



# हरीश-चन्द्र अनुसंधान संस्थान Harish-Chandra Research Institute

छतनाग मार्ग, झूंसी, इलाहाबाद - 211019  
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सं./ .No. : HRI/980/1273

दिनांक / Date : 18<sup>th</sup> July 2016

## OFFICE MEMORANDUM

### **Sub :- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) – Constitution of Local Complaints Committee u/s 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013**

Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and the right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment. On this subject, the Vishaka Guidelines were a set of procedural guidelines for use in India in cases of sexual harassment. These were promulgated by the Indian Supreme Court in 1997 and were superseded in 2013 by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (No 14 of 2013) which has been made effective from 9<sup>th</sup> December 2013. The provisions of this act are applicable in all Government Offices referred as "Appropriate Government" which has further been defined as:-

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

2. In this Act u/s 4, an "Internal Committee" meaning an "Internal Complaints Committee" has to be constituted. In our Institute, a Committee called "Women's Grievance Cell" has been constituted which looks after the cases of Sexual Harassment at Institute level. This committee is being re-constituted as follows and shall, now be known as Internal Complaints Committee / Women's Grievances Cell.

1.	Dr Sandhya Choubey	- Presiding Officer/Chairman
2.	Ms Padma Singh, Social Activist	- Member (External)
3.	Prof Sumathi Rao	- Member
4.	Prof. Raj Gandhi	- Member
5.	Prof Prasenjit Sen	- Member
6.	Dr Aditi Sen De	- Member
7.	Mr. Manish Sharma	- Member
8.	Dr Archana Tandon	- Member

9.	Ms Seema Agarwal	- Member/Convener
10.	Mr. N K Arora, Advocate	- Special Invitee
11.	One Student (JRF/SRF)/PDF nominated by the Director from time-to-time preferably a female candidate	- Special Invitee / Student Representatives

*<sup>i</sup> The services of Shri N K Arora, Advocate & Legal Advisor of the Institute may be taken by the committee in case some investigation is going on in case of some sexual harassment case.*

*<sup>ii</sup> The External Member/Special Invitee shall be paid honorarium as decided by the Director for attending/holding the proceedings of the Internal Committee.*

*<sup>iii</sup> **The presiding Officer and every Member of the Internal Committee shall hold office (as member of the committee) for such period not exceeding three years, from the date of their nomination as may be decided by the Director.***

*<sup>iv</sup> Any Women's Grievance Cell constituted through any other Order/OM shall be treated as amended as per the above i.e. the above constitution of the Internal Committee shall have an overriding effect on any other such Committee like Women's Grievance Cell etc.*

3. With reference to our Institute, various definitions under the said act are as follows;-
- (a) "**Sexual Harassment**" means - any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:-
- (i) physical contact and advances; or
  - (ii) a demand or request for sexual favours; or
  - (iii) making sexually coloured remarks; or
  - (iv) showing pornography; or
  - (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;
- (b) "**Aggrieved Women**" means -
- (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;
  - (ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;
- (c) "**Domestic Worker**" means - a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time- or full time basis, but does not include any member of the family of the employer;
- (d) "**Employee**" means - a person employed at a workplace for any work on regular, temporary, adhoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are explicit or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;
- (e) "**Employer**" means –
- (i) in relation to any department, organisation, undertaking,. establishment, enterprise, institution, office, branch or unit of the appropriate Government or

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

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

*(For the purposes of this sub-clause "management" includes the person or board or committee responsible for formulation and administration of policies for such organization)*

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

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

- (f) "**Respondent**" means – a person against whom the aggrieved woman has made a complaint

4. As per provision of the "**Protection of Sexual Harassment**";-

- (a) No woman shall be subjected to sexual harassment in any workplace.
- (b) The following circumstances, among other circumstances, if they occur or are present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:---
  - (i) implied or explicit promise of preferential treatment in her employment: or
  - (ii) implied or explicit threat of detrimental treatment in her employment; or
  - (iii) implied or explicit threat about her present or future employment status: or
  - (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
  - (v) humiliating treatment likely to affect her health or safety.

5. The procedure for lodging **Complaint of Sexual Harassment** is;-

- (a) Any aggrieved woman may make, in writing, a complaint of sexual harassment in the workplace to the Internal Committee within a period of three months from the date of the incident and in case of a series of incidents, within a period of three months from the date of the last incident:
  - Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee shall render all reasonable assistance to the woman for making the complaint in writing;
  - Provided further that the Internal Committee, for the reasons to be recorded in writing, extend the time limit (not exceeding three months), if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.
- (b) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

6. **Conciliation**;- The Internal Committee may, before initiating an inquiry and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation under following conditions:-

- (a) it shall be as per section 11 of the said act;
- (b) no monetary settlement shall be made as a basis of conciliation;
- (c) Where a settlement has been arrived at, the Internal Committee shall record the settlement so arrived at and forward the same to the employer to take action against as specified in the recommendation;
- (d) The Internal Committee shall provide the copies of the settlement as recorded to the aggrieved woman and the respondent.
- (e) Where a settlement is arrived at as per the provisions of the act, no further inquiry shall be conducted by the Internal Committee.

7. **Action during pendency of the inquiry**;-

- (i) During the pendency of an inquiry. on a written request made by the aggrieved woman, the Internal Committee 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.
- (ii) The leave granted to the aggrieved woman under this provision shall be in addition to the leave she would be otherwise entitled to.
- (iii) On the recommendation of the Internal Committee, the employer shall implement the recommendations and shall send the report of such implementation to the Internal Committee

8. **Inquiry Procedure**;-

- (i) The inquiry by Internal Committee shall be completed within 90 days.
- (ii) For the purpose of making an inquiry, the Internal Committee shall follow the following:--
  - (a) summoning and enforcing the attendance of any person and examining him on oath ;
  - (b) requiring the discovery and production of documents; and
  - (c) any other matter which may be prescribed.

9. **Inquiry Report**;-

- (i) On the completion of an inquiry under this Act, the Internal Committee shall provide a report of its findings to the employer/Director within a period of ten days from the date of completion of the inquiry and such report shall be made available to the concerned parties.
- (ii) Where the Internal Committee arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer that no action is required to be taken in the matter.
- (iii) Where the internal Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to;
  - (a) take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

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

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

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

- (c) The employer shall act upon the recommendation within sixty days of the receipt by him.

**10. Punishment for false or malicious complaint and false evidence :-**

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

*Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant.*

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

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

**11. Duties of Employer :-** Every employer shall-

- (a) provide a safe working environment at the workplace which shall include safety from the persons coming in contact at the workplace;
- (b) display in any conspicuous place of the workplace, the penal consequences of sexual harassments; and the order constituting the Internal Committee
- (c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes (In the Institute Women Cell shall organize this) for the members of the internal Committee in the manner as may be prescribed;
- (d) provide necessary facilities to the Internal Committee for dealing with a complaint and conducting an inquiry;
- (e) assist in securing the attendance of a respondent and witnesses before the Internal Committee;
- (f) make available such information to the Internal Committee, as it may require having regard to the complaint;

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

**12. Other important points :-**

- (a) For the purpose of determining the sums to be paid to the aggrieved woman, the Internal Committee shall have regard to -
  - (i) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
  - (ii) the loss in the career opportunity due to the incident of sexual harassment;
  - (iii) medical expenses incurred by the victim for physical or psychiatric treatment;
  - (iv) the income and financial status of the respondent;
  - (v) feasibility of such payment in lump-sum or in installments.
- (b) Notwithstanding anything contained in the Right to Information Act, 2005, no contents of the complaint made by aggrieved women, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee and the action taken by the employer shall not be published, communicated or made known to the public, press and media in any manner;  
*Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witness.*
- (c) Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions, contravenes the provisions of 8(b) above, he shall be liable for penalty in accordance with the provisions or the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.
- (d) Any person aggrieved from the recommendations made under above provisions or related provisions of the said act or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed. The appeal shall be preferred within a period of ninety days of the recommendations.
- (e) The Internal Committee shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer.

- (f) The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation
- (g) The appropriate Government shall monitor the implementation of this said act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.
- (h) The appropriate Government may, subject to the availability of financial and other resources:-
- develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of the said act providing for protection against sexual harassment of woman at workplace,
  - Formulate orientation and training for the members of the Local Complaint Committee,
- (i) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing--
- call upon any employer to furnish in writing such information relating to sexual harassment as it may require;
- (j) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.
- (k) Every employer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a hearing on the subject matter of such inspection.
- (l) As per the said act, every offence shall be non-cognizable. The above provisions/provisions of the said act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
- (m) This OM and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 shall be uploaded on the website of the Institute ([www.hri.res.in](http://www.hri.res.in)) immediately for further references and dissemination of the information.

  
(Prof J K Bhattacharjee)  
Director

Copy to;-

- (a) Chairman and All Members/Special Invitees of the Internal Committee
- (b) All Members of the Institute (through [hriall@hri.res.in](mailto:hriall@hri.res.in))
- (c) System Manager – for compliance as per point 12(m)
- (d) All Notice Board
- (e) Guard File