

CODE OF CONDUCT FOR EMPLOYEES*

Sexual Exploitation & Abuse and sexual harassment is a serious criminal offense which can destroy human dignity and freedom. In an effort to promote the well being of all employees the following code of conduct has been prescribed

1. It shall be duty of the employer to prevent or deter the commission of any act of sexual Exploitation & Abuse possibly at all times.
2. Sexual Exploitation & Abuse will include such unwelcome sexually determined behaviour by any person either individually or in association with other persons or by any person in authority whether directly or by implication such as :-
 1. Eve-teasing
 2. Unsavory remarks
 3. Jokes causing or likely to cause awkwardness or Embarrassment
 4. Innuendos and taunts
 5. Gender based insults or sexist remarks
 6. Unwelcome sexual overtone in any manner such as Over telephone (obnoxious telephone calls) and the Like
 - Touching or brushing against any part of the body And the like
 - Displaying pornographic or other offensive or Derogatory pictures, cartoons, pamphlets or sayings.
 7. Forcible physical touch or molestation
 8. Physical confinement against one's will and any other Act likely to violate one privacy
 - And includes any act or conduct by a person in authority and belonging to one sex which denies or would deny equal opportunity in pursuit of career development or otherwise making the environment hostile or intimidating to person belonging to the other sex, only on the ground of sex.

** in accordance with the Supreme Court Judgement on " Sexual Harassment of Women at Workplace in Vishaka & other Vs. State of Rajasthan & others (AIR 1997 SC 3011)*

Explanation: - Where any comment, act or conduct is committed against any person and such person has a reasonable apprehension that,

1. It can be humiliating and may constitute a health and safety problem, or
2. It is discriminatory, as for instance, when an employee has reasonable grounds to believe that his/her objection would disadvantage him/her in connection with him/her employment or study, including or promotion or advancement or when it creates a hostile environment, or
3. It would result in adverse consequences if He/she does not consent to the conduct or raises any objection, it shall be deemed to be sexual Exploitation & Abuse or harassment.

Eve-Teasing

Eve-teasing will include any person willfully and indecently exposing his person in such a manner as to be seen by other employees or use indecent language or behave indecently or in a disorderly manner. It will also include any word, gesture or act intended to insult the modesty of a person by making any sound or gesture or exhibit any object intending that such word or sound shall be heard or that such gesture or object shall be seen by such person or intrudes upon the privacy of an employee.

1. Sexual Exploitation & Abuse or harassment of an employee means use of authority by any person in charge of the management or any person employed by it to exploit the sexuality or sexual identity of a subordinate employee to harass her/him in a manner which prevents or impairs the employee's full utilisation of employment benefits or opportunities. It also includes behaviour that covertly or overtly uses the power inherent in the status of the employer or the head of the institution or management to affect negatively an employee's work experience or career opportunities and/or to threaten, coerce or intimidate an employee to accept sexual advances or making employment decision affecting the individual or create an intimidating, hostile or offensive working environment.
2. It shall be the duty of the employer to prevent or deter the committing of any act of sexual Exploitation & Abuse.
3. All employers should take appropriate steps to prevent sexual Exploitation & Abuse of any nature. Express prohibition of sexual Exploitation & Abuse should be notified at the prominent place and also published for the general information of the employees and evaluated in an appropriate manner periodically.
4. Appropriate working conditions should be provided in respect of work, leisure, health and hygiene to ensure that there is no hostile environment towards employees at the work place and no employee should have reasonable grounds to believe that she/he is

disadvantaged in connection with her/his employment in that organisation.

5. Women employees should not be treated as sex objects.
6. No male employee shall outrage or insult the modesty of a female employee at the work place.
7. No male employee shall make any type of sexual advances to woman colleagues, woman subordinates or children.
8. The head of the organisation shall constitute a Complaints Committee as specified in the Judgment of the Supreme Court, i.e., the Committee should be headed by a woman and not less than half of its members 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 a non-government organisation or other body who is familiar with the issue of sexual Exploitation & Abuse or harassment.

Conducting enquiry by the Complaints Committee :-

- Any person aggrieved shall prefer a complaint before the Complaints Committee at the earliest point of time and in any case within 15 days from the date of occurrence of the alleged incident.
- The complaint shall contain all the material and relevant details concerning the alleged sexual Exploitation & Abuse or harassment including the names of the contravenor and the complaint shall be addressed to the Complaints Committee.
- If the complainant feels that she/he cannot disclose her/his identity for any particular reason the complainant shall address the complaint to the Registrar/DG and hand over the same in person or in a sealed cover. Upon receipt of such complaint the Registrar/DG shall retain the original complaint with him and send to the Complaints Committee (ICC) a gist of the complaint containing all material and relevant details other than the name of the complainant and other details which might disclose the identity of the complainant.
- The Complaints Committee shall take immediate necessary action to cause an enquiry to be made discreetly or hold an enquiry, if necessary.
- The Complaints Committee shall after examination of the complaint submit its recommendations to the Registrar/DG recommending the penalty to be imposed.

- The head of the organisation, upon receipt of the report from the Complaints Committee shall after giving an opportunity of being heard to the person complained against submit the case with the Committee's recommendations to the management.
- The Management of the Organisation shall confirm with or without modification the penalty recommended after duly following the prescribed procedure.

Disciplinary Action :

Where the conduct of an employee amounts to misconduct in employment as defined in the relevant service rules, the employer should initiate appropriate disciplinary action in accordance with the relevant rules.

Employee's Initiative :

Employees should be allowed to raise issues of sexual Exploitation & Abuse or harassment at meeting and in other appropriate forum and it should be affirmatively discussed.

Third Party harassment :

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

**The sexual harassment of women at workplace
(Prevention, prohibition and redressal) Act, 2013**

Preamble and background

Object behind the act: "No woman shall be subjected to sexual harassment at any workplace" (clause 3.1)

Introduction:

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

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

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

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

Background and provisions:

The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realization of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishaka v. State of Rajasthan (1997). Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation

of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to Rs.50,000/-.

Major Features:

- The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.
- The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organized or unorganized sectors, public or private and covers clients, customers and domestic workers as well.
- While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organizations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.[16]
- The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.
- Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level.
- The Complaints Committees have the powers of civil courts for gathering evidence.
- The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant.

- Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to 50,000/-. Repeated violations may lead to higher penalties and cancellation of license or registration to conduct business.

Penal Code:

Main article:

Through the Criminal Law (Amendment) Act, 2013, Section 354 was added to the Indian Penal Code that stipulates what consists of a sexual harassment offence and what the penalties shall be for a man committing such an offence. Penalties range from one to three years imprisonment and/or a fine. Additionally, with sexual harassment being a crime, employers are obligated to report offences.

For the False complaint: The burden of proof is on the women who complain of harassment. If found guilty of making a false complaint or giving false evidence, she could be prosecuted.

Briefing:

- Sexual harassment in workplace is a serious irritating factor that renders women's involvement in works unsafe and affects right to work with dignity.
- It is unwelcome verbal, visual or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment. Generally sexual harassment is a sexually oriented conduct at work may endanger the victim's job, negatively affect the victim's job performance or undermine the victim's personal dignity.
- It may manifest itself physically or psychologically. Its milder and subtle forms may imply verbal innuendo, inappropriate affectionate gestures or propositions for dates and sexual favours. However it may also assume blatant and ugly forms like leering, physical grabbing and sexual assault or sexual molestation.
- To fit in the concept of sexual harassment the relevant conduct must be unwelcome. That is unwelcome to the recipient of that conduct. Conduct is not sexual harassment if it is welcome. So in order to determine if the conduct was welcome or unwelcome, Courts would naturally look to the complainant's reaction at the time the incident occurred and assess whether the complainant expressly, or by his or her behavior demonstrated that the conduct was unwelcome.
- If the evidence shows that the complainant welcomed the conduct the complaint of sexual harassment would fail. For this reason, it is

important to communicate (verbally, in writing, or by your own actions) to the harasser that the conduct makes you uncomfortable and that you want it to stop.

Background :

Supreme Court guidelines on sexual harassment- A quick recap

The Supreme Court in Vishaka v. State of Rajasthan for the first time recognized, acknowledged and explicitly defined sexual harassment as an – unwelcome sexual gesture or behaviour aimed or having a tendency to outrage the modesty of woman directly or indirectly.

Defining sexual harassment as an act aimed towards gender based discrimination that affects women's right to life and livelihood, the Supreme Court developed broad based guidelines for employers. This mandatory guidelines known as Vishaka guidelines are aimed towards resolution and prevention of sexual harassment. These guidelines bring in its purview all employers in organized and unorganized sectors by holding them responsible for providing safe work environment for women.

The Vishaka guidelines apply to all women whether students, working part time or full time, on contract or in voluntary/honorary capacity. Expressly prohibiting sexual harassment at work place these legally binding guidelines put a lot of emphasis on appropriate preventive and curative measures. (The guidelines include the following as acts of sexual harassment: Physical contact and advances, Showing pornography, a demand or request for sexual favours, Any other unwelcome physical, verbal/non-verbal – such as whistling, obscene jokes, comments about physical appearances, threats, innuendos, gender based derogatory remarks, etc.)Some of the important guidelines are:

- The onus to provide a harassment free work environment has been laid down on the employers who are required to take the following steps:
- Employers must form a Complaints Committee.
- Express prohibition of sexual harassment in any form and make the employees aware of the implications through in house communication system / posters / meetings.
- Must include prohibition of sexual harassment with appropriate penalties against the offender in Conduct rules.
- Prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 to be included by private employers.

- Provision of appropriate work conditions in respect of- work, leisure, health, hygiene to further ensure that there is no hostile environment towards women.
- No woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.
- Victims of sexual harassment to be given an option to seek transfer of the perpetrator or their own transfer.

Thus the Vishaka guidelines stipulated that all organisations would form a complaints committee to look into any such allegation. It would be headed by a woman employee and not less than half of its members would be women. All complaints of sexual harassment by any woman employee would be directed to this committee. The committee would advise the victim on further course of action and recommend to the management the course of action against the person accused of harassment.

However in *Medha Kotwal Lele v Union of India* coordinator of Aalochana, a centre for documentation and research on women and other women's rights groups, together with others, petitioned the Court highlighting a number of individual cases of sexual harassment and arguing that the Vishaka Guidelines were not being effectively implemented. In particular, the petitioners argued that, despite the guidelines, women continued to be harassed in the workplace because the Vishaka Guidelines were being breached in both substance and spirit by state functionaries who harass women workers via legal and extra legal means, making them suffer and by insulting their dignity.

The Court stated that the Vishaka Guidelines had to be implemented in form, substance and spirit in order to help bring gender parity by ensuring women can work with dignity, decency and due respect. It noted that the Vishaka Guidelines require both employers and other responsible persons or institutions to observe them and to help prevent sexual harassment of women. The Court held that a number of states were falling short in this regard. It referred back to its earlier findings on 17 January 2006, that the Vishaka Guidelines had not been properly implemented by various States and Departments in India and referred to the direction it provided on that occasion to help to achieve better coordination and implementation. The Court went on to note that some states appeared not to have implemented earlier Court decisions which had required them to make their legislation compliant with the Vishaka Guidelines.

Salient features of the Act:

- The Act has in fact sought to widen the scope of the guidelines issued by the Supreme Court by bringing within its ambit (amongst other things) a “domestic worker” (Sec 2e) defined to mean 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.
- The Act has defined “sexual harassment” (Sec. 2n) to include any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely: (i) physical contact and advances; (ii) a demand or request for sexual favours; (iii) making sexually coloured remarks; (iv) showing pornography; or (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature. Further, the following may also amount to sexual harassment: (i) implied or explicit promise of preferential treatment; (ii) implied or explicit threat of detrimental treatment; (iii) implied or explicit threat about present or future employment status; (iv) interference with work or creating an intimidating or offensive or hostile work environment; or (v) humiliating treatment likely to affect health or safety.
- The term ‘employee’ (Sec. 2f) includes regular, temporary, ad hoc, daily wage employees and persons who are working on a voluntary basis i.e. without remuneration. The term also includes contract workers, probationers, and trainees. The Act defines “aggrieved woman” (Sec. 2a) to mean: (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.
- As per the Act workplace (Sec.2o) includes:
 - any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
 - any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment,

industrial, health services or financial activities including production, supply, sale, distribution or service;

- hospitals or nursing homes;
- any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;
- any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;
- a dwelling place or a house.

➤ Complaint mechanisms under the 2013 Act

- The Act contemplates the constitution of Internal Complaints Committee (“ICC”) (Sec. 4) at the work place
- Every workplace employing 10 or more employees is required to constitute an ICC.
- The ICC is required to consist of at least four members, and its presiding officer is required to be a woman employed at a senior level. Provisions have been made in case no senior woman employee is available, to nominate a woman presiding officer from another office, administrative unit, workplace, or organisation.
- Further, one half of the members must be women.

➤ Steps involved in the Complaint Process –Empowerment?

○ Step I

A complaint is to be made in writing by an aggrieved woman within 3 months of the date of the incident. The time limit may be extended for a further period of 3 months if, on account of certain circumstances, the woman was prevented from filing the complaint. If the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death, her legal heirs may do so.

○ Step II

Upon receipt of the complaint, the ICC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or in their absence, in accordance with rules framed under the Act.

- Step III

The inquiry must be completed within a period of 90 days. In case of a complaint by a domestic worker, if in the opinion of the ICC a prima facie case exists, the ICC is required to forward the complaint to the police to register a case under the relevant provisions of the Indian Penal Code.

- Step IV

Where the ICC finds that the allegations against the respondent are proven, it must submit a report to the employer to: (i) take action for sexual harassment as a misconduct in accordance with the provisions of the applicable service rules or where no service rules exist, in accordance with rules framed under the Act; (ii) to deduct 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.

- Step V

The employer must act on these recommendations within 60 days.

- Scope for Conciliation and Settlement

Before initiating an inquiry, the ICC may, at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1))

- In case the ICC is of the view that a malicious or false complaint has been made, it may recommend that a penalty be levied on the complainant in accordance with the applicable service rules (Section – 14). However, an inquiry must be also made. Mere inability to substantiate a complaint will not attract action under this provision.

➤ **The Duties of an Employer**

- a) The Act makes it the duty of every employer to:
- b) provide a safe working environment at the workplace which shall include safety from all the persons with whom a woman comes into contact at the workplace;
- c) display at any conspicuous place in the workplace, the penal consequences of sexual harassment and the order constituting the ICC;
- d) organise workshops and awareness programmes; d) provide necessary facilities to the ICC for dealing with complaints and conducting inquiries;

- e) assist in securing the attendance of the respondent and witnesses before the ICC;
- f) make available such information to the ICC , as it may require;
- g) provide assistance to the woman if she so chooses to file a criminal complaint;
- h) initiate criminal action against the perpetrator;
- i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct; and
- j) monitor the timely submission of reports by the ICC.

➤ **Penalties**

Where the employer fails to comply with the provisions of the Act, he shall be liable to be punished with a fine which may extend to Rs. 50,000. In case of a second or subsequent conviction under this Act, the employer may be punished with twice the punishment prescribed or by cancellation of his licence or withdrawal of his registration.