

GOI'S INSTRUCTIONS REGARDING PREVENTION OF SEXUAL HARASSMENT OF WORKING WOMEN

Supreme Court judgment in the case of Vishaka Vs. State of Rajasthan regarding sexual harassment of working women.

In the case of Vishaka and Ors Vs. State of Rajasthan and Ors. (JT 1997 (7) SC 384), the Hon'ble Supreme Court has laid down guidelines and norms to be observed to prevent sexual harassment of working women.

2. It has been laid down in the judgment above-mentioned that it is the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or 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.

3. Attention in this connection is invited to Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964, which provides that every Government servant shall at all times do nothing which is unbecoming of a Government servant. Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules.

4. Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the concerned authorities shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

5. In particular, it should be ensured that victims, or witnesses are not victimized or discriminated against while dealing with complaints or sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

6. Complaint Mechanism :- Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in every organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints. Wherever such machineries for redressal of grievance already exist, they may be made more effective and in particular women officers should preferably handle such complaints.

7. Awareness :- Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (copy enclosed) in a suitable manner.

8. A specific provision is, however, being made in the CCS (Conduct) Rules, 1964, prohibiting sexual harassment of women by Government servants, in compliance of the judgment of the Hon'ble Supreme Court.

GUIDELINES AND NORMS LAID DOWN BY THE HON'BLE SUPREME COURT IN VISHAKA & ORS. V. STATE OF RAJASTHAN & ORS. (JT 1997 (7) SC 384)

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.

1. Duty of the Employer or other responsible persons in work places and other institutions :

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition :

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.

3. Preventive Steps :

All employers or persons in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality to this obligation they should take the following steps :-

(a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings :

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action :

Where such conduct amount to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism :

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaint Mechanism :

The complaint mechanism referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special councillor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative :

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness :

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

10. Third Party Harassment :

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

[DOPT OM No. 11013/10/97-Estt.(A), dated 13.02.1998]

(25A) Prevention of sexual harassment of working women

The above guidelines (decision No. 25) inter-alia stipulate for the creation of an appropriate complaint mechanism in every organization for redressal of the complaints made by the victims. It has come to the notice of this Department that in one of the Central Government Offices, the Committee constituted for the purpose was headed by an official of the rank of Upper Division Clerk. As an official not sufficiently higher in rank may not be able to express views independently/freely especially when the perpetrator is holding an higher position, the arrangement makes mockery of the system. It is, therefore, requested that the Committee constituted for redressal of the complaints by the victims of sexual harassment should be headed by an officer sufficiently higher in rank, so as to lend credibility to the investigations.

[DOPT OM No. 11013/10/97-Estt.(A), dated 13.07.1999]

(25B) Report of the Complaints Committee constituted for prevention of sexual harassment of women at work places – follow up action

Reference is invited to this Department's OM No. 11013/10/97-Estt. (A) dated 13th February, 1998 under which the guidelines and norms laid down by the Supreme Court in the case of Vishka and others Vs. State of Rajasthan and others (JT 1997 (7) SC 384) for

prevention of sexual harassment of women at work places, were circulated to all Ministries/Departments for compliance by all concerned.

2. The guidelines laid down by the Supreme Court provide, inter-alia, for the constitution of a Complaints Committee in the employer's organization for redress of the complaint made by the victim. In this connection, a question has been raised regarding the status of the inquiry held by the Complaints Committee. It is clarified that the findings of the Complaints Committee regarding sexual harassment of the complainant/victim will be binding on the disciplinary authority to initiate disciplinary proceedings against the Government servant(s) concerned under the provisions of the CCS (CCA) Rules, 1965. The report of the Complaints Committee should be treated as a preliminary report against the accused Government servant.

[DOPT OM No. 11013/11/2001-Estt.(A), dated 12.12.2002]

25C. Report of the Complaints Committee constituted for prevention of sexual harassment of women at work places – follow up action.

Reference is invited to this Department's O.M. of even number dated 12th December, 2002 in which it has been clarified that the report of the Complaints Committee should be treated as a preliminary report against the accused Government servant.

2. In the order dated 26.04.2004 in Writ Petition (Crl.) No. 173-177/1999 (Medha Kotwal Lele & Others Vs. Union of India and others) the Supreme Court has directed that "the report of the Complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules." Sub-rule (2) of rule 14 of the CCS (CCA) Rules, 1965 has accordingly been amended to provide that the Complaints Committee shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these Rules by the Notification No. 11012/5/2001-Estt. (A) dated 01.07.2004 (GSR 225 dated 10th July, 2004).

3. In view of the said amendment made to the CCS (CCA) Rules, 1965 the instructions contained in the O.M. No. 11013/11/2001-Estt. (A) dated 12th December, 2002 should be treated as modified and the report of the Complaints Committee should be treated as an enquiry report and not a preliminary report.
