential and not to be published.

All information received in the course of the examination and inquiry into a complaint of sexual harassment shall be held in trust by the committee and the same are not available pursuant to an application under the Right to Information Act, 2005. Such information shall constitute an exception under Section 8 (e) of the Right to Information Act, 2005, as the same is held by the committee in a

fiduciary relationship and the non-disclosure of the same will not be against public interest. To the contrary disclosure of such information may endanger the life or physical safety of the complainant or any of the witnesses. An exception to this rule can be in the circumstances when the complainant herself applies for information under the Right to Information Act, 2005.

B. THE PROCEDURE

(i) Step 1- Statement of Woman

In a regular disciplinary inquiry, there is only one party against whom the disciplinary authority or inquiry authority, as case may be, draws up the substance of the imputations of misconduct, into definite and distinct articles of charge, as per procedure given in Rule 14(3) CCS CCA Rules, 1965. However, in case of sexual harassment at workplace there are two parties, the aggrieved and respondent, hence the woman's complaint itself may form the statement of the imputation of misconduct or misbehavior.

(ii) Step 2- Article of Charges

The CCS CCA Rules provide that complaint itself may be treated as the Article of Charges or Charge Sheet, however there is no prohibition for specific charge sheet to be made on the basis of complaints. The purpose of framing a charge sheet is to give intimation to the respondent of clear, unambiguous and precise notice of what was alleged against him, subsequent to which he gets an opportunity of defending himself against the allegations. Hence formulating the charges not only helps the committee in deciding the matter, but in cases of appeal makes it easier for the Court to remain focused on the questions of law and facts, which it is called upon to decide.

(iii) Step 3- Written Statement of Respondent

Often, members of the complaint committee not being well versed with legal procedures are apprehensive of communicating with the respondent, and informing him of the charges against him or not. Rule of natural justice provides that no man can be condemned unheard and that justice should not only be done but manifestly appear to have been done. Accordingly the respondent is to be provided a copy of the complaint, articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses.

Note- Do not forget that the respondent also has rights and is innocent till proven guilty. He has a right to due process, fair treatment and access to process consistent with the principle of natural justice. These rights cannot be forfeited, however severe the alleged misconduct may be.

Hence, the respondent should be given a specified time to respond and submit a written statement of his defence, and to state whether he desires to be heard in person. Implicit in the process is the respondent's right to-

- (a) Know the charge
- (b) Inspect documents
- (c) Know the evidence
- (d) Cross examine the witness
- (e) Lead evidence

(iv) Step 4- Plead guilty or innocent

On receipt of the written statement of defense, there are two options-

1. Either the respondent admits to the charges against him; or
2. The respondent does not admit to the charges

In the first case, wherein the respondent has admitted to the charges against him in his written statement of defence, in such circumstances according to Rule 14(5) (a) of CCS (CCA) Rule the complaints committee shall record its findings on each charge after taking such evidence shall act in the manner laid down in rule 14 (5)(a).

If no written statement of defence is submitted by the government employee, then the complaints committee may itself inquire into the articles of charge.

A situation can also arise where the respondent, who despite having not admitted to the charges in his written statement, or not having submitted any written statement on appearing before the inquiry committee pleads guilty to the charge. In that condition the inquiring authority shall record the plea, sign the record and obtain the signature of the respondent.

If the charge is not admitted to by the respondent then an inquiry is mandatory. Proceedings initiated under Rule 14 CCS CCA Rules, 1965 cannot be closed by imposing one of the minor penalties after due consideration of the defence submitted by the accused officer. It is obligatory to hold a formal inquiry before coming to a decision about the quantum of penalty.

(v) STEP 5-Non- Cooperation of Respondent

If respondent fails to appear before the complaints committee within the specified time, omits to plead or produce the evidence, the case shall be adjourned to a later date not exceeding thirty days {Rule 14 (11)(i)(ii)(iii)}. And in case the respondent fails to appear, or give a written defence or cooperate with

the complaints committee, then the complaints committee may come to a decision with the available records {Rule 14(20)}.

The Guidelines also state that the disciplinary authority may also take action without the inquiry if it concludes that it is not reasonably practicable to hold an inquiry. Circumstances where the accused threatens or intimidates witnesses will be considered reasons enough to take action without an inquiry.

Rules provide that for the purpose of proceeding ex-parte, the respondent has to be given three times.

(vi) STEP 6- Examining of witnesses and documents

Once the written submissions of both the parties i.e. aggrieved woman and respondent are complete, then on the date fixed for the inquiry, the oral and documentary evidence of the parties will be taken and witnesses examined and may be cross-examined. The complaints committee may also put such questions to the witnesses as it thinks fit. The guidelines also state that the charged officer has to be given an opportunity to cross-examine all witnesses that appear on behalf of the prosecution. Failure to do so may result in vitiation of the inquiry. If the complaint appears as a witness, she would also be examined and cross-examined. The inquiry officer may, however, disallow questions which are offensive, indecent or annoying to the witnesses, including the complainant.

The committee must be conscious to the covert, private and insidious nature of sexual harassment; and take into account the fact that often the aggrieved woman may not be able to lead direct or corroborative evidence. The committee should-

- Not permit any evidence or examination based on the aggrieved woman's character, personal life, and conduct, personal and sexual history.
- Take note of the respective socio-economic positions of the parties, their hierarchy in the organization, the employer-employee equations and other power differences while appreciating the evidence.
- May disallow any questions which it feels are derogatory irrelevant or slanderous to the aggrieved woman.

In order to prove the charges the aggrieved woman and witnesses supporting her case are to be examined first. Although credible evidence given by the aggrieved woman alone may be sufficient to hold the respondent guilty of the offence, yet still it is may be preferable to have corroboration. There is no such rule which says that corroboration is necessary to find the respondent guilty. Given the personal nature of the offence of sexual harassment witness are rarely available to give evidence on behalf of victim.

Note- Member of the complaints committee while putting questions should ask for specifics:

- Details of incident- Who, what, when, where and how. Use open-ended questions asking the aggrieved woman to start at the beginning and tell everything that happened. Let her speak before asking specific questions.
- Find out if the complainant let the respondent know that behavior was unwelcome. When and how was that done?
- Determine if there were any witnesses and who they were.
- Find out if there is any documentary evidence against the respondent in the form of letters, text messages, email or other documentary proof. While oral evidence of the witnesses is noticed with reference to the number of the witnesses such as CW-1 (Complaint Witness) or RW-1 (Respondent Witness); the documentary evidence likewise is mentioned with reference to the number of documents as they are exhibited such as Ex. C-1 (Exhibit) or Ex.r-1 or simply as Annexure 1 or 2 and so on.
- To get both sides of the story put the same questions to the respondent.
- Then try to verify the statement of the complainant and respondent by asking their witness questions like- What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace. When and what did the complainant tell you?
- When the case for the aggrieved woman is close, the respondent shall be required to state his defence, and the witnesses produced by the respondent shall then be examined and shall be liable to cross-examination, re-examination by the aggrieved woman. (Rules 14 (17)).
- Witness statements recorded are required to be signed by them on each page and on last page after putting ROAC (Read over and found correct). The statement also to be signed by Presiding Officer of the ICC. The general practice is to give copies of statements recorded to both the parties.

(vii) OPTIONAL STEP- Final written briefs

The inquiring Authority may, after the completion of the production of evidence permit the aggrieved woman and respondent to file written briefs of their respective case, if they so desire. (Rule 14 (19))

(viii) OPTIONAL STEP- Interim directions, where ever necessary.

The committee has the power to issue interim orders as provided in the 2013 Act on the demand of either the aggrieved woman or any witness giving evidence in her support, to implement such measures as transfer, changing shifts etc. of either the complainant, witness or respondent; granting of

leave to the complainant so as to protect the complainant and witnesses against victimization and discrimination and mental or physical distress; or any other such interim orders as may be deemed necessary to ensure the safety of the complainant or witness. According to the recent guidelines, issued by the Department of Personnel & Training (DoPT), a government servant accused of sexual harassment:

- May also be placed under suspension before or after issue of a charge sheet where his continuance in office will prejudice the investigation', or
- If there is an apprehension that he may temper with witnesses or documents.
- Suspension may also be resorted to where continuance of the government servant in office will be against wider public interest, like if 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.

C. THE INQUIRY REPORT

After the conclusion of the inquiry, the next step is preparation of the inquiry report. The complaints committee shall prepare an inquiry report containing the articles of charge and the statement of the imputations of misconduct or misbehavior; the defence of Respondent, assessment of the evidence and the finding on each article of charge, supported by reasons. The purpose of this Inquiry Report is to assist the disciplinary authority, by providing an impartial and professional assessment of the nature of sexual harassment, and the impact of the respondent's offending behavior on the workplace, the risk of re-offending, and the interventions necessary to reduce that risk; and most importantly, it forms the basis for taking disciplinary/punitive action against the respondent.

In simple words the inquiry report brings out correct facts of the case, after conducting an impartial and fair hearing inquiry, in accordance with the prescribed procedure. The report should clearly and in unambiguous language state the reasons for deciding in favour of the complainant or for refusing to grant her relief. Broadly speaking, the ICC has to perform the following functions before recording the conclusion in the form of a Report:-

1. To bring on record all documents in support of the charges and those permitted for the defence.
2. To record oral testimony of the complainant and the respondent/defence witnesses after subjecting them to cross-examination.
3. To examine the respondent after the evidence has been recorded, the purpose being to get clarifications from the respondent on the evidence against him.

4. To analyse the evidence recorded by him and make correct and proper assessment of the effect of total evidence on record.
5. To write a reasoned report of inquiry giving pointed findings whether the charges are proved or not proved.

(i) Status of Inquiry Report

As clarified by the Supreme Court in the case of Medha Kotwal Lele, the Committee constituted as a redressal mechanism for complaints of sexual harassment, will be deemed to be an inquiry authority for the purposes of CCS (CCA) Rules and the Report of the Committee shall be deemed to be an inquiry report under the CCS (CCA) Rules. The disciplinary authority will act on the report of the Committee against Sexual Harassment in accordance with the Rules

(ii) Findings

The Inquiry Report may come up with following three types of findings:-

- Charges are proved. In which case the Inquiry Report should contain action to be taken as per service rules of the respondent and/or deduct an amount from the salary as the ICC may deem appropriate to be given to the aggrieved woman.
- Allegations not proved. In which case the matter may be closed concluding no further action required. If the allegations have not been proved, it does not mean that the sexual harassment did not occur, but that there was not sufficient proof on record to prove a case of sexual harassment and ICC may recommend steps to be taken by employer to create a gender friendly environment at the workplace and take corrective actions.
- Complaint is malicious. In which case the matter may be referred for taking action in accordance with the service rules. Act provides that the in case the complaint is found to be malicious the action may be taken against the aggrieved woman as per the service Rules.

(iii) Format

An Inquiry Report is an expression of the ultimate opinion of the committee, which is rendered after due consideration of evidence and arguments, advanced before the Committee. The inquiry report puts a final end to the controversy involved in the matter, so that the dispute brought before the Committee by the aggrieved woman is set at rest.

The recommended essentials are as under:-

- (a) *Title page*- The title page should at the outset identify the names of the parties, and the case which is being decided should be serial numbered. The date of the complaint should be mentioned at

the top of the report, along with the relevant reference number, if any. This should be followed by the names of the Internal Complaints Committee members, their title, and designation.

The title page is important for it indicates as to which matter the inquiry report pertains to, and by whom it has been decided by/ which committee. The date of delivery of the Inquiry report to the parties should also be mentioned.

(b) *Nature of allegation*- The report should begin with nature of allegation followed by a background information, and statements of both the aggrieved woman and respondent. In doing so, efforts of the Presiding Officer should be to note every relevant fact, but at the same time, there should be no repetition and unnecessary facts should be omitted.

(c) *Respondent's defence*- The Respondent's defence may be noted in detail as made before the ICC. No editing or modification should be made therein.

(d) *Charges and points for determination*- The Presiding Officer may thereafter proceed to decide the charges, in the order they are framed. Findings should be recorded charge-wise. Arguments of each party should be discussed with reference to their evidence relevant to the charge in the question. The Presiding Officer should record his finding on each of the charges by supplying his own reasons and giving logic for his doing so and not just by accepting the case of one party or rejecting that of the other. Findings on each of the points should be recorded in such a manner that they remain cohesive and linked to each other.

(e) *Reasons*- Findings recorded by the Presiding Officer on the charges, for or against any party should always be supported by clearly explained reasons. Every party has the right to know how, and for what reasons has the matter been decided, in favour of or against, either of the parties. Reasons are also necessary for the reason that during an appeal, the appellate court will be in position to appreciate the view point taken by the Committee in deciding the matter, the way it has done.

Giving reasons is considered integral part of the principles of natural justice. In fact, right to know the reasons of a decision is inherent in the right of appeal. A Presiding Officer ought not to merely decide a case just by saying "dismissed" or "allowed" without giving the reasons how as to how "she" (the ICC is headed by a woman) came to that conclusion.

The Inquiry Report is the most important document which the Committee hands out to the seeker of justice, therefore, the reasons that it contains assume significance.

(f) *Conclusion and recommendations for corrective action-* The operative part of the Inquiry Report comprises the conclusion and recommendations for corrective action as to whether sexual harassment occurred; along with the supporting rationale for disciplinary action. Where disciplinary action or termination is warranted the Presiding Officer should ensure that the recommendation is appropriate, and reflects the seriousness of the offense, and is not reactionary.

(g) *Disciplinary action recommended-* Once the inquiry is completed, the Committee has to determine what disciplinary action is recommended to be taken against the respondent. A balance has to be found to ensure that the aggrieved woman should not suffer any adverse consequences, and conversely, it should not be assumed that a finding of misconduct will always be sufficient to establish “cause” for termination. Each incident should be reviewed based on the following factors-

- The severity of the misconduct
- The employee’s prior work history (progressive discipline)
- Are there mitigating circumstances (ask the employee)
- Are human rights defences raised
- Is there a contravention of a separate policy or collective agreement.
- Assess the impact of the termination vis-à-vis the impact of retaining the employee
- The cost of termination

The complaints committee in the Inquiry report can recommend penalties ranging from ‘censure’ to dismissal’ as per Rule 11 of the CCS (CCA) Rules, 1965 ‘for good and sufficient reasons’. Penalties classified as major and minor penalties that can be recommended to be imposed on a Government servant, are as under:-

Minor Penalties-

- i. Censure;
- ii. Withholding of promotion;
- iii. Recovery from his pay any pecuniary loss caused to the Government by negligence or breach of orders;
- iv. Reduction to a lower stage in the time-scale of pay by one stage for a period not exceeding three years, but without cumulative effect and not adversely affecting his pension.
- v. Withholding of increments of pay;

Major Penalties-

- vi. 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:

- vii. Reduction to lower time-scale of pay, grade, post or Service for a specified period, which shall be a bar to the promotion of the Government servant during such specified period
- viii. Compulsory retirement;
- ix. Removal from service;
- x. Dismissal from service.

1. Reversion of a Government servant, appointed on probation to any other Service, grade or post;
2. Replacement of the services of a Government servant, whose services had been borrowed from a State Government or any authority;

(h) *Signature*- The end of the Inquiry Report should have the signatures of the Presiding Officer and all the members of the Committee. Each person's typed written name should be in brackets along with designation and date of signing.

(iv) Time Frame

The Sexual Harassment Act of 2013 has a strict time frame of 90 days for completion of enquiry as provided in Section 11 (4) being well aware that undue delays and faulty disposal are not uncommon in government

D. POST INQUIRY- SUBMISSION OF ENQUIRY REPORT TO EMPLOYER

As per Section 13 of the 2013 Act, on the completion of an inquiry under the Act, the Internal Committee is required to provide a report of its findings to the employer within a period of ten days from the date of completion of the inquiry. It is also mandatory to provide the Inquiry Report to both the aggrieved woman and respondent.

In case the committee finds that the allegations have been proved, it shall recommend to the employer, to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or to deduct, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman.

In the event of the aggrieved woman expiring during the Inquiry, her legal heirs are entitled, to the compensation amount recommended by the committee.

E. PENALTY

In most situations, the powers for imposing major penalties are generally entrusted to the Appointing Authorities, in view of Article 311 clause (1) which provides that no one can be dismissed or removed from service by an authority subordinate to the Authority which appointed him. Thus the Appointing

authorities who are also disciplinary authorities in the government, shall on receiving the inquiry report impose the recommended penalty on the respondent, within the prescribed time period.

F. COMPENSATION

The purpose of compensation is to, as far as possible, put the woman in the place she would have been if the sexual harassment had not existed. Sexual harassment has been recognized as a form of discrimination and the law provides entitlement to the aggrieved woman for the consequences of the discriminatory action. As per Section 15 of the Act, the Committee for the purpose of determining the sum to be paid to the aggrieved woman, it shall take into regard the following-

- (a) the mental and suffering;
- (b) the loss in the career opportunity;
- (c) medical expenses incurred by the victim;
- (d) the income and financial status of the respondent;
- (e) feasibility of such payment in lump sum or in installments.

G. WHERE SEXUAL HARASSMENT AMOUNTS TO CRIMINAL OFFENCE

Where the conduct of sexual harassment amounts to a specific offence under the Indian Penal Code (45 of 1860) or under any other law; it shall be the duty of the ICC to immediately inform the complainant of her right to initiate action in accordance with law with the appropriate authority, and to give advice and guidance regarding the same.

She should be informed of her rights and the fact that any such action or proceedings initiated shall be in addition to proceedings initiated and /or any action taken under the Act by the ICC.

It can be concluded that the Act imposes a solemn responsibility on the ICC to conduct an inquiry into a complaint of sexual harassment. Taking into consideration the amended CCS CCA Rules 1965 which provide the procedure for conducting an inquiry in government offices, including recording of statement, articles of charges, written statement of respondent, examination of witnesses and documents, hence it can be concluded that conducting an effective inquiry plays a vital role in providing women a safe and enabling environment to work; and members of the ICC share the responsibility for not only providing relief to the aggrieved woman, but also in prevention and elimination of sexual harassment in the workplace.

DAY 2 – SESSIONS 4 & 5

SESSION 4 & 5	MOCK SESSION TO UNDERSTAND THE ROLE OF PRESIDING OFFICER AND MEMBERS OF INTERNAL COMPLAINTS COMMITTEE (ICC)
OBJECTIVE	<p>To understand the technique of:</p> <ul style="list-style-type: none"> • Eliciting facts of the case from the aggrieved woman, the delinquent official and other colleagues by putting forth right kind of questions; • Prepare a report to be submitted to the Head of the Department.
CONTENT	<ul style="list-style-type: none"> • Questioning Technique • Technique to understand communication loss • Avoidance of bias • Unbiased approach
DURATION	120 minutes
TRAINING METHOD & MATERIAL	Mock Inquiry where the role of aggrieved woman is played by one faculty and the roles of the Presiding Officer and Members of the ICC played by the participants in turn. Debriefing is done by the main faculty - - a practicing lawyer.
LEARNING OUTCOME	<p>The trainees will be able to describe:-</p> <ul style="list-style-type: none"> • How to make meaningful, short questions; • How to avoid verbosity; • How to tackle over reactions; • How to break silences by both moderate and coercive ways; • How to steer clear of bias emanated from personal ideas; • How to compile an inquiry report; and • How to communicate the report to the Head of the Department.

CASE STUDIES^v

CASE-1

- A young researcher is working under a very senior Scientist of very good repute. It has been her dream to work under him. She has sent him at least 3 mails expressing her excitement and pleasure to work under him. She is always ready to take up any assignment/ work given by him, even unrelated to her research. She has even gone to his residence a couple of times. He is middle aged and has family and children. Once when she went to his home, his family was not there and he asked her to stay over and even told her she could sleep in his bedroom. She was taken aback, did not say much but quietly left. Next few days she remained aloof.
- After a week or so, when she met him, he told her she is like his daughter and would never misbehave with her. However, after that incident though he was showing a lot of concern about her when they were by themselves, he has started publicly reprimanding and overtly criticizing her work. She is very disturbed.
- What should she do now? What would you do if this was brought as a complaint before you?

CASE-2

- A young employee who is 1 year in the Organization speaks to an HR person she is comfortable with and raises issues that she has with her senior who has been her mentor. She says that he has been micro managing her work and also constantly enquires about her through messaging over phone. She also says she does not want to raise a formal complaint.
- The HR person speaks to you, an ICC Member. How would you go about it?

CASE-3

- You receive a complaint from an employee who is 4 years in the Organization against a very senior employee (Respondent). She says in her complaint that she has been in a relationship with the Respondent, which is an extra marital relationship for him. However, she says it is all over for her and she has made it clear to him, however he has been pursuing and pressurizing her to continue in relationship with him.
- It is also an internal and popular gossip in the Organization that the Respondent is a flirt and women generally are not entirely comfortable with him. However, he is very senior in the Organization, and has been a very important, influential person.

- What would you do as ICC?

CASE-4

- There is a contract employee who has been working in the Organization for the past one year. She is young and very friendly with everyone. She is known to dress very well and usually in sleeveless dresses. Also she is known to be partying very often. An employee of the Organization gets friendly with her, and by now everyone knows that the two are very good friends.
- After 2 months she complained to the Committee that he has sexually assaulted and raped her.
- What should the Committee do?

References:

- ⁱ Ministry of Women & Child Development, Government of India
- ⁱⁱ Ministry of Women & Child Development, Government of India
- ⁱⁱⁱ *JAISING Indira "Sexual harassment at Work Place"* Universal Law Publishing Co. Pvt. Ltd. New Delhi, India (2014)
- ^{iv} *JAISING Indira "Sexual harassment at Work Place"* Universal Law Publishing Co. Pvt. Ltd. New Delhi, India (2014)
- ^v These cases have been developed by Sowmya Lakshmi Bhat, Advocate & Law Advisor, Joint Convenor - Support Against Sexual Harassment at Workplace (SASHA)