Combatting Sexual Harassment at the Workplace

A handbook for Women, Employers and NGOs

By
Tom Dannenbaum and Keya Jayaram

Guided by
Prachi Patwardhan and Renuka Mukadam

India Centre for Human Rights and Law

Disclaimer:

This handbook is designed to equip the reader with an understanding of issues arising out of sexual harassment at the workplace, which would enable her/him to deal with practical problems encountered while dealing with sexual harassment. However, it does not have all the answers. Please note that there is no substitute for good legal advice and representation. If you have a complex legal problem, or are uncertain about how to handle a certain legal situation, kindly seek advice from a lawyer.

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Foreword

The story of the Indian women - A promised saga of equal treatment, survival and gender justice? Yet the reality is a story of promises broken. Is it due to superstition, exploitation, illiteracy or patriarchy?

In order to highlight some of the very important issues of sexual harassment that women face, this concise well-produced manual will be of great use to social activists, governments and to international organizations. India today is in the forefront of putting all gender equitable legislations under a gender scanner, which would give a progressive vision in addressing all complexities of gender discrimination.

A woman so far has been treated as a social appendage and an urgent change in the mindset of the society is necessary. It gives me great happiness to see the various measures highlighted in this book to ensure that women in the mainstream be heard on the various issues of sexual harassment. As I have mentioned earlier patriarchy has deep roots in India and in this century our single most important measure will be changing the mindset of men. The outlines and depth of this powerful volume by itself launches a massive campaign to educate people and society.

I need not talk about the revolting, unscrupulous, unwanted and increasingly sexual harassment that women face. In our counselling centers one is busy tackling numerous cases and we now see the visibility in the courtrooms too. Two decades ago it was not a recognized problem, however today men and women, employees and workers, lawyers and judges, girls and boys in colleges need to know what it is and how to tackle it.

What is really sexual harassment? Most definitions of sexual harassment combine three elements. Accordingly, sexual harassment involves unwanted behaviour of a sexual

nature, and a perception by the victim that it has become a condition of work, or creates a hostile, intimidating and humiliating working environment. It can involve physical contact, expression of sexual innuendoes, sexually coloured comments and jokes, the exhibition of pornography, or unnecessary and unwanted comments on a person's appearance. There are many examples throughout the world of well-known cases that constitute sexual harassment.

Sexual harassment occurs all over the world. Many studies show that the primary victims are younger women in their first jobs, or women returning to the workplace after a career break. The victim is usually vulnerable, due to age for instance or employment status. In some cases, the timidity-what you might call society's conditioning of the victim is also a factor. Thus women's subordination is a result of interplay of complex socio economic and political forces and a sustained effort for gender equity in several spheres is needed for the empowerment of women.

We are happy that both the courtroom, civil society, are far more aware of the problems today, than they were before. The Supreme Court of India holds that each incident of sexual harassment of women results in violation of the fundamental rights of " gender equality " and the " right to life and liberty". According to the Court it is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution of India. Hence the Supreme Court has directed that each organization constitute a grievance cell in its premises to redress sexual harassment.

I am happy that the organization has brought out such a comprehensive volume.

Dr. V. Mohini Giri
Former Chairperson,
National Commission for Women
September 2005

Preface

As more instances of sexual harassment become public, the issue of sexual harassment at the workplace is gaining visibility and the campaign against it, a definite momentum. In the larger context of our society - a society in which women are socialised not to talk about anything linked to 'sex' or 'sexuality' - the concept of sexual harassment at the workplace has only recently gained recognition as a form of violence against women. The guidelines passed by the Supreme Court of India in the matter of *Vishaka vs. State of Rajasthan*, in August 1997, for the first time explicitly acknowledged the issue in a legal forum. These guidelines gave sexual harassment a legal definition, describing what forms of conduct actually constitute sexual harassment. The ruling also puts the onus on the employer or "management" to ensure a harassment and discrimination free working environment for their women employees. This responsibility must be fulfilled through the institution of specific redressal mechanisms or complaints committees.

Through innumerable workshops and awareness sessions on the issue with various stakeholders - working women, employers, students, members of the complaints committees, and trade unions - we have come to understand just how poor are the awareness levels with regard to sexual harassment. This poor awareness is exacerbated by the fact that the vast majority of women find it difficult to acknowledge the existence of sexual harassment and harder still to admit that they have been victims of it. When nobody talks, nobody listens and nobody knows. While persistent and commendable efforts have been made to raise awareness levels through various means, we believe there is a strong need for a publication that brings together the important information with regard to sexual harassment at the workplace and analyses it from the perspective of each stakeholder.

This publication attempts to do just that. The book

has chapters that cater to different groups, analysis that covers basic and complex issues and provide a holistic view of the meaning and importance of combating sexual harassment in contemporary India. It is an essential guide for anyone with an interest in the issue.

Prachi Patwardhan and Renuka Mukadam

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Abbreviations

ICHRL : India Centre for Human Rights and Law
CASH : Campaign against Sexual Harassment
NGO : Non-Government Organisation
CEDAW : Convention on Elimination of all form of Discrimination Against Women
NCW : National Commission for Women
CC : Complaints Committee
UN : United Nations
ICESC : International Convention on Economic Social and Cultural Rights

1

Introduction and Guide to the Manual

Introduction and Guide to the Manual

"Sexual harassment is sexual pressure that one is not in a position to refuse, it is deliberate, or repeated sexual behavior that is unwelcome. It is about male privilege and dominance."[1]

The above quote, taken from Sexual Harassment: Women Speak Out, a compilation of true stories from a largely American group of women, captures the essence of sexual harassment - *sexual harassment is unwelcome*. Sexual harassment is a harsh reality faced by women across the world. Through most of history it has gone unchallenged and unpublicised because for centuries, the perpetrators of the harassment were the ones defining moral rectitude. To them the behaviour was normal and acceptable; it was only to the voiceless victims that the harassment was painful, wrong, and, simply stated, unwelcome.

However, over the past decade and a half in India, the traditional (male) attitude, ignorant of the ills of sexual harassment, has begun to change. For the first time - due to the persistent efforts of commendable women - sexual harassment complaints are making headlines. The increasing regularity with which stories such as *Historian Suspended for Sexual Misconduct*[2] and *A-I Trainee Hostesses File Molestation Complaints*[3] appear in major newspapers indicates a growing willingness to shine the public spotlight on the sexual harassment issue. Outside the media, the campaign against sexual harassment is making progress in legal circles as well. The Supreme Court finally brought the issue of workplace sexual harassment into explicit legal discourse in 1997, defining and outlawing sexual harassment as a violation of human rights.

Despite these important gains, however, the vast majority of sexual harassment remains in the dark. Almost eighty seven years after the Supreme Court pronounced sexual harassment at the workplace to be a violation of the right to life and liberty, many women are still silently suffering at the hands of sexual violators rather than rising up to fight against them.

Studies indicate that 54% of working women in India have experienced some form of sexual harassment over the course of their careers.

This staggering percentage demonstrates the extent to which the number of victims speaking out is dwarfed by the number who feel unable to challenge their tormentors. For every woman who stands up to fight the injustice of sexual harassment at the workplace, hundreds of other women quietly accept their fate.

The perpetrators of these overwhelmingly numerous acts are not only causing undue suffering, they are also breaking the law. In 1997 the Supreme Court officially defined and outlawed sexual harassment and issued mandatory guidelines for the prevention and punishment of sexual harassment. These guidelines legally require employers to implement very specific measures to guard against and redress incidents of sexual harassment at the workplace.

Unfortunately, few institutions are fulfilling their obligations under the Supreme Court ruling. In many cases this is because the employers are simply unaware of their obligations. In other cases it is because employers can break the law, knowing that as long as sexual harassment victims in the organisation remain ignorant of the law, they (the employers) can get away with non-compliance. Still others fulfil their legal obligations in name only; even among those select organisations that have instituted the required "complaints committees," the complaints process is often nothing more than a token gesture from which women do not find the support and redress mechanisms they need.

The largest obstacle to successful implementation of the Supreme Court judgement on sexual harassment lies not in employers' ignorance or disinclination, but in a chronic lack of awareness on the part of women. This lack of awareness can be broadly categorised along two lines. First, the vast

Majority of women are unaware of sexual harassment as a pervasive cultural problem. In other words, these women do not recognise sexual harassment even when it is perpetrated against them. Second, most women are not aware of the recent Supreme Court ruling on sexual harassment. Therefore, even if they are able to recognise the harassment, they do not know how to fight for their rights.

Given the reticence on the part of employers to comply with the Supreme Court ruling, combined with the lack of awareness on the part of women, it is easy to see how the problem of sexual harassment remains so insidious eight years after the original decision. In an unpublished survey conducted by the India Centre for Human Rights and Law (ICHRL) of female legal practitioners in late 2003, we found that only 68% knew of the Supreme Court guidelines on sexual harassment. This is amongst *lawyers*, the group that should know the law better than anyone else.

In 2001 the prominent women's rights organisation Sakshi conducted a survey among 2,410 respondents in government and non-government sectors across India. The study revealed that only 23% of women were aware of the Supreme Court guidelines on the subject.

Meanwhile, a random survey by AssureConsulting.com among employees working in the IT industry revealed that less than 10% were familiar with the law or their company's sexual harassment policy.

As the studies noted above clearly demonstrate, one of the main stumbling blocks in the campaign against sexual harassment is awareness. Often employers do not know that they are obligated to implement the Supreme Court regulations. In cases in which the employer is aware, the employees and unions are unaware; thus, there is no pressure on the employer to meet the obligation. Before further progress in the campaign against sexual harassment can be made, it is of utmost importance that the people and groups leading the campaign first address this lack of awareness. With this handbook we hope to take a step forward in that regard; we aim both to inform women of their rights regarding sexual harassment at the workplace and to inform employers of their responsibilities to fight and protect against sexual harassment in the workplace.

Low awareness levels are not the only reason for the minimal success of the Supreme Court ruling in combating sexual harassment at the workplace. Even informed women must face the prevailing attitudes and stereotypes surrounding sexual harassment. These pervasive social norms make women reluctant to speak out against sexual harassment even when both they and their employers are aware of the law.

Sexual harassment is often dismissed as a non-issue or an innocuous mistake rather than a real violation. Part of the reason for this dismissal is that prevailing attitudes view men as dominant, particularly in the working world. Tied to this dominance is a climate of machismo, which has in turn created the widespread conception of the workplace as an exclusively male domain. Women who enter the workforce are seen as intruders straying outside of their natural territory. Many men resent female presence at the workplace and regard working women as immodest or excessively aggressive. To express their anger, to intimidate women into leaving the workforce, and to take advantage of the perceived "immodesty" of these women, certain men engage in various forms of sexual harassment against female colleagues and subordinates. Given the male-dominated nature of the workforce, these men know that they can get away with such behaviour without censure; indeed, before 1997 (and even since then in many organisations) they were usually correct. When a woman does complain, harassers retaliate quickly in an attempt to intimidate her into retracting the complaint or to punish her for issuing it in the first place.

Exacerbating this situation is the way that the notion of "honour" has been used to silence women. For many families in India, family "honour" is an important concept, often relying on the sexual purity of its women. Should any of the family women become involved in lurid activity, the honour of the whole family is severely compromised as a result. The woman is shamed to the point of being a poor marriage prospect or if she is already married, an undutiful wife. This attitude becomes a serious problem with regard to sexual harassment because women are disgraced for acts that they have no role in perpetrating. Along with the idea of "honour" comes the idea that women of good repute, those who dress and behave appropriately, will not call inappropriate attention to themselves and will therefore not find themselves on the receiving end of inappropriate advances. In other words, an

Honourable woman would never be harassed because she would never attract that kind of behaviour. The flip side of this is that if a woman is sexually harassed, she must have brought it on herself. Thus, as a woman, admitting to being the victim of sexual harassment can be extremely socially damaging.

Most women, therefore, continue to suffer in silence - either enduring the harassment or quitting their jobs when they cannot take it any longer. In extreme cases, some even end their lives.

In June 2000, it took the suicide of Sangeeta Sharma, an advocate in the Andhra Pradesh High Court, to highlight the fact that women lawyers have no recourse when it comes to sexual harassment at the workplace.

Unwilling to publicly reveal the names of her harassers because she feared harm for herself and her child, Sharma's suicide note contained allegations of sexual harassment by fellow lawyers and senior advocates.

The impact of the "honour" culture extends beyond a woman's individual decision not to speak out against sexual harassment. Employers too are influenced by society's perceptions. When a complaint of sexual harassment becomes public, the company at which the harassment occurred loses face. The view is that "good" companies employ neither the kind of women who "invite" such behaviour, nor the kind of men who partake in it. The potential for sexual harassment allegations to tarnish a company's honour, rather than inspiring vigorous pursuit of harassment complaints, often results in a cover-up designed to keep the case from the public eye at all costs.

The major obstacles preventing successful elimination of sexual harassment from the workplace can be largely attributed to sexist myth and ignorance. The importance of dispelling these myths and enlightening the ignorant is only emphasised by Sharma's suicide. Through this handbook we hope to make positive strides forward in the campaign against sexual harassment, to help many more like Sharma who continue to suffer today.

The Structure of the Handbook and How to Use It

This handbook is structured into six main chapters after this introduction. While the chapters build on each other such that Chapter 3 builds on information and discussion from Chapter 2 and so on, each chapter is designed, as far as possible, to be a standalone piece - one that can be read and learned from entirely on its own. We have organised the handbook in this way to allow individuals and groups to skip ahead to the information most relevant to them. We have tried to as much as possible make it a hands on manual and as user friendly as possible.

Chapter 2 outlines the legal context of sexual harassment in India. We begin by discussing the Constitution, briefly analysing those clauses that directly relate to the issue of sexual harassment. We then review the relevant international treaties to which India is a party in order to provide an international context to recent developments within India. We proceed with a detailed discussion of recent, breakthrough court decisions: the 1997 landmark Supreme Court ruling, *Vishaka and Others vs. the State of Rajasthan* and the 1999 *Apparel Export Promotion Council vs. A. K. Chopra*. We then enter a discussion of the National Commission for Women (NCW) and the all-important Bill it is drafting to create legislation specific to sexual harassment at the workplace. We conclude with a brief analysis of the ongoing *Medha Kotwal* Supreme Court case, which may strongly influence the aforementioned NCW Bill.

Chapter 3 is for women. This chapter serves as a "how-to" guide. Here, we aim to give women a clear understanding of exactly *what* harassment is. We clearly define the term, provide illustrative examples, and thoroughly explain *how* to determine if it has happened. Finally, we describe prudent "next steps," offering a variety of options and a range of advice.

Chapter 4 is for employers. This again is written in a "how-to" style. We delineate for employers exactly what their obligations and responsibilities are under *Vishaka*, providing clear guidelines as to *what* they should do and *how* they should behave in order to meet their obligations. A large part of this chapter is dedicated to complaints committees; we explain exactly what stipulations the Supreme Court ruling

requires and how an effective committee should function.

Chapter 5 is for women's rights activists and NGOs working on women's issues. We give advice on how these individuals and organisations should adapt to the recent emergence of the sexual harassment issue. We describe the support mechanisms NGOs should provide for victims, perhaps the most important being the generation of awareness through teach-ins and training sessions. This chapter also includes a short discussion on the role of trade unions in combating sexual harassment in the workplace.

Chapter 6 takes the reader through six real cases of sexual harassment. Each of these cases were brought to the ICHRL's Campaign Against Sexual Harassment (CASH) by a victim who was struggling to obtain justice. These cases were specifically chosen to convey a range of situations and work contexts and thereby give an indication of the variety of forms that sexual harassment may take. We hope to demonstrate the challenges associated with raising a sexual harassment complaint and to offer women valuable advice on how to avoid or overcome these challenges. This chapter is also useful for employers because it demonstrates the importance of taking their responsibilities seriously, implementing them in spirit, not just in name.

Chapter 7 functions both as a conclusion and a look to the future. We synthesise the information in the preceding chapters to give you our concluding remarks and analyse where the campaign against sexual harassment goes from here. This is particularly important for organisations and individuals working on women's rights. We pay special attention to the draft Bill being passed from the NCW to the government, scrutinising its current flaws and indicating what should be done to improve it.

Finally, along with the main text we have included five appendices. These represent a compilation of the most important documents relating to sexual harassment at the workplace in India. These are listed in the Table of Contents under self-explanatory headings and are referred to throughout the handbook so we will not repeat that list here. However, it is worth pointing out that the appendices are an important part of the handbook. As stated above, this handbook is designed to be a user's manual. As such it is important that it caters to the needs of the user. The appendices can be extremely useful to women, to employers

and to NGOs. Women may find Appendix 5 particularly useful as it lists, by state, the contact information of NGOs working on women's issues.

As a brief aside - throughout this introduction, and indeed throughout the rest of the manual, we address sexual harassment as a problem generated only by men and confronted only by women. We do this for two reasons. First, sexual harassment legal provisions are not gender neutral; they are written with the express purpose of adressing the problems of women. Second, overwhelming societal biases and traditional power structures create a situation in which the majority of sexual harassment comes from men targeting women. Though we recognise that sexual harassment may occur in other forms (for example, same sex harassment), we focus on the dominant and legally-recognised form, (namely male on female harassment).

As a second aside - while throughout this handbook we recommend, for many reasons and in many circumstances, that women fighting sexual harassment contact NGOs working on women's issues for assistance, it is important to recognise that there is a limit to what such NGOs can achieve. We do not want to give the impression that these NGOs can or will solve all sexual harassment problems. However, we do believe that, given the current lack of awareness about sexual harassment and the state of uncertainty about the future of sexual harassment law, NGOs provide a valuable role in supporting and assisting women.

To fulfill this role, NGOs and activists must understand sexual harassment in the Indian context. The appendices include the most important court judgements as well as the most recent draft bills against sexual harassment. A thorough knowledge of these documents is essential to any responsible worker in the women's rights movement.

2

The Background and Legal Context of Sexual Harassment in India

The Background and Legal Context of Sexual Harassment in India

Recent Supreme Court rulings have brought the long marginalised subject of sexual harassment to the forefront of legal discourse in India. The 1997 landmark case, *Vishaka and Others vs. the State of Rajasthan* (hereafter referred to simply as *Vishaka*), laid the legal foundation for preventative measures to be implemented against sexual harassment. Similar such rulings following *Vishaka* have bolstered the original judgment and have paved the way towards successful reduction of sexual harassment at the workplace.

The progress achieved through these recent rulings in securing fundamental rights is unprecedented in the Indian women's rights movement. It is important to point out, however, that the courts are bound by the legal context in which they operate. Thus, while the Supreme Court rulings represented remarkable forward strides for working women, they relied in large part on provisions articulated in existing legal documents. Many constitutional articles dating to 1950 were essential to the current movement against sexual harassment as they provided founding legislation upon which the latest Supreme Court rulings were built. Further support was provided in various international conventions to which India is a party. Finally, existing Labour Law and Service Law offered additional grounds from which the Supreme Court decision emerged.

The main provision in Labour Law that relates to sexual harassment at the workplace is the Industrial Disputes Act of 1947, which allows disputes to be raised in the case of "unfair labour practices".[v] Service Law also incorporates various aspects of sexual harassment as it "covers public employment, including government employees, employees

of statutory corporations, employees of public sector undertakings, and employees of banks and educational institutions. Aspects of public employment like recruitment process, conditions and terms of service, pay scales and parity, equal pay for equal work, seniority, promotions, misconducts, suspension, etc. are covered by Service Law[iii]. We will not discuss Labour Law or Service Law in detail in this handbook because they are adequately covered in Law Relating to Sexual Harassment at the Workplace, published by the Women's Rights Initiative of the Lawyers Collective.

The following chapter proceeds in two stages. First, we examine the foundations of sexual harassment law. This includes an analysis of both relevant constitutional excerpts as well as binding international agreements. Second, we turn to the more contemporary advances in the case against sexual harassment, where we focus on the landmark *Vishaka* judgment, but also include a discussion of subsequent court rulings and government action executed in the pioneering spirit of *Vishaka.*

The Constitution of India

At the most fundamental legal level, citizens of India are protected and guided by the Constitution. Although the issue of sexual harassment has only recently entered the country's legal consciousness through landmark cases such as *Vishaka* and *Apparel Export Promotion Council v A K Chopra* (hereafter referred to as *Apparel*), constitutional provisions protecting victims from sexual harassment have existed since independence. Indeed, the recent Supreme Court ruling on *Vishaka* explicitly draws attention to Articles 14, 19, and 21 as the constitutional articles that sexual harassment most clearly violates.

To provide a detailed explanation of the constitutional provisions that comprise the foundation for newer legal protections against sexual harassment, we highlight the most important articles in the discussion below

Article 14-Equality Before Law

The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

In the Vishaka judgement, the Supreme Court seized on this article as an example of the constitutional requirement for gender equality. This provision for equality means that women have a right to work with equal dignity and, thus, be protected from sexual harassment. Explicit guidelines regarding preservation of equality at the workplace have been laid down in *Vishaka*.

> Article 15-Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex, or Place of Birth
>
> (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
>
> (3) Nothing in this article shall prevent the state from making any special provision for women and children.

As sexual harassment uses the sex of an individual as a central part of the harassment, it is clearly discrimination based on sex, and therefore a violation of Article 15.

> Article 16-Equality of Opportunity in Matters of Public Employment
>
> (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
>
> (2) No citizen shall, on grounds only of religion, race, sex, caste, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

Given the evolving legal status of sexual harassment, as a working woman it is essential to know one's rights. Article 16 protects government workers from sexual harassment at the workplace. Non-government workers are protected by the *Vishaka* ruling (see later in this chapter) as well as by the other Constitutional Articles listed here, but not by Article 16. As one fights for one's rights it is important to understand which laws apply to which circumstances.

> Article 19-Protection of Certain Rights Regarding Freedom of Speech Etc
>
> (1) All citizens have the right
>
> (a) to (f) . . .

(g)To practice any profession, or to carry on any occupation, trade or business.

This article, affords "*all citizens*" equal opportunity to participate in the workforce. This provision is particularly important given the climate of machismo that often exists in places of employment. Despite the great numbers of women entering the workforce, the working world is still viewed by many as a man's domain. Motivated by traditional male-dominant attitudes, some chauvinist men try to intimidate women out of the workplace through sexual harassment. Such hostility is often dismissed as an inevitable part of being a working woman and, therefore, not something worthy of complaint. However, such behaviour clearly and directly violates Article 19 (1)(g) above.

Article 21-Protection of Life and Personal Liberty

No person shall be deprived of his life or personal liberty except according to procedure established by law.

According to Article 21, all persons are entitled to "life and personal liberty" at all times and in all circumstances (other than certain, legal exceptions).When considered in conjunction with Article 19(1)(g), which entities all persons to equal opportunity at the workplace, it stands that no persons "shall be deprived" of life or liberty at the workplace. Furthermore, the Supreme Court has interpreted "right to life" to mean, "right to live with human dignity." Sexual harassment is an obvious violation of human dignity.

Article 39-Certain Principles Be Followed By The State

The state shall, in particular, direct its policy towards securing-

(a) That the citizens, men and women equally, have the right to an adequate means to livelihood;

(b) and (c) . . .

(d) That there is equal pay for equal work;

(e) and (f) .

. .

Actions such as intimidation of women through sexual harassment with the (explicit or implicit) intention of driving them from the workplace can be interpreted to violate

Provision (a) of Article 39 above. Also, it can be argued that the state is required under provision (d) to protect individuals from situations in which they must choose between submitting to sexual demands and accepting lower pay (or dismissal) as punishment for rejecting those demands.

Article 42-Provisions for Just and Humane Conditions of Work and Maternity Relief

The state shall make provisions for securing just and humane conditions of work and for maternity relief.

Sexual harassment is neither just nor humane. This article, therefore, lays the foundation for future measures to make explicit legal provisions against sexual harassment at the workplace.

Article 42 further protects women's right to maternity leave. This makes it clear that attempts to intimidate a woman out of claiming maternity leave are illegal. Moreover it makes it clear that there is no legal basis for the traditional misogynist claim that pregnancy interferes with work thus making women unsuitable for the workplace

Article 51A- Fundamental Duties

It shall be the duty of every citizen of India-

(a) to (d) ...

(e) To promote harmony and the spirit of common brotherhood.

Sexual harassment promotes disharmony and shows wanton disregard for the spirit of common brotherhood (or sisterhood). Any citizen perpetrating sexual harassment, therefore, stands in violation of this article.

As can be seen from this constitutional analysis, sexual harassment violates the Constitution on several counts. The above articles set the stage for the Supreme Court rulings that have forced India to publicly confront the problem of sexual harassment. Without these constitutional provisions, the recent progress would not have been made, and the promise of imminent government legislation would be dimmer if existent at all.

International Obligations

Beyond the Government of India's constitutional obligations are its obligations to the international treaties it has signed and ratified. Of these, the most important for our purposes is the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW).[ix] Thus, attention to CEDAW will consume the bulk of the ensuing discussion.

CEDAW was adopted by the UN General Assembly in 1979, and can be seen as something akin to an international bill of women's rights. The UN describes it thus, "Consisting of a preamble and 30 articles, it defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination."[x] The Government of India signed the Convention in September 1979, finally ratifying this decision on July 9, 1993.

CEDAW defines discrimination against women as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."[xi]

Through their commitment to CEDAW, signatory nations are obliged to implement a series of measures designed to eliminate discrimination against women, including commitments:

- To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

- To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

- To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination

· To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

· To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise;

· To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

· To repeal all national penal provisions which constitute discrimination against women."

CEDAW aims to provide the basis for achieving equality between the sexes by ensuring women equal opportunities across the social spectrum. It explicitly recognises the danger posed by sexual harassment, stating as part of its recommendation, "Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment at the workplace."[xiii]

The obligations of the signatory nations, including India, are very clear. "Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations."[xxiv]

It is precisely the existence of these obligations that opened the door for the Supreme Court to develop its guidelines for the prevention of sexual harassment at the workplace. Despite having signed the treaty in 1979, the government had failed to implement many of the requirements. However, upon its ratification in 1993, CEDAW changed from a mere guideline to a legally binding document. Thus, the Supreme Court was able to draw on both CEDAW and the Constitution as part of the legal framework it used as the basis for the *Vishaka* judgment.

It should be noted that the 1966 International

Covenant on Economic, Social and Cultural Rights (ICESCR) and the 1995 Fourth World Conference on Women, Beijing Declaration both endowed the government with further international obligations regarding the advancement of women's rights. While CEDAW was the most significant international treaty to setting the context for the 1997 Supreme Court *Vishaka* ruling, the ICESCR and the Beijing Declaration also played a part in framing that decision.

We will now turn to *Vishaka* and other Supreme Court rulings. However before we do, we want to briefly address one question that may have arisen from the discussion so far. Having read our analysis of the constitutional and international context above, one may ask, "If international obligations and constitutional law both prohibit sexual harassment, then what is the need for these Supreme Court rulings?"

First, let us discuss the international obligations. While legally binding, these treaties simply set out guidelines, requiring that domestic governments implement laws that adhere to those guidelines. The guidelines are not laws in and of themselves; they are requirements to pass laws. Such laws had not been passed in India despite ratification of the treaties. The result was that there was a legal obligation but no laws. Hence, women were not protected directly by the treaties, but the Supreme Court had the power to make rulings based on those treaties.

Second, while the constitutional articles do technically combine to protect victims of sexual harassment, they have not been effective in doing so. This is for several reasons. Most importantly, they do not offer specific guidelines on how women should be protected. They also fail to address workplace sexual harassment explicitly. Finally, they leave prosecution through the courts as the only recourse for women who have been harassed. Given that sexual harassment victims often feel shame, that evidence is often difficult to gather, and that cultural biases often blame victims for the harassment, this recourse has not proven sufficient.

Vishaka and Others vs. the State of Rajasthan

As can be seen from the discussion so far, sexual harassment is clearly a constitutional violation on several

Counts. Furthermore, the act of sexual harassment is in direct breach of international treaties to which India is a signatory nation. These are critically important legal facts as they set the stage for the Supreme Court rulings that have compelled India to confront the problem of sexual harassment at the workplace.

The 1997 Supreme Court ruling in *Vishaka and Others vs. the State of Rajasthan* represented a landmark legal decision and an unprecedented victory for the women's movement in India. This judgment, for the first time, defined sexual harassment in an official, legal context, and outlined specific, mandatory provisions to ensure the health and safety of women at the workplace.

As provided for in Article 141 of the Constitution, the *Vishaka* judgment is to be treated as ***the law of the land*** until such time as legislation on the issue is passed.

The events leading up to the *Vishaka* case proceeded in the following manner. In 1992, Bhanwari Devi, a village-level development worker, or sathin, participated in a campaign against child marriage. Her efforts against the customary local practices provoked anger from five upper-caste men, the traditional power brokers in the village. To discourage her from her mission, these men intimidated Bhanwari Devi through repeated sexual harassment. In response, Bhanwari filed several complaints with the local authorities. However, her attempts to procure justice were thwarted by local law enforcement officials who were sympathetic to the five men. Despite the adversity she faced, Bhanwari Devi continued her campaign and attempted to intervene in an upper-caste child marriage. As punishment for this "insubordination" the same five men gang-raped her.

In some ways Bhanwari's experience was a classic example of sexual harassment - the abuse she suffered was of a sexual nature and her harassers intended to interfere with her job performance. However, in other ways it broke new ground in understanding the issue. Bhanwari worked "in the field" and in that sense had no clearly defined "workplace". This is a common situation for working women and it was crucial that any ruling on sexual harassment at the workplace not define "workplace" too narrowly.

Bhanwari took her case to the Sessions Court of

Rajasthan, and in 1996 the Court agreed to hear her case. After a controversial trial, the five men were acquitted of all but a few minor charges. Bhanwari has since appealed to the Supreme Court, but this appeal remains unheard today. However, in response to the outrageous attack on Bhanwari and the lack of subsequent action, a pool of individuals and organisations, led by the women's NGO Vishaka, filed a writ in the Supreme Court. Their grievance was that while women were allowed to enter the workforce, they were uniquely vulnerable to sexual harassment and were left unprotected by a law or a specific regulation. Vishaka and other sympathetic NGOs and activists approached the Supreme Court arguing for the enforcement and protection of the fundamental rights of working women as guaranteed by the Constitution and international treaties such as CEDAW.

The Supreme Court ruled in favour of the Vishaka-led consortium on August 13, 1997. Importantly, the Court ruled that the issue of sexual harassment at the workplace is a human rights issue and not merely a criminal issue. That the Supreme Court chose to invoke human rights law (Human Rights Act, 1993) as a basis for the *Vishaka* judgment holds significance for the issue of sexual harassment.

Previously, criminal law proceedings were the only tools available to women suffering from sexual harassment. Through this framework, instances of sexual harassment were viewed as *crimes* against *individuals*.

The new Supreme Court decision, on the other hand, views sexual harassment through the human rights lens; that is, as a form of *systematic discrimination* against women *as a whole*. The Court went on to decide that given its status as a human rights violation rather than a crime, the issue should be dealt with at the workplace rather than in courts. This change in perspective shifted the focus of sexual harassment from *convicting the perpetrator* to *protecting the victim*.

One of the most important features of the *Vishaka* judgment is that it places the onus of responsibility for protection against sexual harassment at the workplace on the ***employer***. It clearly states that it "shall be the duty of the employer" to take all the necessary steps to prevent and deter sexual harassment at the workplace and, in the event that

harassment occurs, to make provisions to resolve, settle or prosecute the violation. The Supreme Court's novel approach to sexual harassment, not as a set of discrete crimes against individuals, but instead as a systematic human rights violation requiring a societal change in attitudes, is at the crux of the decision to impose this responsibility on employers. Failure on the part of employers to comply with the mandatory creation of organisational mechanisms to counter sexual harassment constitutes a ***contempt of court***.

It is important to note here that in bequeathing employers with the responsibility of *protecting against* sexual harassment, *Vishaka* emphasises the importance of *prevention* in addressing issues of sexual harassment. Rather than creating the provisions to prosecute a crime that has already been committed, *Vishaka* seeks to stop that crime ***before it happens***, by insisting on a safe working environment and promoting awareness of sexual harassment.

In issuing its ruling, the Supreme Court set out legally binding guidelines for preventing and redressing sexual harassment at the workplace. These guidelines are known as the "*Vishaka* guidelines."

The *Vishaka* guidelines explicitly define sexual harassment as "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."

The guidelines thus interpret sexual harassment as that behaviour which constitutes "*unwelcome or uninvited* attention, or the imposition of behaviour with sexual overtones on women co-workers."[xv] The words we have italicised in this quotation are important because they state, in unambiguous terms, that ***sexual harassment is determined not by the perpetrator but by the victim***. Often, due to social context and conditioning, invasive behaviour, such as physical touch or a "minor" sexual advance, is viewed as "normal" male conduct and any woman that takes offence to it is seen to be overreacting.

With much credit due to the global women's rights movement, this perception is slowly starting to change. It is becoming clear that such invasive behaviour falls into the category of sexual violation, and that it is only exacerbated by the unequal power dynamics that have for so long defined the work environment. However, many workplaces have not been receptive to *Vishaka* and remain hostile to women. It is important to know that the creation or maintenance of a hostile work environment may also be categorised as sexual harassment.

In other words, there are two kinds of sexual harassment. One is the harassment perpetrated by one individual or group of individuals on another. The second kind is organisational harassment. This second kind of harassment includes workplaces that do not make adequate provisions for female workers, that circulate pornographic emails, etc. The point here is that workplaces that are hostile to women on an institutional level, like persons who are hostile to women on an individual level, are examples of sexual harassment. It is important for women to understand that any undesirable conduct by *individuals or organisations* that falls into the categories listed above is a punishable offence.

Of the many requirements that the *Vishaka* ruling places on employers, the most important is the establishment of a complaints committee. All places of employment are required by law to set up a body to address/redress any complaint made by a victim of sexual harassment. That committee is to be headed by a woman, with women constituting greater than fifty percent of committee members. In addition, the committee is to involve a third party member knowledgeable on sexual harassment, such as an NGO representative, to ensure the influence of senior employees has no bearing on decisions made by the committee. The committee must act in an efficient and timely manner, must maintain confidentiality of all matters presented before it, and must deliver an annual report of activities to the government. Aside from the complaints committee, additional action required of employers is outlined in the "Action Points for Employers for Prevention of Sexual Harassment" section in Chapter 4 of this handbook (page 46).

The *Vishaka* guidelines embody landmark government action regarding - and revolutionary ways of conceptualising - sexual harassment at the workplace. This

decision has at once legally defined sexual harassment in its own right, brought attention to women in the informal work sector, reclassified sexual harassment as systematic discrimination against women (as opposed to crimes committed by and against individuals), and laid out obligatory action on the part of employers to prevent sexual harassment at the workplace.

However, almost eight years after this breakthrough Supreme Court judgment was first published, the implementation of *Vishaka* is not living up to the ideals behind it. The entrenched social myths surrounding male/female interaction belie the spirit of *Vishaka*. For example, many employers fear "putting ideas into people's heads", and use this "fear" as a justification to not raise the issue of sexual harassment at the workplace. Ignorance also plays a large part in unsatisfactory implementation levels. Employers are simply unaware of the profound, adverse impact sexual harassment has on employee morale, and, in turn, on business productivity. Thus, they do not take seriously the Supreme Court requirements to set up complaints committees and properly respond to sexual harassment violations.

Employers aside, several factors also deter sexually harassed women from filing complaints with a committee (in the case that such a committee exists in her place of work). Again, based on traditional social norms, submitted complaints are often dismissed as false accusations from a woman of "questionable moral character", or as vindictive attempts to exact revenge on an innocent male colleague. Thus, many women fear for their reputation and social standing if they admit to having been sexually harassed. Many more fear for their job security if the accused party has the power to demote, transfer, or even fire them.

Given the importance of the *Vishaka* guidelines for working women, and the extent to which their implementation is falling short of their honourable goals, Chapters 3, 4, and 5 of this handbook discuss in detail the practical measures that can be taken, both by women and related parties (such as employers, NGOs, trade unions, lawyers, etc), to effectively reduce incidence of sexual harassment at the workplace.

What is the Scope of *Vishaka*?

One of the most common questions with regard to the *Vishaka* guidelines is the scope of its jurisdiction. The *Vishaka* guidelines apply to all workers, whether in the organised or unorganised work sector, whether paid or voluntary employees. In other words, if you work, you are covered by *Vishaka*, regardless of the specific nature of your employment (For further clarification of "workplace" and the details of how the guidelines protect against sexual harassment at the workplace, refer to Chapter 3 page 34 and Chapter 4 of this handbook).

However, there are concerns as to the feasibility of enforcing the *Vishaka* guidelines in the unorganised sector and in small businesses or organisations. For example, an organisation that employs five individuals will face logistical obstacles in setting up a complaints committee, let alone one that is comprised of 50% women and chaired by a woman (see section on complaints committee, Chapter 4, page 51). Furthermore, a woman selling jewlery on a local Mumbai train has no obvious person to whom she can report a harassment violation. It is our hope that the imminent government legislation on sexual harassment at the workplace will address these issues, and indeed we are pressuring legislators to include the appropriate provisions.

Also concerning is that while the "workplace" is relatively simply defined when thinking in terms of employers and employees, the definition becomes far murkier when "service-takers" and third parties enter the equation. For example, students at a university fall neither into the employer nor the employee categories of the university. The same is true for a patient in a hospital. Yet, sexual harassment of a student or a patient by a professor or a doctor when on university or hospital premises should constitute sexual harassment at the workplace. The imminent sexual harassment legislation referred to above has yet to fully clarify the role of service-takers and third parties in terms of sexual harassment at the workplace. (For more on the future of sexual harassment legislation, see the concluding chapter, Chapter 7 of this handbook).

Until such legislation is passed, the situation for women working for small organisations or in the unorganised

sector - as employees, service takers or third parties - will remain a challenging one. Therefore, we recommend that women who fall into these groups contact a women's rights activist or an NGO working on women's issues immediately upon experiencing sexual harassment at the workplace to determine the best course of action. See Appendix 5 for a list of contact information for such NGOs throughout India.

Apparel Export Promotion Council vs A K Chopra

The *Vishaka* judgment, while historic, was not the Supreme Court's final word on sexual harassment at the workplace. Since *Vishaka*, judicial rulings such as that given in the *Apparel* case have served to clarify aspects of the original sexual harassment ruling.

In 1999, in *Apparel Export Promotion Council vs. A K Chopra*, the Supreme Court again passed judgment on sexual harassment at the workplace. In this case, the accused was removed from his position as an employee of the Apparel Export Promotion Council on charges that he attempted to molest a junior employee. The accused subsequently filed a petition with the high court to contest his removal from office. The high court allowed his petition on the grounds that because no physical contact was established between him and the victim, his attempt at molestation did not amount to sexual harassment. The victim appealed to the Supreme Court, which maintained the following position:

"Sexual harassment is a form of sex discrimination projected through *direct or implied* unwelcome sexual advances, requests for sexual favours, and other *verbal or physical* conduct of a sexual nature" (emphasis added).

In other words, the Court held that the dismissal of the accused was justified even though he had only tried to molest the accuser and had not actually made physical contact with her.

Furthermore, given that the woman in this case was a junior employee at Apparel, the Court's ruling reinforced that sexual harassment is aggravated when the act "may affect [the victim's] employment, unreasonably interfere with her performance at work, and create an intimidating or hostile working environment for her".

Therefore, the Court held that the dismissal of the accused was further justified because he had used a position of power to sexually intimidate his female junior employee.

The *Apparel* judgment is important as it upholds *as law* that "each incident of sexual harassment at the workplace is incompatible with the dignity and honour of women and violates the fundamental rights to equality, life and liberty". It is additionally significant in that it explicitly states that the testimony of victims of sexual harassment is to be taken into account as credible evidence; i.e. accusations from the victim are to be taken as true unless inconsistent with other evidence. Finally, the judgment reinforced the obligation on Indian Courts to consider international treaties when adjudicating domestic cases. In particular, this decision relied on gender-sensitive norms found in CEDAW, ICESCR and the Beijing Declaration.

One of the important facets of the Supreme Court ruling on *Vishaka* is that it now stands as the law of the land until the Government passes additional legislation to take its place. The task of drafting this legislation has fallen on the National Commission for Women (NCW).

NCW and the Draft Bill

The NCW was set up as a statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Government of India). The role of this Commission is "to review the Constitutional and legal safeguards for women; recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women."[xvi]

Even before the *Vishaka* ruling, the NCW had already focused attention and resources on the issue of sexual harassment. After the ruling, its work turned more specifically to the drafting of a Bill for the prevention of sexual harassment at the workplace. The finalised draft Bill was to be forwarded to the Government with the goal of placing it before the Parliament.

While the *Vishaka* ruling was an important step forward in the campaign against sexual harassment, such a Bill was needed for several reasons. First, the *Vishaka* ruling

stipulated that the guidelines it handed down would be law until the legislature passed a Bill on the topic. In other words the authors of *Vishaka* specifically raised the issue of a forthcoming Bill. Second, the *Vishaka* ruling did not, and indeed could not, enter enough detail to cover all of the issues pertaining to sexual harassment at the workplace. For example, how can an informal employer who employs two people set up a complaints committee? While a ruling is necessarily short and pithy, a legislative Bill can go into much greater depth, covering all of the necessary concerns and providing a far more complete legal framework for the protection of women against sexual harassment. Finally, a Bill is necessary because *Vishaka* has been poorly implemented. This is partly because many employers believe that they can get away with ignoring a court ruling. Far fewer hold the same attitude to government-passed legislation.

In August 2001, the NCW set up a group of civil society activists and, in consultation with these experts and several NGOs working on women's issues, designed a first draft of the Bill. This draft was submitted to the Ministry of Human Resource Development, Department of Women and Child Development, which made amendments to the Bill and, in turn, invited suggestions from the public at large. The majority of NGOs working on women's issues found many flaws in the wording and the approach of the Bill and proposed several changes. With continued assistance from such NGOs, the NCW has been rewriting the proposed Bill in the four years since its initial attempt. The most recent draft was submitted to the government in September of 2004.

On September 19, 2004, The Hindu Business Line announced the following story:

"The National Commission for Women has submitted a draft Bill - The Sexual Harassment of Women at the Work place (Prevention and Redressal) Bill, 2004 - for the consideration of the Government. Organisations and individuals interested in this subject are invited to offer their comments on the draft Bill by the end of September 2004. This is in pursuance of the guidelines given by the Supreme Court in its judgment on August 13, 1997, in the *Vishaka* case, said an official release." [xvii]

The draft submitted in September 2004 can be found in Appendix 2 of this handbook. However, just one month

later, in October 2004, a number of organisations that work on sexual harassment issues met in Mumbai to discuss and suggest amendments to the most recent version of the Bill. Finally, as recently as March 2005, the individual activists and women's organisations including ICHRL have further commented and made changes to the Bill. We elaborate on the future of this Bill - essential as it is to the future of the campaign against sexual harassment at the workplace - in the concluding chapter of this manual, Chapter 7.

In addition to the draft Bill, in 1998 the NCW produced a Code of Conduct for the Workplace that was written to more clearly codify the requirements of the *Vishaka* judgment. The Code expands on the definition of sexual harassment laid out in *Vishaka* and clarifies the employer's responsibility in addressing incidence of sexual harassment at the workplace.

Medha Kotwal Lele & Others. vs. Union of India & Others

In the years after the *Vishaka* ruling, there has been significant ambiguity surrounding the exact implementation of *Vishaka* guidelines. Many organisations failed to set up the required complaints committees; in some cases, the *Vishaka* guidelines were so broad that workplaces were not certain of how they should proceed; and, the "scope" of *Vishaka* - which workplace relationships fall under its purview and which did not - were not made explicitly clear.

In response to the inadequacy of the original *Vishaka* judgment in clearly defining its guidelines and the resulting impediments to timely and ubiquitous implementation, social activist Medha Kotwal Lele, along with other individual women's rights activists, wrote a letter to the Supreme Court in 1999 that was converted into a writ petition in 2001. The letter arose from a case of sexual harassment at MS University Baroda.

Medha Kotwal's primary arguments made three important claims. She first asserted that the *Vishaka* guidelines were not being uniformly and extensively implemented throughout the country and specifically singled out government failures in implementation. Second, Ms. Kotwal declared the *Vishaka* guidelines to be too general and stressed the adoption of more specific measures. Finally, she

pointed out that *Vishaka* did not address all workplace relationships - those third parties and service-takers in particular (see page 22).

Following the conversion of Medha Kotwal's letter into a writ petition, the Supreme Court issued various interim orders addressing her claims. First, notices were presented to both state and central government bodies calling them to file affidavits stating the extent to which they had implemented the *Vishaka* guidelines. The affidavits revealed a sad state of affairs. The *Vishaka* guidelines were found to be wholly absent from most government offices. In those few bodies that had attempted implementation, most of the efforts were either in their nascent stages or were mere token gestures that did nothing more than acknowledge *Vishaka*. Only a handful of complaints committees had been set up around the country.

The Supreme Court order for affidavits, though it revealed a dismal picture with regard to *Vishaka* implementation, had positive effects. Since the order, there has been a flurry of activity amongst government bodies to establish complaints committees and act in the spirit of *Vishaka*. Though much still needs to be done, this is an important first step.

A second order issued by the Supreme Court was directed at various professional bodies that had not yet established complaints committees as per the *Vishaka* guidelines. This round of notices was sent to such organisations as the Bar Council of India, University Grants Commission, Chartered Accountant Association and Medical Council of India. The results of this order are still pending.

Finally, according to guidelines found in the Central Civil Services (Conduct) Rules of 1964, the Supreme Court passed an interim order on the 26th of April 2004 clarifying the role of complaints committees. Prior to the *Vishaka* guidelines, many organisations already had "inquiry committees" in place. These inquiry committees are tasked with investigating any and all complaints registered by employees; inquiry committee members are not, however, trained in the specific, and often delicate, task of handling sexual harassment complaints. With the introduction of a mandatory complaints committee, it was not clear how the new investigating bodies were to work in conjunction with the existing "inquiry committees," or if they were to do so at all.

One of Ms. Kotwal's primary points of contention with *Vishaka* was that many organisations did not bestow the complaints committee with the same powers as the existing inquiry committee; thus, victims in these organisations faced long delays in attaining justice. The complaints committee would complete its investigation, and hand in its report. Then, if the report was accepted by management, the inquiry committee - tasked with assigning punishments - would begin its investigation. There would often be a time lag between the two committees' investigations. This meant that cases became drawn out, repetitive affairs, benefiting the harasser through delaying his punishment and adding unnecessary and additional trauma to the experience of the victim.

Thus, this most recent Supreme Court order mandated that in matters of sexual harassment at the workplace, complaints committees (as they were defined and described in *Vishaka*) should replace "inquiry authorities."

In other words, the investigation and report of the complaints committee are to be treated as the final word in a sexual harassment case, and the process is not to be repeated by any other in-house "inquiry committee".

This Supreme Court order cleared up the ambiguities surrounding the relationship between complaints committees and inquiry committees and served to empower complaints committees through explicitly defining their powers during a sexual harassment investigation.

In addition, this order further stated, "The committee shall make an annual report to the government department of the complaints and action taken by them." This requirement was handed down in response to the claim that the *Vishaka* guidelines were not being properly enforced. By requiring the complaints committees to report to the government, the Supreme Court created a mechanism by which the effectiveness of *Vishaka* implementation could be monitored.

In the time since the issuance of the interim orders discussed above, the Medha Kotwal case has pressed on. In the last week of August 2004, during a hearing before the Supreme Court, the Solicitor General of India made a statement on behalf of the Central Government that it was "extremely serious" about getting a law passed on the subject

of sexual harassment at the workplace.

While the government has been working on such a Bill for quite a while now, the pressure garnered by the Medha Kotwal case is clearly creating some urgency.

The Medha Kotwal case has also provoked the Supreme Court into demanding that the Industrial Dispute Act be amended.

The proposed amendment will explicitly define sexual harassment as an "unfair labour practice" when sanctioned by management and as "misconduct" when perpetrated by an employee.

This change will further cement the legal protections against sexual harassment at the workplace.

As the *Medha Kotwal* case continues we expect more important developments to arise. We hope that this case can catalyse proper legislation on the issue of sexual harassment at the workplace and, ultimately, true implementation of the original *Vishaka* ruling.

Conclusion

The chapter above has provided the basic legal background on sexual harassment in India. The rest of this manual will focus on how concerned parties can and should operate within this legal context. That is, what a victim of sexual harassment can do, what an employer must do, and what a third party (i.e., individual activist or NGO working on women's issues) may do.

3

For Women

For Women

What is Sexual Harassment?

Sexual harassment is often regarded as a harmless or even benign act. Frequently cloaked in the seemingly innocuous term "eve-teasing", it is easy to forget that sexual harassment, like rape, molestation and domestic abuse, is a form of violence against women.[xviii] This male assertion of power over women carried out in the public sphere imposes upon women's *fundamental right* to safely occupy those public spaces and earn a living.

In reality, far from a "harmless" act, sexual harassment carries grave consequences for the victim. Sexual harassment causes emotional and physical stress that, over time, can lead to illness and hospitalisation. Symptoms of emotional trauma include anxiety, nervousness, depression, lack of confidence and low self-esteem. Symptoms of physical trauma include insomnia, headaches or migraines, nausea and ulcers.[xix] The depression can become so serious in some women that it can lead to self-inflicted harm and even suicide.

Unfortunately, so universal and widespread is this form of gender discrimination that most people, including victims, are quick to dismiss unwanted sexual advances as "normal" interaction between men and women. Equally prevalent is the attitude that women "of a good reputation" should be able to deflect any uninvited behaviour without creating unnecessary uproar over what is "natural" male behaviour. Should a woman be so bold as to protest against sexual harassment, these societal norms often distort legitimate complaints into "vindictive fantasies" or "wishful thinking" on the part of the victim.[xx]

In reality, sexual harassment is neither normal, acceptable behaviour, nor indicative of the disreputable character of the victim. It constitutes ***any unwanted behaviour of a sexual nature***, the specifics of which are outlined in detail in the *Vishaka* judgment (see Chapter 2 and Appendix 1). That the definition of sexual harassment relies on the victim's interpretation of the behaviour (wanted vs. unwanted) affirms that ***incidence of sexual harassment is determined by the victim alone***, and is not for others to (mis)construe.

Myth: Women enjoy "eve teasing" / sexual harassment
Fact: Women find "eve teasing"/sexual harassment a humiliating, painful and frightening experience.

Myth: Eve teasing is harmless flirtation. Women who object need to lighten up.
Fact: Behaviour that is unwelcome cannot be considered harmless, or funny. Sexual harassment is defined by its impact on the woman, rather than the intent of the perpetrator.

Myth: Only women who are provocatively dressed are sexually harassed. Decent women do not get sexually harassed.
Fact: This is a clichéd and dishonest shift of blame from the attacker to the victim. Women have a right to act, dress and move around freely without the threat of attack.

Myth: Women who say NO actually mean Yes.
Fact: This is a common myth used by men to justify sexual aggression.

Myth: Sexual harassment is not really an issue. It doesn't hurt anyone.
Fact: Persons subjected to sexual harassment experience a wide range of physical and psychological ailments. There are economic consequences for the victim and the organisation in which she works.

Myth: Sexual Harassment?! It's only natural male behaviour.
Fact: Men are not born knowing how to sexually harass others. It is a behaviour learned within the context of a sexist environment.

Myth: Women keep quiet, so they must like it
Fact: Women keep quiet in order to avoid the stigma

attached to being a victim of sexual harassment. Women are afraid that they will be accused of provoking it. They are afraid of being victimised, of being called liars, of being made subjects of gossip and of bringing dishonour onto their families.

Myth: If women go to places where they are not welcome, they should expect sexual harassment.
Fact: Discriminatory behaviour and abuse is unlawful. Women must have equal access to all work facilities.

Sexual harassment can take many forms and can occur in any circumstance.At the workplace, this discrimination can be broadly categorised under two headings: "Quid pro quo" and the creation of a hostile work environment.[xxi]

Quid pro quo is Latin for "this for that". It indicates a mutual exchange of something (money, goods, favours) between two parties. This form of sexual harassment will often be exploited by a woman's superior at the workplace-someone with control over her standing as an employee. The superior will ask for, or demand, sexual indulgences and will promise promotions, pay raises, and general job security in return. Should the victim choose not to consent to the deal, she may suffer job loss, demotion, or transfer.

While quid pro quo sexual harassment can be clearly and simply defined, the creation of a hostile work environment is more ambiguous. However, while less clear on paper, there is no ambiguity as to when it occurs because harassment is *defined by the victim*. So, included in this type of harassment is any behaviour, of a sexual nature, that causes the victim discomfort. Examples of such behaviour are outlined in the *Vishaka* definition of sexual harassment, mentioned first in Chapter 2 of this manual and reproduced below:

The *Vishaka* guidelines explicitly define sexual harassment as including "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 a sexual nature".

What is the Workplace?

It is important to understand that the Supreme Court has taken a broad interpretation of what constitutes "the workplace." It does not limit the workplace to a geographical location such as the organisation offices or premises. For the purposes of defining sexual harassment at the workplace, "workplace" means either in the context of workplace relationships or whilst fulfilling professional duties.

The first of these two facets of the workplace definition refers to workplace *relationships*.

This means that even if the harassment takes place outside working hours and outside the premises of the organisation, it is considered to be sexual harassment at the workplace.

A secretary who is harassed by her boss at an office party, or a woman harassed by a co-worker whilst catching a ride home in his car are both suffering sexual harassment at the workplace because the harassment takes place in the context of workplace relationships.

The second facet of the workplace definition refers to *professional duties*. This is crucial in protecting women in the informal sector or women whose work takes them outside of a specific company location. For example, a nurse visiting a private home to treat a patient is still within her workplace. If her accompanying doctor harasses her in a patient's private home, she is suffering sexual harassment at the workplace despite the fact that she is not on hospital premises.

For further clarification you may refer to Chapter 6 of this manual for concrete illustrations of real cases of sexual harassment that occurred both on and off official workplace premises.

Are you a Victim of Sexual Harassment

Vishaka and other Supreme Court rulings have clarified the definition of sexual harassment and assigned responsibility to employers, obliging them to take specific measures to prevent sexual harassment at the workplace. However, without the voices of the victims, these new measures are impotent. Ultimately, the campaign against sexual harassment relies on the courage of victims to speak out. However, before they speak out, victims of sexual harassment must recognise that the behaviour they have experienced is indeed sexual harassment and that they are indeed victims. Given the many myths surrounding the issue of sexual harassment, recognising one's status as a victim is not always easy.

Earlier, we mentioned two types of sexual harassment. Examples of quid pro quo sexual violations include:[xxii]

- Attempts to influence a co-worker or subordinate to
- submit to unwelcome sexual advances
- Either implicitly or explicitly making verbal or
- physical conduct of a sexual nature a condition of employment
- Either implicitly or explicitly tying evaluations,
- promotions, job transfers, and other benefits to verbal or physical conduct of a sexual nature
- Threatening professional retribution unless the
- victim takes part in verbal or physical conduct of a sexual nature

Examples of "hostile work environment" sexual violations include:[xxiii]

- Co-worker/supervisor/any other person or persons
- engaging in unwelcome and inappropriate sexually based behaviour, rendering the workplace atmosphere intimidating, hostile, or offensive
- Any form of sexual assault in which a person uses
- the body, or any object as an extension of the body, in relation to another person without the latter's consent or against the person's will
- Sexually coloured conversations, comments,
- remarks, jokes, letters, phone calls, SMS

messages, or e-mails;
- Vulgar gestures, the display of pornography, lurid
- stares, physical contact or molestation

In spite of the descriptions of particular types of intrusive behaviour described above, it may still prove difficult for a victimised person to definitively articulate that they have been sexually harassed. As noted above, sexual harassment often occurs in non-direct, or implicit, forms and may therefore be difficult to pinpoint. Remember: sexual harassment is any behaviour of a sexual nature that makes you feel uncomfortable. The illustrations below intend to clarify particular situations that amount to sexual harassment:[xxiv]

- Staring at someone's body rather than looking her in the eye while talking
- Passing remarks about someone's (either the person being spoken to or a third person's) physical appearance during a conversation
- Holding a handshake longer than needed
- Deliberately brushing against a co-worker (on the stairs, in a lift etc.)
- Placing comments with sexual overtones on worktables, display boards etc.
- Making derogatory comments about women at the workplace (either to women or to a third person)
  - I. "Women belong at home, not at work"
  - II. "This is a man's job"
- Any sexually coloured remarks/innuendos made by one group against another.
- One group pointing out individuals in another group, sniggering, and asking amongst themselves, "Which one do you want?"
- Scribbling graffiti and comments with sexual overtones (on the walls of staircases, lifts, toilets etc.)
- Insisting or sternly requesting accompaniment at events outside the workplace (dinners, movies, car rides home)
- Using sexually explicit language
- Any display of pornography in the workplace. This includes lewd SMS messages, emails or posters/leaflets displayed in the office
- Any member of the workplace making lewd jokes in the presence of others

While this is not an exhaustive list of sexually

unacceptable workplace conduct, these examples may help indicate that behaviour to which you can make a legitimate and justified objection (you may also refer to Chapter 6 for case study examples of sexual harassment). If you have experienced any form of gender-specific discrimination as outlined here, and the behaviour in question has made you feel uncomfortable or victimised, then you are a victim of sexual harassment. Again, we reiterate: the most basic test of whether a particular occurrence is one of sexual harassment is to ask yourself: Was this conduct of a sexual nature? Was it welcome or unwelcome? If the answers to these questions are "yes" and "unwelcome", you are facing a situation of sexual harassment. It is important to emphasise that such acts as are outlined above need not be repeated or persistent to constitute sexual harassment. One incident alone counts as a sexual harassment violation.

Sexual Harassment	Flirting
Feels bad	Feels good
One-sided	Reciprocal
Feels unattractive	Feels attractive
Is degrading	Is a compliment
Feels powerless	In control
Power-based	Equality
Negative touching	Positive touching
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Flattering
Sad/angry	Happy
Forced	Participatory
Negative self-esteem	Positive self-esteem

As a Victim of Sexual Harassment What Should You Do?

Sexual harassment, especially when allowed to persist over long periods, can take a serious physical and emotional toll on the victim. Therefore, it is imperative that any harassment is stopped as quickly as possible. The victim must play an important role in bringing about that end.

If you are a victim of sexual harassment, the following steps are prudent:

1. *Do not ignore* sexual harassment in the hope that it will go away. It won't.

2. *Say "NO" clearly.* The harassment will not stop unless challenged. Given the overriding biases of society with regard to sexual harassment, it is entirely possible that a harasser does not recognise his behaviour as harassing or offensive. Sometimes, a simple (but firm) "No" is all you need to stop the behaviour before it gets out of hand.

3. *Do not blame yourself.* Sexual harassment is violence committed against you. It is not your fault.

4. *If the harassment is violent* (whether verbally or physically), *remove yourself from the situation immediately and seek help* from the company security, the police, or an NGO working on women's issues

   If the violence includes physical assault, immediately get a medical examination and keep the medical report. You may need this information should you decide to pursue a legal case.

5. If the harassment is non-violent or less immediately threatening, *document the incident* (or incidents) *precisely*. When you seek redress for the situation, you will need names, dates, places, and details of what happened and what was said.

   If you are not able to keep your record in writing, or you work in the informal sector, relate the events to someone you can trust. Do not make notes concerning any aspect of harassment on your office computer. Keep notes on a personal computer or notebook that you keep at home and purchased with your own funds. Company property can be confiscated - If your evidence is on company computers or notepads you may lose access to it before being able to use it.

6. *Use informal methods* to stop the harassment

   a. *Challenge the person* harassing you and demand that he stop such behaviour.
   b. *Name or describe the behaviour* to the perpetrator. Describe the behaviour/incident, your feelings about the harassment, and demand that such behaviour stop at once.
   c. *Threaten to tell others* (or actually tell others: see point d.)
   d. *Create a witness to the behaviour.* Inform a trusted colleague and ensure that he/she is a witness to the harassment situation. This measure will prove helpful if you later choose to file a formal complaint.
   e. *Send a copy of the institution sexual harassment policy*(if an anti-sexual harassment policy is already formulated at your workplace) to the person who is making you uncomfortable, with appropriate sections underlined.
   f. *Write a letter to the perpetrator*. Writing a letter to the perpetrator often unnerves him enough to make him stop his offensive behaviour. A model letter should be in three parts
      i. Describe the offending incident(s) in a straightforward, factual manner.
      ii. Describe how the incident(s) made you feel; again, in a straightforward, factual manner.
      iii. Include a statement (or statements) to the effect of, "I want this behaviour to stop immediately."

This letter should be sent by registered post and a copy should be kept for future reference or use in any official complaints or legal proceedings.

7. If the informal methods do not stop the harassment, *file a formal complaint*. Generally, this is done within the institution/business. If no action is taken on your behalf, file charges with the appropriate government agency *or explore other available formal actions.*

   Find out if your workplace already has a complaints committee to deal with sexual harassment. If it does, report the behaviour to the appropriate person. If your workplace does not have

a policy in place to address sexual harassment, ensure that your employer formulates such a policy and carries out the required tasks to ensure that future victims of harassment in your workplace have the mechanism in place to address their situation. You may also demand your employer's help in filing a legal case.

If at all possible, *avoid delay in reporting* the sexual harassment to the appropriate authorities; however, also understand that just because you have not previously objected to certain behaviour does not preclude you from making a complaint about it now.

8. If the concerned authorities do not immediately solve your problem, or if you feel you have been targeted for intimidation because of your complaint, *do not rely exclusively on the company*. If you are a member of a labour union, talk to your union representative. If not, you may schedule a meeting with a local NGO that deals specifically with issues of sexual harassment at the workplace. With the help of an NGO representative, you may decide to pursue legal action against your harasser.

How to Address Potential Problems and Challenges

Sexual harassment is often obfuscated by myth. Many people refuse to see it as a real problem and prefer to blame the victim. Consequently, victims that do try to bring complaints and shine light on the problem are frequently met with hostility and are forced to overcome significant challenges.

Examples of such challenges include (but are not limited to) the following:

1. Other company members may close ranks with the harasser and try to intimidate the victim into withdrawing the complaint.
2. The company may launch an investigation of the victim, looking for an excuse to fire her and thus eliminate the problem of the complaint.
3. The company may select a complaints committee

that is not in accordance with *Vishaka* and is hostile to the victim.

4. The harasser may attempt to retaliate against the victim through further harassment or other sanctions. ***(See Chapter 6 for real accounts of sexual harassment at the workplace and the challenges these women faced)***

As a victim the first step to prepare yourself for such obstacles is to be aware of your rights and of the responsibilities of the various actors. These are all outlined in this handbook. If you know how the complaints committee should be structured and staffed (see Chapter 4) and you understand how the investigation should proceed, you are well placed to pre-empt any indiscretions before they get out of hand. The employers are unlikely to bend the *Vishaka* rules if they know you are aware of those rules because it dramatically reduces the probability that they can get away with it.

Assuming you have read through this manual and you are aware of your rights where sexual harassment is concerned, it is important to empower yourself with the ability to force your employer to behave appropriately. For this reason we recommended that you contact an individual activist or NGO working on women's issues as soon as possible after harassment begins, and certainly before you begin a formal complaints procedure. The benefits of doing so are manifold.

NGOs working on women's issues can give you a channel through which to exert pressure on the employer. If the complaints committee is not properly set up, or if the investigation does not conform to the *Vishaka* guidelines, an NGO can help you by bringing legitimate, knowledgeable, public pressure to bear on the employer, forcing the company to comply with its legal obligations. Such NGOs are far better equipped to threaten and launch a publicity campaign against a misbehaving employer than is the victim.

If public pressure is not enough, or is inappropriate to the situation, an NGO can help the victim to bring legal pressure. The NGO will have access to the appropriate resources to either connect you to a lawyer or to provide you with in-house legal guidance needed to mount a case against the employer. Remember that the *Vishaka* ruling is the law of

the land and any employer acting in defiance of the ruling is stands in contempt of court.

On a more personal level, an NGO can provide you with emotional and psychological support. Sexual harassment places a strenuous burden on the victim; this can be further exacerbated by the challenges and hostility you may encounter by raising a claim. NGOs can help you cope during this period and put you in touch with counsellors if necessary.

Finally, an NGO working on women's issues can provide advice and understanding. While this handbook is useful in understanding sexual harassment, an NGO can give a deeper analysis, more specific to the case at hand. Having experienced many cases in the past and understanding the legal context of such cases, the representatives of an NGO working on women's issues are best placed to advise you on how to proceed with your complaint or, if it goes to court, with your legal case.

For a list of organisations you can use as resources for support and advice as you decide to take a stand against sexual harassment in your workplace, refer to the comprehensive register in Appendix 5.

On a more informal level and beyond formal organisations, it is important to use friends and family for emotional support.

By bringing in these trusted "advisors" early in the process, you will feel less alone. Often, friends and colleagues of the harasser may close ranks in an effort to make the victim feel alone and vulnerable, hoping to intimidate the victim out of proceeding with the complaint.

Having the emotional support of family and friends can give you added strength in coping with such treatment. However, given the stereotypes and stigmas surrounding issues of sexual harassment, not all victims are able to turn to friends or family for support.

In these cases the rejection by friends or family may be one of the hardest parts of the entire ordeal. Under such circumstances it can be extremely useful to turn to an NGO, as described above.

The most important thing to remember as you begin a complaint against sexual harassment is that you are not alone. There are organisations and individuals willing to help you make it through. You have legal rights and your employer has legal responsibilities. With the right support you can assert those rights and hold the employer accountable to those responsibilities.

Conclusion

Though this chapter is dedicated specifically to women, a victim of sexual harassment needs to know much more than the information highlighted here. She needs to know what the law says, the specific obligations that are legally required of her employer, the services she can expect from an NGO that works on women's issues or an individual activist, how a real case of sexual harassment may transpire, and what the future holds for sexual harassment legislation in India. Therefore, though this chapter is titled "For Women," the reality is that this book is dedicated to women. We encourage women not to stop here, but to continue on through the rest of this book in its entirety.

4

For Employers

For Employers

Having discussed the *Vishaka* ruling and its implications for victims of sexual harassment, we now turn to the employers. While the ruling granted *rights* to the victims of sexual harassment, it created *obligations* and *responsibilities* for employers. In this chapter we explore how employers can do their part to implement the spirit of *Vishaka*. We pay special attention to the complaints committee later in the chapter.

The Role of Employers

The Supreme Court ruling on *Vishaka* makes it very clear that the burden of responsibility for preventing sexual harassment at the workplace falls on the employer. We will now clearly define the steps employers should take to ensure compliance with their legal obligations.

The official requirements on Employers as published in the *Vishaka* ruling are as follows:

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

A. Express prohibition of sexual harassment (as defined by the court) at the workplace should be published and circulated in various 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

against offenders.

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 ensure that there is no hostile environment towards women at the workplace and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

With respect to employees in the private sector, the Supreme Court has directed the employers to take action in accordance with the prohibition in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. The Act requires employers of all industrial establishments to formally define the conditions of employment on which the workmen are to be employed.

To translate the Supreme Court requirements into concrete measures, we have compiled a list of specific action points that will help an organisation meet its legal obligations regarding sexual harassment at the workplace.

Action Points for Employers to Prevent Sexual Harassment

1. Formulate and Publish a Sexual Harassment Policy

A. The policy must *explicitly and unequivocally* prohibit sexual harassment at the workplace.

B. The policy must *clearly define* sexual harassment as unwanted behaviour including:

   I. Physical contact and advances
   II. A demand/request for sexual favours
   III. Sexually coloured remarks
   IV. Display of pornographic material, distribution of pornographic emails or text messages
   V. Any other unwelcome physical / verbal / non-verbal conduct of a sexual nature

C. The policy must unambiguously state that *"unwanted" behaviour is defined by the victim.*

D. The policy must prescribe the institution of a

complaints committee in line with the *Vishaka* guidelines.

E. The policy must make the process of filing a sexual harassment complaint through the complaints committee clear, describing in step-by-step detail how a victim should proceed.

2. Generate Awareness of the Policy

A. Display the policy prominently in poster form throughout the workplace.

B. Circulate the policy to all employees in leaflet form with pay checks or via email.

C. If applicable, hold mandatory teach-ins to help employees to understand the meaning of the new policy.

D. Discuss sexual harassment at worker's meetings, employer-employee meetings, and at all other appropriate forums.

   I. Take careful note of the feelings of employees at these meetings and reflect their concerns in updates to the policy.

   II. These meetings should be held regularly and conducted in both mixed and single-sex environments.

3. Institute a Complaints Committee

A. The committee is to be chaired by a woman

B. A minimum of 50% of committee members must be women

C. The committee membership must include a third party - either an NGO representative or an independent individual active in the arena of women's rights and familiar with the issue of sexual harassment. This member must be entirely independent from the organisation as he/she is to provide the watchdog function.

D. For more details on the complaints committee see the section specifically devoted to it beginning on page 51.

4. Provide a Workplace that Is Both Desexualised and Friendly to Women

A. Provide counseling and other support services for victims of sexual harassment

B. Provide appropriate conditions with respect to work,

leisure, and hygiene.

I. Every employee should be given his/her own workspace;

II. No employee should be required to attend out-of-office events or informal gatherings. Such attendance should be on a strictly volunteer basis.

III. Office space should include separate toilets for men and women, or at least one toilet designated specifically for women.

C. Create a workplace environment that is not hostile to women.

I. Sexual Harassment aside, a workplace environment should be welcoming to women and should create an atmosphere of equality between all workers irrespective of gender.

D. Provide adequate protection to ensure that individuals filing complaints to the complaints committee are not victimised or ostracised. This means being particularly aware of the events happening in an individual's workspace, and the interactions she is having with co-workers when that individual is filing a complaint. Monitor the situation closely and be quick to clamp down on victimisation or intimidation of the complainant.

5. Protect Employees from Third-Party Harassers

A. If the source of the harassment is a third-party (for example a client of the organisation) this does not absolve the employer of the responsibility to protect the employee.

I. Necessary preventive action must be taken.

II. Protection of the employee must take priority - even if this means turning away the business of a client.

6. Institute Appropriate Disciplinary Measures

A. If the offence amounts to misconduct under the sexual harassment policy, appropriate disciplinary action must be initiated. Depending on such factors as the severity of the offence, the frequency of incidence, whether the offender is a repeat offender, etc. this may amount to dismissal, transfer, fine or warning. The complaints committee will determine the nature of the penalty. Management is obliged to

B. implement the committee decision.
The victims of sexual harassment must be given the option of seeking the transfer of the perpetrator or
C. their own transfer.
If an employee claims to have been the victim of sexual harassment that amounts to a criminal offence the employer must help her to lodge a complaint with the appropriate legal authority (head of the local police station or local magistrate) if she so desires.

The ruling on *Vishaka* made it abundantly clear that any woman who draws a regular salary, receives an honorarium or works in a voluntary capacity - in the government, private or unorganised sector - comes under the purview of the *Vishaka* guidelines. Therefore, these action points are appropriate to any place of work.

It is also important to understand what is meant by the "workplace." We re-iterate that the Supreme Court does not limit the workplace to a geographical location such as the organisation offices or premises. For the purposes of defining sexual harassment at the workplace, "workplace" means: either in the context of workplace relationships or whilst fulfilling professional duties. The employer is responsible for protecting women from harassment in such circumstances, and in cases where harassment does occur is responsible for implementing the *Vishaka* guidelines as stringently as if the offence took place inside the office. For examples of harassment outside the organisation premises but in the "workplace", see the section in Chapter 3, page 28 entitled "What is the Workplace?" as well as the Chapter 6 case studies.

Why Should Employers Follow *Vishaka*?

It is in the best interests of all employers to follow the *Vishaka* guidelines. The incentive to follow the guidelines should be based on self-interest as well as morality.

1. Failure to Implement the Guidelines is Illegal

A. Once the Supreme Court published its ruling on *Vishaka* it became the *Law of the Land*. Therefore, failure to abide by the ruling amounts to breaking the law.
B. Failure to abide by a Supreme Court ruling

constitutes a *Contempt of Court.*

2. Failure to Implement the Guidelines May be Fiscally Damaging

A. Sexual Harassment can have serious consequences.

It negatively impacts employee morale.

I. It can cause physical and emotional trauma so
II. great as to cause illness to the victim. Lower employee morale leads to lower productivity. Sick employees are less productive than healthy ones. Therefore, *Sexual Harassment Hurts Productivity.*

B. Legal cases can bring enormous costs to a defendant, especially if the defendant is convicted. Any employer failing to implement the *Vishaka* guidelines is breaking the law and therefore making itself vulnerable to legal action. *The Threat of High Legal Costs Is Real.*

C. Finally, a company found guilty of failing to protect its employees from sexual harassment will get negative press coverage. This may be accompanied by a drop in sales as consumers boycott the company's products. *Sexual Harassment Can Hurt Sales*. Negative press coverage may also diminish the pool of applicants seeking to work for the organisation. *Sexual Harassment Can Hurt Recruitment.*

Lower productivity, high legal costs, and lower sales all lead to reduced profits. Lower recruitment hurts productivity, thus exacerbating this cycle.

3. Failure to Implement the Guidelines Is Immoral and Inhumane

Sexual harassment strips the dignity of the victim - it is a crime against an individual and against a gender . This is why *Vishaka* concluded that sexual harassment is a human rights violation and not an ordinary criminal offence. Implementing the steps to protect employees is the right thing to do.

The bottom line is this: implementing the *Vishaka* guidelines is the moral choice, the legal obligation and the profit-maximising policy for any company.

The Complaints Committee

Along with the formulation of a sexual harassment policy, the institution of a complaints committee is the most important step that an organisation must take to comply with the *Vishaka* guidelines. So what is a complaints committee, how should it be set up and how should it operate?

Vishaka outlined that the composition of the complaints committee in any organisation should be as follows.

1. The complaints committee must be chaired by a woman.
2. At least 50% of the committee members must be women. *
3. There must be third party representation on the committee. This third party must be either an NGO representative active in the field of women's rights and expert in sexual harassment, or an independent individual who meets those criteria.

   I organisations that do not have a large enough female population to meet this quota, more third party representatives must be brought in to ensure the 50% threshonld is met.

Beyond these basic requirements, there is a degree of flexibility. Any given organisation should meet the broad *Vishaka* guidelines, but should also be aware that complaints committees must be appropriate to the organisation in which they exist. For example, in a major multi-national corporation it may make sense to employ a group of full-time staff specifically focusing on and addressing "employee issues," including sexual harassment. However, in a small, local business it is unreasonable to hire staff specifically for this purpose. Here, complaints committee members will likely be full-time staff members who are assigned to the complaints committee in addition to their core work. In an organisation with several offices around the country, it may be more feasible to institute a decentralised complaints committee, one for each branch of the company. Adapting the general complaints committee model to suit an organisation's specific needs is an important step through which employers can most effectively combat sexual harassment.

Membership of the Complaints Committee

To truly implement the spirit of *Vishaka*, organisations must ensure the neutrality and fairness of the complaints committee. If the management unilaterally appoints members of the committee, there is likely to be a feeling amongst the workers that the decisions that committee makes will prioritise being favourable to the management rather than being just. Regardless of whether that impression is true, it undermines the effectiveness of the committee. First, it means that managers are more likely to commit sexual harassment, believing that with a friendly complaints committee in place they will never be found "guilty." Second, victims of sexual harassment are less likely to make a complaint if they do not feel that the committee will support and, more importantly, protect them. Given that the deterrence of offenders and protection of victims are the two most important roles of the complaints committee, failures in these two areas would be catastrophic for the efficacy of a company's sexual harassment prevention policy.

To avoid such problems, where possible, committee members should be chosen through internal elections. All members in the organisation should be free to participate in these elections. This democratic process would solidify the legitimacy of the committee, thus helping victims to feel secure in filing a complaint against a fellow employee. Once elected, the names and office contact information of all committee members must be prominently displayed in a conspicuous area in each department of the organisation and should be circulated with the sexual harassment policy. That same policy should clearly outline the election process so that all employees understand exactly how a given member was chosen.

One member of the complaints committee is appointed rather than elected. This is the independent, or third party, representative. In selecting this member, the organisation must bear three things in mind. First, this member must have significant experience in women's issues in general and sexual harassment in particular. The role of this individual is twofold. He/she is to serve both as a watchdog, *and* as a guide to the rest of the committee through what will be uncharted territory for many of the members. Second, this member must have a secular philosophy to approaching the

issue of sexual harassment. This is important to prevent any religious discrimination from infiltrating committee decisions. Finally, the individual must have absolutely no ties to the organisation or any of its employees. This is essential to the independent decision-making of this representative.

While the guidance of this independent committee member will be available as the committee takes up and processes all sexual harassment cases, there must be some *basic formal training for all members prior to commencing committee work*. The NGO that provides the independent member will often also be involved in this training. If the third party member does not come from an NGO, then an organisation with expertise in sexual harassment must be brought in to provide this formal training (see Chapter 5).

1. Members will be immediately dismissed from the committee for the following reasons:
2. No member of the complaints committee may have any complaint of sexual harassment pending against him.
3. No member of the complaints committee may ever have been found guilty of any form of sexual harassment.
4. No member of the complaints committee may be absent without permission for four consecutive committee meetings.
   No member of the complaints committee may preside over a case in which a friend or relative of his/hers is under investigation

A member can resign by tendering his/her resignation along with reasons to the Chairwoman. That person shall be deemed to have vacated the position as soon as the chairperson on discussion with the committee members has accepted the resignation. Replacement is at the Chairwoman's discretion.

Complaints Procedure

Before launching a formal complaint procedure, it is our recommendation that the committee first attempt to resolve the matter informally. If this fails or is deemed inadequate to the circumstances, a formal inquiry must begin. It should be noted that if the complainant so desires, the

informal stage may be skipped and the committee may proceed directly with the formal inquiry. Furthermore, no pressure should be placed on the victim to resolve the case at the informal level if she does not wish to proceed in that manner. However, regardless of whether the case is resolved at the formal or informal level, a detailed record of all complaints and the complaints committee's findings, actions and decisions must be kept.

Upon receiving a complaint, the committee will proceed in the following manner:

1. Within 3 business days of receiving a complaint the complaints committee must constitute a sub-committtee consisting of three of its members. The chairperson of the complaints committee should be the chairperson of the sub-commitee baring exceptional cases. The sub-committee is specifically charged with dealing with the case in hand. Of the three sub-committee members: one must be of the same grade (rank) as the complainant, one must be of the same grade as the harasser. It is mandatory that a NGO member be a part of the sub-committee . No relatives or friends of either party may sit on the sub-committee.
   a. In cases where more than one individual is accused, and the charge is that the organisation as a whole is hostile, an additional NGO representative should be brought onto the sub-committee. The complaints committee chairwoman will decide whether such a measure is appropriate to the case.
   b. In cases where one of the two parties (either the victim or the harasser) is not an employee (i.e. is a service taker), an additional NGO representative will fill the sub-committee position for that person (a position that would otherwise be taken by the complaints committee member of that individual's rank).
   c. Both complainant and accused have the right to raise objection to the membership of the specific sub-committee assigned to their case and any such objections must be considered by the complaints committee.
2. A complaint may be submitted to the committee in either oral or written form. However, if the complaint is made orally, it must also be recorded in writing. If the

complainant requests committee help to file the complaint in writing, the committee should provide that help.

3. During the course of any complaints committee activity, be it formal or informal, it is essential that the committee remain cognisant of the vulnerability of the complainant and that names of all involved persons be kept confidential where possible.

After the initial, informal inquiry, the sub-committee assigned to the case must decide whether the complaint warrants a formal investigation. The complaint will be dropped only if it is patently clear that the allegations don't constitute the offence of sexual harassment. The decision of the sub-committee to drop a complaint will be submitted to the complaints committee for its ratification. If the sub-committee decides to drop the complaint, the complainant must receive written notification of this decision and the reasons behind it. During the formal investigation, the committee has the power to protect the complainant by facilitating her transfer or changing the shifts of either the complainant or accused. This may be necessary to protect the complainant from intimidation or retaliation by the accused. The formal procedure should take the following form:

1. The first step is to launch a full inquiry. This will consist largely of conducting interviews.
   a. To precisely establish what the complainant's allegations actually are, the sub-committee must interview complainant and establish firm chronology of events. *Who* was involved? *Where* did it happen? *When and how often* did the harassment take place? *What* forms did the harassment take? Whilst asking these questions the case sub-committee must remain sensitive to the traumatic nature of the events. The interviews should question the victim but not interrogate her; they should, as far as possible, be scheduled at times convenient to her; and, the number of interviews should be kept to a minimum. The personal life of complainant is deemed irrelevant to proceedings; the investigation should not probe into her private life beyond the specific harassment allegations. The sub-committee must also bear in mind that perpetrators of sexual harassment often contrive

to perform the harassment in the absence of witnesses. Such absence should therefore not be used against the complainant.

b. The accused must also be interviewed to establish his side of the story and allow him to reply to the allegations. Again, a chronology must be established through which the sub-committee can ascertain the nature of the relationship between the complainant and the accused.

c. Beyond the two central parties, the sub-committee should interview relevant third parties. These would include witnesses to any violations described by the complainant, any persons with knowledge of the events that transpired between the complainant and the accused, and any persons with knowledge of the relationship between the complainant and the accused. Where possible the sub-committee should maintain the confidentiality of the complainant during these interviews.

d. The sub-committee should determine whether the accused harassed other members of the organisation. This can be done by informally chatting with other women and possible victims. However, it is important not to compromise the confidentiality of the matter at hand.

2. The second step is collection of documents. The sub-committee must collect as much documentary evidence related to the case as possible. This includes any documentary evidence submitted by either the complainant or the accused as well as any documents (electronic, paper, or recordings) that the sub-committee deems relevant. However, the case is not to be treated as a criminal proceeding in an official court case. Therefore, documentary evidence is not necessary to rule in favour of the complainant.

3. Both the complainant and the accused are entitled t representation by a person of their choice. However, an advocate (lawyer) may not represent the accused unless the complainant also chooses such representation.

4. The sub-committee is time bound and should proceed with complaints in an efficient manner. The complainant should be contacted within 30 days regarding the status of her complaint.

5. The sub-committee proceedings are to be held *in camera*. Confidentiality is a priority and should be maintained as far as possible. Sub-committee members are required not to speak about the case outside of the case meetings.
6. The complainant's identity shall remain confidential at all times(to the extent possible), including during the time of preparation and completion of the sub-committee final report, unless the complainant expressly chooses to disclose her identity. Such an option taken by the complainant shall be stated in writing.
7. For the purposes of sub-committee work (as well as complaints committee work in general), 50% constitutes a quorum (minimum number of members required to continue with proceedings). If a quorum is not present at any meeting it shall be adjourned for not more than seven working days. If at the subsequent meeting a quorum is still not present, the meeting shall proceed with those who are present and the proceedings of such a meeting will not be challenged on the ground of absence of quorum.
8. Once the facts have been determined and the investigation has reached a conclusion, the sub-committee shall take a decision. In the case that a consensus cannot be reached, decisions may be made on a majority-rule basis. The decision of the committee will be binding on management.

Once the committee has reached a decision, management must acquiesce with its recommendations in the following manner:

1. If the accused is found guilty, no recognised victim will be forced to work under or with that person. If such a provision requires the transferring of people, the victims' preferences should take priority.
2. If the committee reaches a verdict of guilty it must then decide upon the appropriate penalty. This decision may take into account past offences. In other words, repeat offenders may be given harsher penalties.
3. Penalties may be broadly grouped under two headings, Major Penalties and Minor Penalties:

   A. Minor Penalties:
      i. The harasser is required to write a letter of

apology to the victim

ii. Management writes a letter of reprimand to the harasser including a warning against further activity

iii. Harasser is suspended for up to 4 days per month

iv. Management withholds the increment from harasser for one year.

v. The harasser is fined up to Rs. 2000

B. Major Penalties:

i. The harasser is demoted

ii. Management terminates employment of the harasser

iii. Management withholds the increment from harasser for more than one year

iv. The harasser is fined more than Rs. 2000.

v. If the harasser is a service taker or third party, management terminates service to the harasser.

4. Management is obligated to aid in the implementation of the final committee decision. Failure to implement the decision must be accompanied by a written explanation.
5. Copies of proceedings regarding the investigation must be made available to both the complainant and the accused.
6. If action other than an informal warning must be taken against the accused, then the name of the complainant along with the details of the complaint may be disclosed only to the accused.
7. If the complaints committee is of the opinion (based on the substantiated facts) that the complaint of sexual harassment was made falsely and with malicious intent, then such action will be considered misconduct. In such case the complaints committee may make a recommendation of the appropriate action to management.

Complaints Committee Approach

The issue of sexual harassment is one that has long plagued the workplace, but one that has only recently

received any meaningful public attention. Previously, sexual harassment had been a closeted topic; most people denied that such violations were even occurring and the rest did not recognise harassment as a "real" problem. Though it is now more openly discussed and is being more directly addressed, the majority still denies the severity of the problem. A complainant is often blamed either for oversensitivity to "natural" male behaviour, or for being "of a dishonourable character" and thereby bringing harassment on herself.

Sexual harassment, though it may not always be a physical violation, is always an emotional violation. It is traumatic. Attaching labels to suffering women only serves to intensify the trauma as such terms introduce feelings of self-loathing and shame that should not be added on to the pain already experienced.

In addition to investigating and redressing a victim's complaint, a complaints committee also has an obligation to ameliorate, instead of exacerbate, a victim's suffering. Towards repairing deep-seated stereotypes surrounding sexual harassment, committee members should treat all complainants with dignity, respect, and, above all, sensitivity.

The desirable attitude of committee members can be broken down into two words: Subjectivity and Empathy.

1. Subjectivity: It may seem that the committee should take an objective stance on all complaints that it receives. Moreover, it may seem that to be subjective would be irresponsible and unjust. It is absolutely true that the committee must remain objective in formulating a decision - it must not prejudice either party in the final stage of its investigation. However, the important point here is that a sexual act when unwelcome constitutes sexual harassment, and the "unwelcome" aspect is determined by the victim's subjective reality.

In deciding whether an action is or is not sexual harassment, it matters little what the perpetrators intentions were. The defining factor is how that action made the victim feel.

Whether or not a superior thinks his sexist joke was harmless comedy, if it makes employees feel uncomfortable, then it is harassment. Thus, the complaints committee's first

job is to believe in the victim's feelings. In other words, regardless of a committee member's response to a victim's complaint, under no circumstances should that complaint be dismissed as being an overreaction, or as being overly sensitive. The incident must be viewed through a subjective lens.

2. *Empathy*: It is critical that the complaints committee empathise with the complainant and not judge her by its own moral standards. (Refraining from moral judgment also plays a role in maintaining subjectivity.) In trying to understand the position of the victim, the committee must remember the following:

a. The complainant has put her career and reputation at stake by making a complaint. This is a heavy cost to bear and makes it unlikely that she is lying.
b. It is difficult for a woman to discuss sexual matters. Therefore there can be a long time interval between the harassment and the actual complaint for female victims.

Further Responsibilies of the Complaints Committee

Though the main function of the committee is to process complaints, the committee is also involved in the prevention of sexual harassment at the workplace. In line with the subjective and empathetic attitude adopted by complaints committee members, there is a further step the committee can take to promote a comfortable environment for women at the workplace. This involves organising, scheduling and publicising teach-ins and gender-sensitisation training for employees. These training sessions are important for raising awareness of the sexual harassment issue, and, perhaps more importantly, for educating people as to what kind of unintended effects their actions may have. Without this education it will be difficult to change traditional behaviour into attitudes that create a safe space for working women. To learn more about teach-ins and training sessions with an NGO that works on women's issues, see Chapter 5, page 67. For NGO contact information, see Appendix 5.

Beyond the question of how the committee should act within a complaints procedure is the question of how it

should structure its work. The committee must plan how much time in a month it will require for the two roles of prevention and grievance redressal. Given that the members of the committee all have responsibilities beyond their duties on the committee, it is essential that time is used efficiently and scheduled thoughtfully to ensure that committee members can attend meetings. The committee should, where possible, try to integrate committee work as seamlessly into members' existing schedules as possible. If the workload exceeds the aggregated capacity of the committee members, then more members must be brought on. It is imperative that no victim be unable to process a complaint because the committee does not have time.

Finally, an important check on committee progress is the annual report. All complaints committees must make an annual report to the concerned local government department. This report must detail all activities of the committee throughout the year, paying special attention to any actions taken with regard to complaints filed and outlining what preventative measures the committee has organised. It is for this reason that all cases be fully documented, from the original complaint to the final decision and the aftermath (i.e. whether retaliation or further harassment occurred).

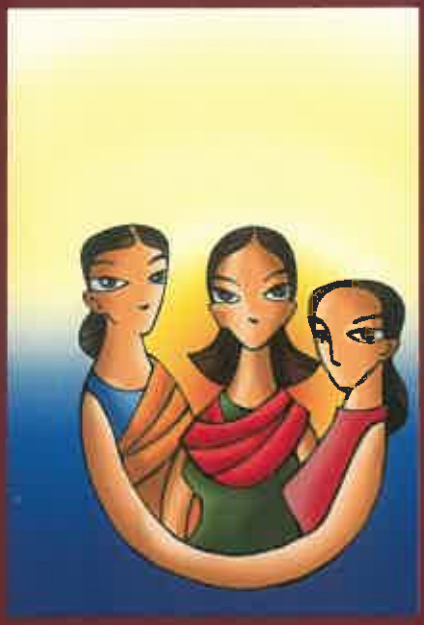
How the records will be kept and who will be in charge of them and the annual report is something that the committee must decide on when meeting for the first time each year. Ideally, records should be maintained both electronically and on paper. They should be accessible only to complaints committee members. Therefore, files or documents on computers should be password-protected, and hard copies should be stored in a secure location.

Conclusion

Without the cooperation of employers in implementing the various measures cited above, sexual harassment at the workplace will remain a pervasive and unchecked problem. This chapter outlined those obligations that *Vishaka* imposes on employers and, more importantly, *how* employers can meet those obligations both in name and in spirit.

5

For NGOs and Other Third Parties



For NGOs and Other Third Parties

Though the Supreme Court ruling in the *Vishaka* case takes care to place primary responsibility for the prevention and punishment of sexual harassment offences on the employer, and while the creation of in-house complaints committees represents a concerted effort on the part of the Court to address sexual harassment grievances within, and not outside of, the workplace, these measures do not indicate that third party people and organisations have no role in the campaign against sexual harassment at the workplace.

In fact, third-party organisations can play a large role in preventing and addressing sexual harassment at the workplace. We devote the following chapter to women's rights activists, NGOs working on women's issues, and trade unions, and we focus on the specific measures these third-party organisations can implement in the fight against sexual harassment.

Role of NGOs Working on Women's Issues

One of the most important resources for a sexually harassed woman is the support network of women's rights activists and NGOs working on women's issues. Due to the myths and stereotypes surrounding sexual harassment and its victims (see Chapter 3, page 32), a woman who has been so violated may not wish to confess her plight to family members or friends. She requires a space where she can be assured of confidence, comfort and guidance. To fulfil those needs, there are a few simple guidelines such NGOs can follow.

On the most basic level, all NGOs working on women's issues should be educated in the issue of sexual

harassment. Although not all such organisations are devoted entirely to this problem, there should be a minimum of one staff member designated as a sexual harassment "expert". That person (or persons) should be well acquainted with the contents of this manual and should keep abreast of any changes or developments. Such a person(s) should be able to knowledgably answer questions on the subject or direct women to appropriate additional resources (lawyer, hospital, etc.) when necessary.

With respect to *lawyers*, NGOs working on women's issues should have a list of reliable, trustworthy lawyers on hand, preferably with whom other women have had positive experiences. The NGO should offer the names and contact information of more than one lawyer so the woman in question can choose to work with whomever she feels most comfortable.

With respect to *hospitals*, if the woman has been physically assaulted, advise her to get a medical examination immediately. Reassure her that doctors are bound by an oath of confidentiality and that it is advisable for her to be open and honest with her doctor. In addition, the Supreme Court has made it clear that it is the duty of doctors, both government and private, to provide first aid to patients without insisting on the completion of legal formalities such as registration of a criminal case or lodging an FIR. However, should the woman wish to begin her legal case, a police officer whose duty is to register complaints for medical-legal cases is posted in every casualty ward of a government hospital.

In addition to offering support and advice, NGOs working on women's issues may take further steps to best provide for the needs of sexual harassment victims. Such NGOs may choose to establish and operate shelters and/or crisis centres that offer emotional and legal support to victims of sexual harassment. At such a centre, an accredited counsellor and lawyer should always be present during regular working hours so women can come in for consultation as necessary.

NGOs working on women's issues may also choose to use new channels, such as the media, to increase public awareness about sexual harassment. While sexual harassment is a shockingly pervasive phenomenon - over fifty percent of women in India have experienced some form of it -

most people believe that it is a relatively rare occurrence. Media coverage of the issue can raise both consciousness and sensitivity towards sexual harassment.

Finally, such NGOs can work to help implement existing legislation on sexual harassment and lobby for new measures. The landmark *Vishaka* judgement (see Chapter 2 and Appendix 1), while important, is only as strong as its implementation. Thus far, though it is a legally binding ruling, few places of work are heeding the requirements outlined in *Vishaka*. NGOs working on women's issues can play a large role in raising awareness and improving the scale of *Vishaka* implementation.

Raising Awareness

As mentioned in the introduction to this handbook, raising awareness is one of the most important immediate goals in the campaign against sexual harassment. Despite eight years having passed since the *Vishaka* judgement, both women and employers remain uninformed about their respective rights and responsibilities under *Vishaka*. Unless awareness levels are dramatically improved, the outlook is bleak for the campaign against sexual harassment. Therefore, the fight against sexual harassment must begin with education. It is in this endeavour to generate awareness that the NGO community can play a large role.

One of the most powerful and effective methods for dispersing the message is through the organisation and delivery of teach-ins and training sessions. These sessions have two goals. The first goal is to encourage discussion on topics that either are talked about only in private or are swept under the rug entirely. The second goal is to apply what was learned in the general discussion to specifically address the issue of sexual harassment at the workplace. In this way participants will gain the knowledge and understanding needed to establish and effectively run an anti-sexual harassment policy.

The first step, *before* organising teach-ins and training sessions at workplaces, is to start an information/outreach campaign. This campaign should circulate leaflets, pamphlets, brochures, etc. informing companies not only of their legal obligations with regard to

sexual harassment, but also of the benefits they will reap by complying with these obligations. (For a comprehensive discussion of what employers must do in light of *Vishaka* and why, see Chapter 4). Direct access to organisations can happen *only* by invitation, and an invitation will be offered *only* as the result of a successful information campaign of the kind described above. Once an NGO is invited to speak at a given organisation, planning can begin.

Before we discuss the specific content of training, it is important to distinguish between the two forms of training. For our purposes we will call the first kind "teach-ins" and the second "training sessions", though this nomenclature is not official and is used here for clarity purposes only. While both teach-ins and training sessions are essential in the effort to generate awareness of the sexual harassment problem, the teach-in focuses on education whereas the training session focuses on compliance with the law.

Teach-ins are informal sessions designed to educate employees of all levels - from senior management to the most junior assistant - on the basic concepts and laws on sexual harassment. A teach-in involves discussion on general issues such as sex vs. gender, stereotyping, and personal boundaries, eventually linking these concepts to the idea of sexuality at the workplace. Beyond that, attendees learn of their rights and the responsibilities of their employer under the *Vishaka* judgment, complaints committees, complaint procedures, etc. In sum, the teach-in is purely about education.

Training sessions function as an extension of teach-ins and are thus the second of a two-stage process to implement the *Vishaka* guidelines in workplaces. Only after an employer has been educated about sexual harassment does he/she have the tools to formulate an appropriate sexual harassment policy in his/her workplace. So, in a training session, the NGO facilitator takes information gleaned from the teach-in to the management in order to formulate an action plan to address sexual harassment at that workplace. Training sessions instruct employers on how to draft an anti-sexual harassment policy and how to create a complaints committee, and also train committee members on how to investigate grievances and administer punishments. Training sessions require a greater degree of expertise from the trainer then do teach-ins. Rather than simply providing information, the goal

of the training session is to develop skills and functional understanding.

Teach-Ins

A well-executed teach-in will entail a good deal of planning and expertise on the part of the NGO facilitator(s). This facilitator not only needs to be well-versed in the various issues surrounding sexual harassment at the workplace, but also in the particular methods to be followed in any teach-in. An excellent, comprehensive guide for prospective teachers is The Campaign Against Sexual Harassment at the Workplace : A Training Manual by Priya Narula and Catherine Sluggett[xxv]. This manual contains detailed explanations of the concepts to be taught in any teach-in programme, as well as the specific exercises that will maximise learning in a group environment. The following information on teach-ins is largely summarised from this manual.

Before beginning any teach-in programme, the facilitator should be aware of the pervasive attitudes, biases and misconceptions surrounding issues of sexual harassment. It is of supreme importance that the facilitator's own feelings about the subject matter be set aside for the duration of the teach-in. All opinions must be valued and given equal consideration in the group setting, regardless of the emotional reaction a particular comment may strike within the facilitator.

This unbiased attitude is important because different people have different levels of comfort when discussing these kinds of topics, particularly in a group setting. Women may be uncomfortable in front of men and vice versa; low-ranking employees may be uncomfortable in front of senior-level employees and vice versa; and people may be uncomfortable for a variety of personal reasons: social, cultural or religious. Given the difficulty with which people speak up on sexual harassment, the facilitator must treat all participation with dignity and respect.

Given the sensitivities surrounding sexual harassment, the facilitator must be able to speak with comfort and ease on such sensitive issues as sexuality, sexual acts, sexual feelings, body parts, etc. The facilitator sets an example to the group and encourages discussion through

his/her confidence and poise. Without it, the group will not achieve an open and honest forum through which to engage in frank discussion about sexual harassment.

The best strategy for ensuring active group participation is to create a safe and structured atmosphere for the teach-in. Providing a safe atmosphere includes:

- Being attentive to all group members
- Modelling and encouraging desired behaviour
- Validating participants' feelings and emotions
- Encouraging and respecting voluntary participation

Providing a structured atmosphere means that certain ground rules are agreed upon in consensus with the whole group and then strictly adhered to throughout the duration of the teach-in. The group may write up a "contract" on a whiteboard or poster board that can be viewed and referred to during discussions. This contract could include stipulations such as:

- One person speaks at a time
- The facilitator determines who speaks and for how long
- No interrupting
- No shouting
- No one has to talk if they do not wish to

Remember, the contract is written by the particular group in question. Thus, the exact stipulations will vary in different teach-in programmes.

Finally, prior to facilitating any programme the NGO representative(s) should know the profile of the group they are about to train. How large is the group? Is it a single-sex group or mixed? If it is mixed, do the participants prefer to split into single-sex groups for discussion? What positions do they occupy within the organisation? Have they ever been through training sessions before? Did they volunteer to participate in the teach-in or is it an office requirement that they do so? The answers to these questions allow the facilitator to tailor the teaching programme to the needs and interests of the participants.

The teach-in programme should be divided into four main sections:

1. Concepts of gender
2. Sexuality at the workplace
3. Sexual harassment at the workplace
4. Sexual harassment policies and committees

In the course of this four-part programme, there are several topics that should be thoroughly covered by the facilitator and discussed by the participants. That is, if the facilitator decides to change the basic structure of a teach-in based on the profile of a particular group of employees, the teach-in should always assist group members to:

- Become more aware of gender issues and sexual harassment at the workplace
- Understand the concept of sexual harassment and what behaviour constitutes sexual harassment
- Understand the *Vishaka* ruling and guidelines on sexual harassment at the workplace
- Be empowered to report incidents of gender discrimination and sexual harassment at the workplace
- Develop strategies to address sexual harassment sensitively and justly at the workplace

The following outline, derived from the Narula and Sluggett training manual referenced earlier, serves to offer NGO representatives a general guideline of the content of a full teach-in programme. For more specific suggestions as to exactly what activities and exercises can be employed to teach a particular point, refer either to the Narula and Sluggett manual, or contact an NGO with a long history of experience in dealing with sexual harassment.

1. Getting Acquainted

A. Welcome
   I. Facilitator talks to the group to introduce themselves, explains the programme and clarifies the programme's objectives

B. Introductions
   I. Introduce group members to each other
   II. Allows the facilitator a chance to get a feel for the expectations (hopes and fears) of group members

C. Trust Exercise
   I. Enables group members to loosen up and familiarise themselves with the other participants

II. Participants stand in a tight circle with a volunteer in the middle. The volunteer closes his/her eyes and falls. The group is responsible for catching that person
III. Starts with a physical trust-building so that emotional trust-building can follow through the course of the programme

D. Group Agreement
I. After the trust-building exercise is a good opportunity to write the "group contract" mentioned earlier

2. Concepts of Gender

A. Gender vs. Sex
I. Introduce the concepts of gender vs. sex
II. Explain that "sex" refers to biology and "gender" refers to social stereotypes attached to a particular sex, for example:
1. Women give birth, men do not: Sex
2. Women are better at child-rearing than men: Gender
III. Relate these concepts to people's experiences. Ask them to fill in the following phrases:
1. "Because I am a woman/man, I can…"
2. If I were a woman/man, I could…"
IV. You will likely find that men respond that they cannot do things linked to their sex - i.e. have children; and women will say that they cannot do things linked to their gender - i.e. walk home late at night. Emphasise this distinction
V. If you split up into single-sex groups for this exercise, come back together to discuss the results as a whole group

B. Roles and Values of Men and Women in the Workplace
I. Analyse and compare the positive and negative aspects of sex and gender roles within the workplace
II. Discuss the gender vs. sex distinction as it relates to workplace situations

C. Masculinity and Femininity
I. Discuss the concepts of masculinity as it is understood by males, femininity as it is understood by females, and how each of these terms is understood by members of the opposite sex

II. Make sure the discussion draws out the following points:
   1. Masculinity/femininity is the way in which gender manifests itself within us
   2. These concepts are constructs from childhood - they are neither innate nor biological
   3. Being outside of these constructs ("masculine" women or "feminine" men) often results in social unacceptability

D. Power, Discrimination and Oppression
   I. Demonstrate the role of power in discrimination and oppression
   II. Split the group into two groups: the powerful and the powerless. Allow them to mingle with each other while acting-out their assigned roles
   III. Bring the group back together to discuss how it felt to be in positions of power and positions without power. Discuss how this relates to inter-personal dynamics within the workplace

3. Sexuality at the Workplace

A. Concepts of Sexuality
   I. In a free-flowing, brainstorming session, ask participants to call out what they understand by the word "sexuality"
   II. When a consensus has been reached, ask the group to answer the question: "Why is it important to look at issues of sexuality when working on sexual harassment?"
   III. Teaching point: Sexual harassment is a sexual violation. The violator uses sex as a tool of power, to oppress or threaten. Therefore, as sexuality is purposely manipulated in crimes of sexual harassment, a discussion of sexuality is essential to a discussion of sexual harassment

B. Body Mapping
   I. Explore perceptions of private and public parts of the male and female body
   II. Teaching point: remember people's levels of comfort and sensitivities with regard to such intimate topics. If you feel that your group can not handle an explicit discussion of the human body, skip this exercise

C. Sexual Expression at the Workplace
   I. Explore how sexuality manifests itself in the

workplace

II. Emphasise the difference between welcome and unwelcome expressions of sexuality (see Chapter 3)

III. Clarify that sexual expression at the workplace can be consensual, welcomed, and can reflect two people's mutual interest in one another

D. Personal Boundaries

I. Alert people to their own personal boundaries and those of others

II. Explain that boundaries are lines of separation, and personal boundaries separate our bodies and our emotions from others'

III. Compare people's boundaries and emphasise that everyone's boundaries are different and even an individual's boundaries can change in different circumstances

IV Clarify that not only do different people have different boundaries, but that women often have different boundaries than men

E. Sexual Boundary Crossing

I. Discuss the differences between men and women when their personal boundaries with respect to sexuality are breached

II. Remind participants of sexual stereotypes that the different genders are taught to conform to, for example:

1. Men are forceful, aggressive and in command
2. Women are weak, passive and sexually available

III. In light of these stereotypes:

1. Men should read when their advances are unwelcome and they have crossed someone's sexual boundary
2. Women should effectively communicate when they feel uncomfortable and their boundaries have been crossed

4.Sexual Harassment at the Workplace

A. What is Sexual Harassment?

I. Explain the concept of sexual harassment, first in general terms and then as it is understood in the Supreme Court guidelines

II. Clarify that sexual harassment can take many forms and is not limited to physical contact or

rape

III. Emphasise that sexual harassment is any conduct that is sexual in nature and unwelcome; that is, sexual harassment is defined by its impact on the victim and not by the intent of the perpetrator

B. Understanding the Effects of Sexual Harassment

I. Explain why sexual harassment is a traumatic event for those who experience it and why it should be eliminated

II. Brainstorm with the group on what acts constitute sexual harassment based on the Supreme Court outline

III. Split the group into pairs and have them role-play the scenarios they brainstormed. Come back together as a group and discuss how the actions made the recipient feel

C. Impact

I. Differentiate between "impact" and "intent" of sexual harassment

II. Facilitate a discussion on why it is important to focus on impact rather than intent, emphasising the following points:

1. Sexual Harassment often happens in isolation and does not often give rise to witnesses or evidence
2. Focusing on intent indirectly absolves the harasser of guilt
3. Focusing on impact helps direct attention to the act itself and not the character/ history/etc of the harasser
4. Remind the participants that sexual harassment is defined by its impact, not by its intent, and explain the severe emotional repercussions that can result from repeated or prolonged harassment

D. Supreme Court Guidelines

I. Review statistics of the extent of sexual harassment at the workplace and the importance of addressing the problem.

II. Put the campaign against sexual harassment in the context of the national women's rights movement in India

III. Mention international agreements (CEDAW, Beijing Declaration) to put Indian women's movement in context of global movement

E. Myths and Facts
   I. Understand how myths about sexual harassment develop and clarify the common misconceptions
   II. Refer to the Chapter 3, page 32 of this handbook for a list of "myths and facts" surrounding sexual harassment
F. Exploring Values and Attitudes
   I. Assess the biases, values and attitudes of participants towards various issues of sexual harassment at the workplace
   II. Using case-study examples, split into small groups and discuss personal reactions to the cases at hand (refer to Chapter 6 for case-study examples)
      1. Imagine you are one of the people in the case example. How would you have reacted?
      2. Who do you empathise with most in the scenario and why?
   III. Come back together as a group and talk about participants' reactions. What do their reactions say about socially ingrained biases regarding sexual harassment?

5. Sexual Harassment Policies and Procedures

A. How to Develop an Anti-Sexual Harassment Policy
   I. Define the framework for any anti-sexual harassment policy, including the following key points
      1. Clearly state the employer's commitment to:
         a. Recognise sexual harassment as a serious offence
         b. Prevent/punish sexual harassment at the workplace
         c. Conduct anti-sexual harassment awareness training
      2. Define sexual harassment and term it an "offence"
      3. Constitute a complaints committee as per Supreme Court guidelines
      4. Include detailed stipulations regarding complaints committee membership (guidelines can be found on pages 52-53 of Chapter 4)
      5. Ensure that third parties or service takers are

aware of the policy

II. Formulate the framework for an anti-sexual harassment policy for the particular organisation based on a brainstorming session of participants

B. Steps of a Complaints Procedure

I. Using a case-study example, (you may refer to Chapter 6) guide the group through the steps of a complaints procedure, asking each one to role-play as if he/she were a complaints committee member

II. For a comprehensive guide to complaints committee procedures refer to pages 53-58 of Chapter 4

III. Once the group has completed one case-study as a group, split them into smaller groups and ask them to repeat the exercise for a variety of case studies

C. Implementation of Policy

I. Discuss how to appropriately and legally exercise power as a member of the complaints committee

II. Select six participants from the group (men and women) and assign them roles on the complaints committee (one NGO representative, one chairperson)

III. In addition, assign members from the rest of the group to be the complainant, the harasser, a friend of complainant, etc.

IV. Assign remaining participants as "observers"

V. Role-play a session of the complaints committee. As the facilitator, encourage the observers to stop the proceedings at any time to point out any mistakes being made by the committee, but allow comments to be made largely by the observers

VI. Conclude with a brief session on the feelings of participants involved in different roles in the scenarios. Focus on the feelings of the complainant and how different behaviours on the part of the committee made them feel

6. Closure

A. Evaluation

I. Allow participants to give the NGO facilitator feedback on the training session. The participants may fill out a questionnaire designed beforehand so as to minimise the

chance that they censor their commentary

B. Positive Comments
   I. Ask for positive, take-away points that the participants feel they gained from the programme.
   II. Encourage positive thoughts about the other people in the room so as to build trust and camaraderie for the future when real cases of sexual harassment may arise

C. Wind-up
   I. Review objectives of the teach-in programme, determine whether the objectives have been met, and thank group members for their attendance and participation
   II. You may finish with fun, team-spirit building games if you wish

Training Sessions

The teach-in programme is of the utmost importance because it sensitises employees to the subject, nature and effects of sexual harassment - a subject to which they may not have had much educational exposure or given much previous thought. After the teach-in programme has been executed at a given workplace, the next step is to institute a training session. While the educational value of the teach-in is important, the training session will be instrumental in creating a workable policy and set of protections.

Over the course of the teach-in the NGO facilitator should keep notes on all the information about the particular workplace that is offered up in the relevant brainstorming sessions.The facilitator should be able to gain an understanding of how receptive management is to the idea of complaints committees, how comfortable employees are in raising and discussing issues of sexual harassment, how sensitive employees are to the victims of sexual harassment in the case studies, etc. Armed with this knowledge, at the conclusion of the teach-in, the facilitator should make an appointment with the senior level staffers, or the employers, to conduct a training session. Given that the Supreme Court guidelines hold employers responsible for the prevention of sexual harassment at the workplace, it is to the employers that the training session will be directed.

In the training sessions, the NGO representative(s), preferably the same person(s) who conducted the teach-in, meet with the employers to accomplish two main tasks. The first is the formulation of an anti-sexual harassment policy. The framework for all such policies will be the same; the differences will come from the particularities of a given workplace environment. For example, if the workplace is male-dominated, it is likely that a woman speaking out against sexual harassment will be interpreted as speaking about against the male-dominated power structure of the organisation. The sexual harassment policy will therefore want to emphasise the duty of the complaints committee members to accept all complaints as valid (unless proven otherwise), to recognise the victim's trauma, and to respect her emotional vulnerability.

The second task of the training session is to constitute a complaints committee as per the Supreme Court guidelines and to train committee members in their role and procedures. Again, the creation of the complaints committee will follow the same basic structure everywhere, but will differ according to the specifics of a given workplace. For example, a large, multinational corporation may require several committees, one for each division of the company. On the other hand, a small business may require only one committee of limited membership. Refer to the section on complaints committees in Chapter 4, beginning on page 51, for a detailed explanation of the various committee functions.

Summing up the Role of NGOs

While many NGOs working on women's issues may not have the resources to engage in the extensive list of possible pursuits in the campaign against sexual harassment mentioned in this section, it is important that each organisation explore all possibilities that are within reach. Some examples/ suggestions of what an NGO can do are given below:

- Establish a training and resource centre
- A telephonic helpline for women who are being or who have been sexually harassed
- Network with all sectors - organised, unorganised, public, private, and educational - other NGOs, law enforcement agencies and trade unions

- Assist organisations to formulate anti-sexual harassment policies and establish complaints committees
- Be an active member on complaints committees
- Conduct training programs on gender sensitisation and sexual harassment at the workplace for organisations.
- Develop resource and educational material
- Lobby with local government authorities
- Provide legal aid to women who have filed petitions in the courts to pressurise workplaces to implement the Supreme Court's guidelines, to set up complaints committees and provide a safe work environment.

Finally, NGOs working on women's issues should use the expertise they gain as active participants in the campaign against sexual harassment to effect change for the future. While the *Vishaka* judgment was an important and essential first step towards securing a safe work environment for women, it stands as law only until legislation on the matter is passed.

The National Commission for Women (NCW-see Chapter 2 for more information) has been tasked with drafting the sexual harassment legislation to be passed by congress into law. Before finalising the latest draft of the Bill (see Appendix 2), the NCW enlisted the help of several women's rights activists and NGOs working on women's issues across India for their input and advice.

Participation in this collective legislation-writing effort is one example of how such NGOs can make large-scale, lasting contribution to the anti-sexual harassment movement. In the concluding chapter of this book we discuss the outlook for the future, paying particular attention to the current and prospective legislative developments.

The Role of Trade Unions

Trade unions are constituted with the mission of using collective power to protect the interests of the group and the individuals within it. Sexual harassment harms both the individual victims and the interests of the collective. As such trade unions should be involved in its prevention.

In many respects the trade union should simply serve as a support mechanism for the victim, offering comfort and advice where needed. However, the trade union may also represent the victim in any discussions with the organisation at which the harassment occurred, and may help in the representation of the victim before the appropriate complaints committee.

The German trade union SIPTU produced a useful document entitled Sexual Harassment is No Joke. The guidelines below are loosely adapted from that work.

Guidelines for a trade union dealing with the sexual harassment of one of its members:

1. Ensure that any cases of sexual harassment brought to the union are kept as confidential as possible.
2. The first response of the union should be to be supportive of the victim. This does not mean ostracising the accused, but simply that the victim should be treated with care and understanding.
3. Listen carefully to what the victim says. Do not attack the victim for being over-sensitive but understand that the victim has come to you in a time of vulnerability, having gone through a traumatic ordeal.
4. Encourage documentation. Specifically encourage the member to note details of each incident of harassment and to monitor any changes in the work patterns or attitudes on the part of the alleged harasser (including moves to victimise the accuser through bad employee reports, etc).
5. Make discreet enquiries to ascertain whether other workers have experienced similar problems. If they have, ask them for details of any harassment which may have occurred.
6. Discuss with the victim how she wishes the case to be followed. For example, does she want to pursue an official complaint, or does she want to fight the harassment on a more informal level.
7. If the victim agrees to making the matter public knowledge at the workplace, then seek the support of other workers for her.
8. If the victim wants to pursue the matter with management, offer union representation. Make it clear that this offer remains open throughout the enquiry. When representing the victim:

a. Ensure that the case is dealt with as quickly as possible by the management.
b. Try to prevent the member from suffering any avoidable distress both during the inquiry and when the inquiry comes to a decision.
c. If the inquiry committee decides upon the transfer of one of the people involved to another work location, try to ensure that it is the harasser rather than the victim who is required to move.
d. Ensure that the agreement reached is effective.

9. If the alleged harasser is also a union member, he may wish to have union representation. If so, then this representative should not be the same person who is acting on behalf of the victim.

6

Case Studies

Case Studies

This chapter takes six real cases brought to the India Centre for Human Rights and Law (ICHRL) since the *Vishaka* ruling. Each of these cases tells the true story of an employee who experienced sexual harassment at the workplace. Some of the cases have been successfully pursued. In others the perpetrator has not yet been brought to justice.

The purpose of this case-study analysis is threefold. Through relating real instances of sexual harassment at the workplace we hope to offer a better idea of what such harassment can entail. While the descriptions below do not exhaust the many, various forms that sexual harassment can take, they do serve to illustrate commonly occurring patterns. Beyond this, we hope that these examples will raise awareness of the obstacles and difficulties one may face when raising a complaint of sexual harassment. The dominant culture in Indian work settings is not yet empathetic to women vocalising claims of sexual harassment and it is important to be prepared for some hostile reaction to any complaint. Finally, in our analysis of these cases we hope to highlight those measures that could have been taken by both organisation and victim in question, both to better defend against the harassment and to fully address the situation after it occurred.

In all of the following stories, names have been changed so as to protect the privacy of all parties concerned.

Case 1

The first case we will look at was brought by a single

40-year old woman working for a public sector employer in Mumbai. The woman, who we will call Meenakshi, had been working for this employer for fifteen years when she alleged that she was sexually harassed by a co-worker in 2000.

Meenakshi was working on an individual task assigned solely to her. For unknown reasons, Praveen - a male co-worker - tried to take control of this task even though it fell outside the scope of his responsibilities. Meenakshi informed Praveen that the task was assigned to her and that she was capable of handling it alone. However, her assertion only encouraged him to become more involved. Eventually, Meenakshi complained to her superiors requesting that they put an end to Praveen's interference in her affairs. In response to this complaint, Praveen began a campaign of intimidation and sexual harassment. This campaign began on a day when Meenakshi was absent from the office, visiting her sister in the hospital. During a meeting with colleagues Praveen began to smear Meenakshi's character, alleging that she was having illicit relationships during working hours, that she had embezzled money from her employers, and that she was involved in other corrupt activities at work.

Upon her return to the office, Meenakshi was informed of a missed call from Praveen. Later in the day he called again. During this phone conversation he asked her how she had dared to complain against him. He again accused her of corruption, claiming that she had embezzled money from her employers regularly. When she tried to reply to this false allegation, he began to use derogatory sexual language with her. He said," I know who your Godfather is and I also know what activities you indulge in during office hours. The entire department is aware of all your illegitimate relationships and activities." When she tried to stop this tirade he threatened her further saying," I will register complaints against you, I will tell everyone about your activities and ruin your character. I will teach you a lesson so that you know the consequences of filing a complaint against me". This conversation lasted 12 minutes.

That same day, Meenakshi and a female colleague, who had witnessed Praveen's tirade in Meenakshi's absence sent written complaints about Praveen's behaviour to the Law Office and to the offices of the head of the organisation. Both these letters demanded a departmental enquiry into Praveen's behaviour as well as a separate enquiry by the Committee

Against Sexual Harassment to be established in accordance with the Supreme Court's *Vishaka* guidelines. Meenakshi's colleague then contacted the ICHRL and we became involved in helping Meenakshi proceed with her case, which is still ongoing.

Takeaway Points

This case is important in two key respects. First, it is an example of verbal sexual harassment. It is a common misconception that sexual harassment must be physical - that it necessarily involves molestation or rape. In this case there was no physical contact between Praveen and Meenakshi, but the intimidation tactics that Praveen used clearly included sexual harassment. Many of the comments he made were sexual in nature - he specifically raised questions over Meenakshi's sexual behaviour, inventing escapades and relationships that she was supposedly having in the office. Moreover, the comments were unwelcome. Therefore, under the *Vishaka* definition, this was an example of sexual harassment. To resolve any ambiguity over the status of verbal harassment, the verdict in *Apparel* re-iterates in no uncertain terms that a verbal attack of a sexual nature constitutes sexual harassment.

The second important aspect of this case is that Meenakshi's response to the harassment was perfect. Immediately after the harassment began, Meenakshi filed a complaint. Her prudent and expeditious action meant that the details of the incident were fresh in her mind and that she could accurately relate the progression and details of all events. It is important to take a stand against the harassment as soon as possible after it begins to prevent it from escalating further.

It is also important to have the courage to confide in trusted friends or family to have emotional outlets in what can be a very difficult process. When Meenakshi enlisted the help of a witness to the events that took place in her absence, she strengthened her case - if only one employee is complaining it is easier for the organisation to ignore her. In addition, she confided the incident to her sister, using family as emotional support during a trying time.

Finally, Meenakshi contacted NGOs working on

women's issues, including the ICHRL. These NGOs placed immediate, outside pressure on the organisation to behave appropriately and in accordance with the law. Each of these actions strengthened her case and reduced her vulnerability, both professional and emotional.

Case 2

This case was brought by a single, 33 year-old woman working for a private sector, multinational corporation in Mumbai. The harasser was the direct superior of the woman in question. For the purposes of this description we will call the woman Prema and the man Nikhil.

Given that Nikhil was the direct superior of Prema, they worked together on several projects and interacted professionally on a daily basis. Prema had worked for Nikhil for approximately nine months when the harassment began. Over a period of two months in 2004 Nikhil began to make sexually coloured remarks towards Prema. These remarks were accompanied by sexually explicit SMS messages to Prema's mobile phone, and sexually explicit emails to her office email account. The frequency of these advances increased with time. Prema made it clear to Nikhil that this behaviour was unwelcome and unacceptable, but it continued unabated.

The organisation in which Prema worked had not set up a formal complaints committee as per the *Vishaka* guidelines. As a result, there was no clear complaints procedure for Prema to follow. Initially, she complained to the Vice President of her department. He responded that "these things do happen" and instructed her to drop the complaint. Having heard of her discussion with the Vice President, Nikhil told Prema he would "pay her back" for making a complaint against him. Prema then took the complaint to higher levels, meeting with the head of the Indian arm of the company as well as complaining to the heads of her department in both the US and India. Their response was to fire Nikhil, however they also put significant pressure on Prema to resign claiming she was partly at fault. She was denied access to her email, thus making it impossible for her to retrieve the email-based evidence of harassment. When she refused to resign she received a letter terminating her employment on the grounds that her conduct was unsatisfactory.

Despite losing the evidence she had saved on email, Prema still has the SMS messages saved on her private cell phone as evidence of the harassment. She is now considering her options, which include bringing a lawsuit against her former employers on two counts - non-compliance with the *Vishaka* ruling and wrongful dismissal.

Takeaway Points

This case highlights some of the most common forms of sexual harassment at the workplace - sexually coloured remarks combined with sexually explicit emails and SMS messages. Again, it is important to point out that sexual harassment takes many forms it is not necessarily physical

Prema's first move in this case was the correct one. By directly confronting Nikhil she attempted to solve the problem with as little hype as possible. Often such direct confrontation will work - the perpetrator will be embarrassed by his actions and, recognising that the victim is offended by the harassment, will often be happier to stop than to risk a public complaint. Unfortunately for Prema, her stand did not have the desired effect. Nikhil ignored the request and continued to harass her.

Prema's next move - filing a complaint with the appropriate authorities - was again the correct next step. In the absence of a complaints committee and clearly established guidelines on how to lodge an official complaint against sexual harassment, Prema was left to complain to individuals - that is, male individuals; unsurprisingly, she was ignored.

The organisation's reaction to Prema's accusations exemplifies a common barrier thrown up to prevent sexual harassment victims from achieving justice. As a result of her complaints, the organisation saw Prema as a liability and pushed her out along with Nikhil. This abrupt reaction directly contradicted the spirit of *Vishaka* - that it is the employer's responsibility to fully investigate and put an end to sexual harassment at the workplace. Prema did the right thing, but was fired anyway. The hostility she faced from within the organisation is typical.

To pre-empt that hostility, Prema, like so many other

women in similar situations, would have been well advised to contact an NGO working on women's issues as she was making the complaints. With outside guidance and counselling, she would have been able to put legal pressure on the organisation to establish the required complaints committee and investigate her case in the appropriate manner. Under the supervision of a third-party, the organisation would not have been allowed to ignore Prema's complaint and unlawfully dispose of her.

It is not too late, however, for Prema to achieve justice. The organisation in question made serious legal blunders in its handling of Prema's case and is now facing legal repercussions for its bad judgment.

Case 3

The following case occurred at a government agency. Rupa, a single woman in her early thirties, had been consistently harassed by her immediate boss for several months when, in April 2004, she filed a complaint.

During the preceding months Rupa's boss had sexually harassed her in a variety of ways. He sent her derogatory and sexually explicit SMS messages and made inappropriate comments in person at the office. The situation degenerated further when he began to make sexual advances on a quid pro quo basis (see page 33 for definition). He made it clear that he knew what powers he held over Rupa and that he could use these powers to hurt her if she did not succumb to his wishes.

Rupa complained to the management. At the same time, her sister contacted a women's activist. As there was no formal complaints procedure set up at the branch of agency in which Rupa worked, the head office sent representatives to form a complaints committee.

This process is underway, however the committee's conduct has already been brought into question. As proof of the nature of the harassment, Rupa had saved some of the offending SMS messages on her phone. When investigating this, the committee members went through the entire cell phone, checking personal messages that were not relevant to the case. During Rupa's appearance before the committee

she was questioned on her sexual history, on why she was not married and on whether she was sexually frustrated. It was suggested during this hearing that as a thirty year-old woman who was not yet married she was inviting this kind of behaviour. She was also asked why she would try to damage the reputation of a married man. She has now been transferred to another office location despite her request to stay in her current one.

Takeaway Points

The complaints committee investigation is ongoing and it is unclear how the matter will be resolved. The case is another example of one in which the victim made all of the right choices. By complaining early, gathering and saving evidence (such as the SMS messages), and contacting NGOs working on women's issues, Rupa has put herself in the strongest position possible for a just conclusion to her suffering.

It is important to recognise how the fact that she was unmarried was used against Rupa by the complaints committee. It is often the case that women who are single, whether they have never married, are divorced, or are widowed are seen as 'available' or of 'loose character'. This is a sadly pervasive attitude. It is important that complaints committees in general work to stamp out this attitude and ensure that it does not contaminate investigations or other committee proceedings.

Whilst the behaviour of the complaints committee in this case has been deplorable, the involvement of an NGO working on women's issues from the start has ensured that the case is being well observed and that the poor committee work is being documented. This third-party monitoring has opened the door for committee action to be evaluated and adjusted as the investigation takes place and for Rupa to appeal the final committee decision should it be reached through an unfair and/or illegal process.

Case 4

In early 2001, one of the harassers in this case, Divya, had been transferred from her previous department after her work was found unsatisfactory. In her new department Divya

still found her workload overwhelming and sought help from the co-accused, Mayur. They often sat side-by-side at the same desk in a manner considered by many of their colleagues to be inappropriate for the workplace.

The complainant, Aparna, worked directly opposite them on a nearby desk. As Divya and Mayur were positioned directly in Aparna's line of sight, she saw momentary displays of affection that betrayed the affair occurring between Mayur and Divya. Whilst Aparna did not make this knowledge public, Divya and Mayur became aware that she knew. In order to intimidate her into silence, they began to tease her verbally, making sexually coloured jokes about her.

The verbal taunts soon escalated into a physical confrontation. In July of 2001, Divya attacked Aparna, pulling her by the hair and dragging her to Divya's desk. Aparna retaliated and the brawl had to be broken up by co-workers. At this point Aparna filed a complaint with senior authorities in the company.

Two days later, Divya, accompanied by two women, three male thugs and Mayur, approached Aparna at work, pushed her around and outraged her modesty by exposing parts of her body by tearing away clothing and then groping her. They also threatened to kill her and her husband. Those office co-workers who attempted to help Aparna were similarly threatened by the accused.

In spite of the further complaints filed by Aparna, the authorities took no action.There was no complaints committee and the organisation filed no police complaint. She instead was pressured by several colleagues and company authorities to drop the charges and instead "join hands with" Divya and Mayur.

Since Aparna filed the complaint, the harassment has escalated. Mayur seeks her out when she is alone at her desk to show her pornography. In the presence of Divya he passes sexual remarks. This includes asking her if her husband is in town, telling her that if her husband is away he can please her, and telling her she should not be jealous of the affairs of others and instead should take part in them. He also touches her inappropriately and without her consent. She has now contacted the ICHRL and we are formulating a case against the organisation and the perpetrators.

Takeaway Points

There are several lessons to be gleaned from the above case. First, women suffering from sexual harassment will not necessarily find a trustworthy confidant in a fellow female solely because she is female. While it is advisable to turn to sympathetic, understanding co-workers for support through a harassment ordeal and to bear witness to the charges if necessary, it is important to seek out trustworthy people.

Second, Aparna was right to file charges against her harassers with senior authorities in the company. Being on the receiving end of violent behaviour is unacceptable anywhere; should it happen at the workplace, the most prudent step is to alert the senior authorities. As a result of her responsible action, Aparna and those who supported here were subjected to demeaning treatment and verbal threats. Furthermore, the office authorities did not honour their duty to investigate and adjudicate Aparna's claim. Instead, they urged her to drop it.

Such a response, both from the accused party and the workplace management, is, unfortunately, all too common. When one decides to file a complaint against sexual harassment at the workplace, it is strongly advised to enlist the guidance services of an NGO working on women's issues. The employer is obligated under Supreme Court jurisdiction, to protect your rights at the workplace. With the help of an NGO, victims of sexual harassment are better placed to force the employer to abide by this obligation.

Finally, not only did the employers respond in a typical manner in Aparna's case, but so too did the harassers themselves. After Aparna filed a complaint against them, the harassers escalated both the frequency and intensity of the harassment. Such a response is typical as harassers generally wish to intimidate the victim into withdrawing her complaint. Again, Aparna would have been well advised to seek the support of an NGO working on women's issues to combat such malicious behaviour. From an NGO she would have received emotional support to guide her through the trauma of her situation, she would have been directed to additional resources if necessary (lawyers, therapists, doctors) and she would have been able to place stronger outside pressure on her employers to properly address her deteriorating situation.

Case 5

Dina joined a major corporation in March of 1997 in a middle-management role. Despite performing at a high level (as is confirmed by her records, employee reports, etc.) Dina was passed over for several promotions. Each time she was, on paper, the best candidate. After four years of being passed over Dina approached senior management to ask for a promotion based on her record of performance and work experience. She approached two members of senior management. Both managers said that if she gave them sexual favours, they would be able to promote her. Shortly after refusing these advances, Dina was transferred to a lower-ranking role in a different department in which she was not qualified for the work.

For the next two and a half years, and on a number of occasions, she was called upon to entertain people outside the office premises and after office hours. The solicitations would come through phone calls to her desk. Her refusal to submit to these demands resulted in threats, abuses, victimisation and harassment.

While discussing a particular assignment with the company head, Maneck, Dina was asked to "move to a quieter location" that would be more conducive to discussion. Here Maneck told her, "Hard work does not pay. You will have to cross some boundaries and come to me. You are new to this sector. If you want to progress you will have to willingly give yourself to us that is the only way you can progress."

In spite of the adversity she faced, Dina continued to ask for improved working conditions. She was instead transferred to a department outside her expertise: administration. Here, her supervisor Gagan continually pursued her. She refused his advances but continued to seek promotion. She was told she would have to submit to him to get that promotion. Upon her refusal she was again transferred to another department, then every two to three months thereafter, moving five times in one year.

In one of her new roles Dina received anonymous phone calls asking her to meet unnamed persons out of the office and after hours. She refused. On one later occasion Dina was invited to meet another unnamed man. She was told

the trip would take only a few days and vehicles were sent for her. Again she refused. She was then given "one last chance" to comply and was told that she would be denied promotion if she refused. She was to meet her unknown caller in a car outside her home wearing a black dress. She did not comply.

The harassment then took a more violent tone. She was threatened with kidnapping from her home and acid attacks. At this point Dina decided to submit her resignation.

Before she had submitted her resignation, during the festival of Holi, Dina had specifically requested not to take part in the colour-throwing activities. In general, her co-workers respected her request; however, one co-worker, Umesh, did not. He began by throwing colour at her and proceeded to use abusive and suggestive language towards her. When Dina attempted to protect herself, Umesh became violent and had to be restrained by other employees. Dina did not make any complaint, formal or informal. To her surprise, the next day she found a complaint had been filed against her. Not knowing what else to do, she filed a police report against Umesh.

The company then set up a "fact finding committee" before which Dina was asked to testify to give her story. In the hearing she was aggressively interrogated and her answers were not accepted. She was told she should not have stayed at the office for the Holi festivities. She was also told that if she did not withdraw her police report the testimony she gave in the hearing would not be further investigated. She was then transferred to another location.

Feeling powerless to change her situation, Dina approached several NGOs working in the field of violence against women. She received guidance and support and was told to approach the police again, as well as the Maharashtra State Commission for Women. Here we outline the legal action she then took:

1. Dina again filed a police complaint under section 354-IPC. No action has yetbeen taken
2. She then wrote to the Company Management, requesting that they fulfil their obligations under the *Vishaka* judgment. The Management replied and said that Dina's allegations were 'frivolous', 'ambiguous', 'baseless' and 'false', and that they did not amount to sexual harassment at workplace.

3. With NGO help, Dina submitted a letter to the State Commission and approached the press to arrange a press conference.
4. The employer used media contacts to suppress the story. It worked. Though reporters from all major newspapers attended the conference, only one carried the story.
5. At this point she was fired.
6. The State Commission summoned Company Management for their testimony in the case and a record of the "fact-finding" mission conduced earlier. Management was later re-summoned and instructed to set up an in-house complaints committee as per the *Vishaka* guidelines.
7. Though the company did formulate a complaints committee, they did not do so in accordance with *Vishaka* rules or in accordance with State Commission recommendations.
8. Dina expressed her dissatisfaction with the established committee and stated she would not join in the proceedings until the shortcomings had been addressed. The inquiry into her case simply happened in her absence.
9. The State Commission for Women issued a contempt notice to the management. The management responded not by complying with the State Commission's order, but instead by attempting to sue the State Commission in the High Court. This law suit has thus far been unsuccessful.
10. Meanwhile, Dina has filed a case in Labour Court claiming illegal termination. This case is pending and Dina is receiving legal and emotional support from a number of activists and NGOs working on women's issues.

Takeaway Points

The details of the case above exemplify one of the most common forms of sexual harassment at the workplace. People in positions of power often use their status to extract sexual favours from those who fall within their realm of authority. Furthermore, refusal to comply with sexual solicitations from senior employees commonly results in the various forms of "punishment" experienced by Dina - refusal to grant promotions, rejection of requests for salary increases,

departmental transfers, geographical transfers, and, ultimately, termination of services.

Dina's extensive and persistent efforts against the perpetrators of sexual harassment at her place of work are extremely commendable. However, there are steps she could have taken that may have helped to curb the harassment before it spiralled out of control.

Dina was right to reject the wholly inappropriate advances proposed of her, but there were additional tools she could have used to actively combat the harassment from the start. For example, had she been aware of the legally binding requirement on employers to institute a complaints committee to address issues of sexual harassment at the workplace, she could have demanded an inquiry into the behaviour of the company head after the first incident of harassment occurred.

Often, a harasser will protect himself by pre-emptively issuing a complaint against the victim. This means that when the victim complains of harassment, she appears to be seeking revenge rather than lodging a legitimate complaint. The result is that the management is immediately sceptical of her motives, and is more likely to turn down her appeals. The earlier one files a complaint, the better one's chance of avoiding such a scenario.

In Dina's case, lodging an official complaint and demanding an inquiry would not only have brought unwanted attention to the issue from the perspective of the harassers, but it may also have encouraged other suppressed voices to speak out.

Dina talked to several of her female co-workers and found that many had experienced the same problems. However, they had been intimidated sufficiently to ensure that they were not willing to speak out. It is possible that seeing her lodge a complaint would have inspired them to join her.

Finally, it would have been extremely helpful to her case if Dina had been able to collect evidence of the harassment. Recording phone calls, transcribing conversations, or informing a friend, activist, or NGO in time for them to be witnesses to the car that was sent for her, for example, would all have strengthened the persuasiveness of her case. The more evidence one has, the harder it is for

management to ignore the complaint.

Although there were opportunities for Dina to take more severe action earlier than she did, her story is an important example that it is never too late to demand justice against sexual harassment. Dina demonstrated excellent judgement when she turned to NGO resources to guide her through her fight. Her relentless struggle against her former employer can serve as a model to all women that attempts at justice will require wholehearted commitment and tireless perseverance.

Case 6

Soon after Vyoma joined a major corporation in 1999, her direct superior, Vikram, began to make overtures towards her and touch her unnecessarily at even the slightest pretext. Early on in her employment, Vyoma felt unwell at the office and needed to leave early. Vikram offered to escort her to her residence. She protested that she could go alone, but he insisted on accompanying her. Inside the taxi, he tried to kiss her. As the taxi drove on he continued with verbal overtures, telling her how he wished to have her in a vacant room to passionately kiss her and asking her whether she had sexual intercourse with her husband.

After this incident Vyoma did her best to avoid Vikram but he would often intentionally brush up against her. On one occasion, when the office was empty, he crept up behind her, planted a kiss and speedily walked off.

At one point, Vyoma approached Vikram for a certificate of working experience. She typed it out and placed it in front of him for signature. The office was empty. Vikram opened the fly of his pants and asked her to masturbate him. She refused.

Later, having found a mistake in the certificate, Vyoma retyped it and presented it again to Vikram. When he called her to his office to retrieve it, she asked a male colleague, Subodh, to accompany her. As they entered his office Vikram asked Subodh to leave the office and run an errand. Subodh obeyed this direct order from his boss. After he left, Vikram offered her the certificate, but when she reached out for it, he stood up, caught her hand and pulled her down. The fly of his pants was

open and he forced her hand on it. She struggled to release herself, and during the struggle, Vikram told her that if she did anything to anger him, he would fire her. He also expressed his wish to have her in a hotel room for one night.

In response to this harassment Vyoma spoke to senior personnel within the company. She related specific incidents of harassment to them and told them of her intent to approach an NGO. Most of the senior employees Vyoma approached brushed her complaint aside as an overreaction on her part. They tried to convince her not to approach an NGO. When she directly confronted Vikram, he categorically denied all her claims and called her character into question. Many of the senior managers she had approached agreed with Vikram's assessment. They also agreed that she had been a willing participant in any activities between the two.

At the culmination of this she was told she would be fired but had the option of filing a resignation letter to improve her chances of finding employment elsewhere. Seeing no other option, Vyoma signed the letter. Just before her departure Vyoma contacted an NGO working on women's issues for guidance. This NGO helped Vyoma draft a letter to the company management.

Vyoma received a reply to her letter after she had left the company. Management insisted that Vyoma had been forced to leave due to her own flaws, that she was incompetent and that her work performance was poor and dissatisfactory. They insisted that her dismissal had nothing to do with her complaint of sexual harassment, which the company had received with "full sympathy and support". They claimed to have conducted an enquiry that found all of her charges to be false.

Vyoma then approached an umbrella body of NGOs and individual activists. They conducted a sustained campaign against the company and helped Vyoma to lodge a complaint in the Labour Court against her unjust dismissal. They mobilised public opinion for the case through a press campaign. Regular demonstrations were held in front of the company's stores. They also organised an e-mail campaign to reach out to various Human Rights groups and activists. The company reacted strongly to this campaign and demanded it be withdrawn. As it continued the Company was forced to reconsider its position.

At this point the company relented and offered redress. They paid Vyoma monetary compensation and issued a letter of apology. A complaints committee was established at the company as per the *Vishaka* guidelines. The committee has been functional since the 28th of February 2000.

Takeaway Points

The details above provide a heartening example that speaking out against the injustice of sexual harassment at the workplace can achieve important results, not only for an individual woman but also for the future of all women at a given place of employment.

It is important to note that the hostility Vyoma faced when she complained of the harassment and indicated her intent to approach an outside organisation for help is a reaction typically found at the workplace. Given the culture of male dominance in the workforce here, there is a strong mentality that sexual harassment is not an issue to be taken seriously. While the first step in any incident of sexual harassment should be to approach people at the workplace, if one finds that one's complaint is not handled with care and sensitivity, one would be well advised to seek outside support.

Vyoma's approach to an NGO working on women's issues to help her in her case against her employer greatly strengthened her position. Through the NGO she was able to access powerful resources such as a supportive human rights network and the press. This mounting public pressure is what ultimately forced the company to succumb.

In addition, the NGO was able to bring its knowledge of the legally binding requirements on employers with regard to sexual harassment. Thus, the NGO provided crucial aid in accomplishing two goals. For the short-term, it was instrumental in securing appropriate redress for Vyoma's suffering. For the long-term, it helped enforce the *Vishaka* ruling, thus providing future female employees with a properly administered protection mechanism in the complaints committee.

7

Looking at the Future & Concluding Comments

Looking at the Future and Concluding Comments

The intent of this handbook has been to offer both an informational account of sexual harassment in India as well as direction and advice to the various parties involved. Most of the discussion has focused on what the current legal framework means for institutions and victims and how both should behave within that framework. The advice we have given is based on the context set by *Vishaka* and other court cases since then.

However, while we have offered direction on how to behave in the current context, an important part of the campaign against sexual harassment is the creation of a new and better context for the future. There is an opportunity to be involved in the construction of that new context - namely involvement in the creation of new legislation pertaining to sexual harassment. This is what we now turn to.

Since the Supreme Court handed it down, the *Vishaka* ruling has been accepted as a temporary substitute for legislation in the period before the government drafts and passes a Bill explicitly confronting the issue of sexual harassment at the workplace. This impending legislation is the most important factor on the immediate horizon for the campaign against sexual harassment.

We discussed the formation of the Bill, sponsored by the National Commission for Women, in Chapter 2 and have included it in full in Appendix 2. The most important goal concerning the NCW Bill is to ensure that it comprehensively protects against all workplace sexual harassment. When a bill is in the drafting phase it is relatively easy to close any gaps; once a bill is passed into law, it becomes almost impossible to do so. Therefore, if any potential victims are currently

unprotected by this Bill, or if any circumstances of sexual harassment that should be covered are not currently covered by this Bill, *now* is the time to effect change.

An alternative draft of the sexual harassment Bill was presented to the legislature by women's organisations and individual activists in March 2005, and where appropriate we recognise whether this newer Bill addresses our concerns regarding the original NCW Bill. This "alternate" draft is included in this book as Appendix 3. For the rest of the chapter the NCW draft will be referred to as "the NCW Bill" and the newest draft will be referred to as the "Alternate Draft Bill." Our reason for primarily focusing on the NCW Draft is that the NCW was specifically charged by the government with drafting the Bill. Therefore, it is unclear whether the government will seriously entertain the Alternate Draft Bill.

The first area of concern with regard to the NCW Bill is the sexual harassment of non-employees, or service-takers. This is particularly prevalent in medical and educational institutions. As it stands, the NCW Bill does not offer any protection to a university student who is harassed by her professor. This context of sexual harassment is insidious because of the power dynamics in educational institutions. A university professor can do severe damage to the long-term career aspirations of a student, and can likewise vastly improve them. Suppose a biology student is constantly touched by her professor, suppose he makes sexually coloured remarks and advances to her. She is well aware of the influence he has over her career prospects - he knows everyone there is to know in the field, he is nationally respected for his work. To tell someone of the traumatic interactions she has with him would be to jeopardise her career. This harassment is taking place in a workplace, it is being performed by a professional within his professional context, and there is a power dynamic, yet the NCW Bill does not protect the victim because she is not an employee of the university.

Similar issues arise in the medical field. Recently, there have been several news headlines about doctors abusing the trust of their patients and molesting them during check-ups and treatments. Again, this kind of harassment occurs in a workplace (even if it is in the patients home, it is in a professional context and therefore in a "workplace" as defined by the Supreme Court), and again there is an unequal power

dynamic between the service provider and the service-taker. People tend to view doctors as having power - a doctor has a greater understanding of his patient's state of being than the patient does; he has the power to affect the patient's health. Moreover, patients may not know when they are being molested and when they are simply being checked for medical purposes. The NCW Bill does not protect the victims in such cases because they are employed neither by the doctor nor by the doctor's employer.

Of course, these are not the only two contexts in which there is a power dynamic between the employee and the service-taker. The police also have authority over their "clients" as do bankers, lawyers, and a wide array of other professionals. The point is that the sexual harassment of service-takers exists and it exists within the context of a professional interaction within a workplace. Therefore, we believe that such instances should be provided for in the final Bill through the creation of a new chapter specifically dealing with service beneficiaries.

The Alternate Draft Bill does a better job of addressing this issue than does the NCW Bill. The issue of the harassment of such third parties is dealt with in Chapter II of this Alternate Draft Bill, where it is stated that:

No employer or any person who is a part of the management or ownership, a supervisor, or a co-employee shall sexually harass a woman who, for whatsoever reason is present in / at the workplace of the said persons, or who comes into contact with the employer, supervisor or employee in connection with her work or the work of the said persons.[xxvi]

No member of a public establishment shall sexually harass an outsider who visits the establishment for a legitimate purpose.[xxvii]

No employee, member of the teaching staff, or student of an Educational Institution shall sexually harass

a. a person seeking admission to that establishment as a student
b. a student of that establishment.
c. a member of the teaching staff[xxviii]

No person shall sexually harass another person in the course of providing or offering to provide goods or services to that other person.[xxx]

Sexual harassment of a client in the course of providing services shall amount to Misconduct under The Advocates Act 1961, The Indian Medical Council Act 1956 , The Architects Act 1972 , The Chartered Accountants Act 1949 and all the laws and rules governing conduct of professionals[xxx].

A second gap in the NCW Bill concerns the sexual harassment of one individual by another when the only connection between the two is that they share work-related space. For example, a lawyer may be harassed at court by another lawyer, but have nothing to do with the harasser other than that they both work in the legal profession. Suppose the victim is a corporate lawyer, and the harasser a criminal defence lawyer. They have no professional interactions and they do not share an employer. However, for whatever reason, they both have cases going on in the same courthouse over the period of a month. Every time the harasser sees the victim he makes a lewd comment and suggests she go home with him. This is clearly sexual harassment, and it occurs at the workplace. However, because there is no professional link between the two parties, either through having the same employer or through interacting in a professional context, the harassment does not fall within the remit of the NCW Bill. Such situations can occur across a range of professions - on the trading floor of the stock exchange between two traders of unrelated commodities, each of whom works for a different company; between reporters converging for a press conference, etc. The NCW Bill does not offer protection to the victims of harassment in these circumstances. Again, this is an area we think needs to be reworked. The Alternate Draft Bill makes an improvement in this area (see the second paragraph of the list of quotes from that Bill above), but we still believe that more work needs to be done.

A third area requiring further work is how the NCW Bill deals with the unorganised sector. The NCW Bill does proscribe that Local Committees will be set up to address the complaints of workers employed in organisations of less than 50 people. This provision is presumably intended to include all workers in the unorganised sector. However, no details are provided concerning the function and jurisdiction of these committees. An in-house committee can decide to terminate

employment, demote, transfer, and fine. It is unclear what powers the Local Committees would have to remedy sexual harassment situations. Given the substantial population of workers in the unorganised sector, this oversight is a crucially important point. Failure to properly address it in the forthcoming Bill would be thoroughly negligent. But the core question remains unanswered: How should sexual harassment in this segment of the working world be dealt with? Answering this question constitutes the most immediately pressing concern for the drafters of this Bill.

Again, the Alternate Draft Bill is an improvement over the NCW Bill. It has a far clearer explanation of the constitution of the Local Committees, and, to some extent, their function[xxxi]. However, it still fails to make clear what the exact powers of this committee are. Without a delineation of their powers and jurisdiction, Local Committees will be relatively impotent.

In addition, there remain some issues surrounding the complaints committee that need reworking. As mentioned earlier in the book, and as arose in some of the cases discussed in Chapter 6, committee inquiries can sometimes be used to intimidate and torment the victim. The NCW Bill as it stands does not adequately define the protection the complainant has against hostile committee treatment. Such protection would include the banning of certain topics (e.g. whether the victim is married and any questions about her sex life) from the interrogation. Through making this explicit, the Bill would reduce ambiguity about appropriate committee behaviour, thus facilitating appeal against hostile committees.

On another complaints committee issue, the NCW Bill does not give the committee the flexibility to deal with complaints on an informal level. Often the victim will be reluctant to proceed with a full-scale investigation until the harassment reaches a critical level. Allowing for an informal settlement may encourage victims to come forward earlier and therefore stop harassment before it gets out of hand. Making it clear that such a strategy is available to the committee (at the direction of the victim) would open the door to earlier settlement. The Alternate Draft Bill deals with this complaints committee issue very well, and we recommend that the government follow the Alternate Draft Bill on this issue.[xxxii]

Finally, the specifics of committee selection, and

particularly the nature of the third-party representative, need further revision. The NCW Bill does not adequately define the expertise, experience, or role of the third-party representative. This is important because filling the position with an unqualified committee member would render the provision for a third-party redundant. On the other hand, restrictions that are too tight could place unmanageable burdens on the few NGOs qualified to take on such a role. Furthermore, the NCW Bill must define more clearly the exact role of the third party representative. If it is to be at all different from that of other members, then those differences must be clearly delineated.

As we discussed in Chapter 2, the formation of the NCW Bill involved consultation with the NGO community and others involved in the campaign against sexual harassment. We anticipate there being further such opportunities to influence the final Bill. The formation of this Bill is the most important issue in the immediate future of the campaign against sexual harassment at the workplace. The issues we have raised in the paragraphs above are important and require discussion and debate. Much of what we have said has been on a general level. The specifics must be worked out over the following months. The Alternate Draft Bill is an excellent step in this direction. Further refining the ideas in that Draft, and pressuring the legislature to include them in the final Bill, is what the campaign is now turning to. This is the future of defending women from sexual harassment at the workplace.

In Conclusion

Through this handbook, we hope to have provided a user-friendly manual for all those involved in dealing with sexual harassment at the workplace - from victim, to employer, to third parties such as NGOs working on women's issues. While different chapters focus on different issues and cater to the needs of different groups, a common thread runs through its entirety.

Though the *Vishaka* ruling came down eight years ago, a finalised Bill has yet to be made into law. The ruling should have been the catalyst for a powerful change in workplace dynamic, but too little has changed. From every perspective, the campaign against sexual harassment is only beginning. Employers have hardly begun to implement the

Vishaka guidelines. Many NGOs working on women's issues have yet to place a focus on sexual harassment. For victims, the sexual harassment continues and the barriers to speaking out still exist, though they are weakening.

However, rather than feel disheartened, we must see these obstacles as opportunities to act and seize the chance to make up for lost time. Whether an employer, a victim, an NGO, or simply an individual interested in making a difference, we can all play a part in changing this situation. Take the guidelines in this book as a first step.

Finally, please remember that this handbook does not end on this page. This is a reference book that we hope you will review many times as various situations arise. The appendices are there for precisely that purpose. They bring together the most important documents in the field, allowing you to reference them quickly whenever you find need for them.

We hope that this manual has proven informational, but, even more importantly, useful to those involved in the campaign against sexual harassment.

Notes

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II Times of India Network, "*Historian Suspended for Sexual Misconduct*" Times of India (January 24th, 2004) p.6

III Times of India Network, "*A-I Trainee Hostesses File Molestation Complaints*" Times of India (June 26th, 2004) p.3

IV Sakshi study, details retrieved from http://www.hindustantimes.com/news/7242_1214239,00180007.htm. January 20, 2005

V Ibid

VI Assureconsulting.com. January 20, 2005

VII To see the full text of this Convention refer to Appendix 4

VIII http://www.un.org/womenwatch/daw/cedaw/ , also available in Appendix 4

IX Ibid

X Ibid

XI Ibid

XII Ibid

XIII Ibid

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XV *Prevention of Sexual Harassment in Workplaces/Educational Institutions: An Action Research Project* Conducted in Sir J.J. Hospital and Grant Medical College. Veena Poonacha and Neeta Raymond

XVI http://www.indianngos.com/issue/women/govt/ncw.htm. February 10, 2004

XVII http://www.thehindubusinessline.com/2004/09/20/stories/2004092001990500.htm. February 10, 2004

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XIX Condition of Word Digest, Vol 11, p9, 1992 ILO, qtd. in Sexual Harassment at the Workplace - A Guide. Sakshi, New Delhi, India

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XXII Bombay Municipal Corporation, Sexual Harassment Policy-Working Guidelines

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XXV Narula, Priya and Catherine Sluggett. The Campaign Against Sexual Harassment at the Workplace: A Training Manual. Socio-Legal Information Centre, Mumbai: 2002

XXVI Alternate Draft Bill, Chapter II, Article 4 (II). See Appendix 3

XXVII Ibid, Chapter II, Article 5. See Appendix 3

XXVIII Ibid, Chapter II, Article 6(i). See Appendix 3

XXIX Ibid, Chapter II, Article 7(i). See Appendix 3

XXX Ibid, Chapter II, Article 7(ii). See Appendix 3

XXXI Ibid, Chapter III, Articles 18 and 19 and Chapter IV, Articles 36 and 37. See Appendix 3

XXXII Ibid, Chapter III, Articles 18 and 19 and Chapter IV, Articles 36 and 37. See Appendix 3

Appendices

Appendix 1
Vishaka and Others vs. State of Rajasthan

Vishaka & Ors.
Vs.
State Of Rajasthan & Ors.
13.08.1997 dd.
Cji, Sujata V. Manohar, B. N. Kirpal JJ.

Judgement:
This Writ Petition has been filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice, there is increase in the effort to guard such violations; and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration, and assisting in finding suitable methods for realisation of the true concept of 'gender equality'; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right of Life and Liberty'. It is clear violation of the rights under Articles 14, 15 and 21 of Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a siltation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a "safe" working environment. Right to life means life with dignity. The primary responsibility fro ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

The notice of the petition was given to the State of Rajasthan and the Union of India. The learned Solicitor General appeared for the Union of India and rendered valuable assistance in the true spirit of a Law Officer to help us find a proper solution to this social problem of considerable magnitude. In addition to Ms. Meenakshi Arora and Ms. Naina Kapur who assisted the Court with full commitment, Shri Fali S. Nariman appeared as Amicus Curiae and rendered great assistance. We place on record our great appreciation for every counsel who appeared in the case and rendered the needed assistance to the Court which has enabled us to deal with this unusual matter in the manner considered appropriate for a cause of this nature.

Apart from Article 32 of the Constitution of India, we may refer to some other provision which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19(1)(g) and 21, which have relevance are Article 15

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-

(1) The State shall not discriminate against any citizen on only of religion, race, caste, sex, place of birth or any of them.

(2) xxx xxxx xxxx

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) xxxx xxxx xxxx"

Article 42 "42. Provision for just and humane conditions of work and maternity relief - The State shall make provision for securing just and humane conditions of work and for maternity relief."
Article 51A

"51A. Fundamental duties. - It shall be the duty of every citizen of India, -
(a) to abide by the Constitution and respect its ideals and institutions, ...

xxxx xxxx xxxx
(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

xxx xxxx xxxx"

Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are

Article 51 "51. Promotion of international peace and security - The State shall endeavour to -
xxxx xxxx xxxx

(c) foster respect for International law and treaty obligations in the dealings of organised people with one another; and

xxx xxx xxx"

Article 253. Legislation for giving effect to international agreements - Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."
Seventh Schedule "List I - Union List

xxxx xxxx xxxx

14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.

xxx xxx xxx"

In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all work places, the contents of International Conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any International Convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. This is implicit from Article 51(c) and enabling power of the Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Constitution. Article 73 also is relevant. It provides that the executive power of the Union shall extend to the matters with respect to which Parliament has power to make laws. The executive power of the Union is, therefore, available till the parliament enacts to expressly provide measures needed to curb the evil.

Thus, the power of this Court under Article 32 for enforcement of the fundamental rights and the executive power of the Union have to meet the challenge to protect the working women from sexual harassment and o make their fundamental rights meaningful. Governance of the society by the rule of law mandates this requirements as a logical concomitant of the constitutional scheme. The exercise performed by the Court in

this matter is with this common perception shared with the learned Solicitor General and other members of the Bar who rendered valuable assistance in the performance of this difficult task in public interest.

The progress made at each hearing culminated in the formulation of guidelines to which the Union of India gave its consent through the learned Solicitor General, indicating that these should be the guidelines and norms declared by this Court to govern the behaviour of the employers and all others at the work places to curb this social evil.

Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The common minimum requirement of this right has received global acceptance.

The International Conventions and norms are, therefore, of great significance in the formulation of the guidelines to achieve this purpose.

The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of the Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are "Objectives of the Judiciary 10. The objectives and functions of the Judiciary include the following

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."
Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are Article 11
"1. States Parties shall take all appropriate measures to

eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in particular

(a) The right to work as an inalienable right of all human beings;

xxxx xxxxx xxxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxx xxxxx xxxxx

Article 24 "States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognised in the present Convention."

The general recommendations of CEDAW in this context in respect of Article 11 are "Violence and equality in employment

22. Equality in employment can be seriously impaired when women are subjected to gender specific violence, such as sexual harassment in the work place.

23. Sexual harassment includes such unwelcome sexually determined behavior as physical contacts and advance, sexually coloured remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruiting or promotion, or when it creates a hostile working environment.

Effective complaints procedures and remedies, including compensation, should be provided.

24. States should include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of coercion in the work place."

The Government of India has ratified the above Resolution on June 25, 1993 with some reservations which are not material in

the present context. At the Fourth World Conference on Women in Beijing, the Government of India has also made a official commitment, inter alia, to formulate and operationalize a national policy on women which will continuously guide and inform action at every level and in every sector; to set up a Commission for Women's Rights to act as a public defender of women's human rights; to institutionalise a national level mechanism to monitor the implementation of the Platform for Action. We have, therefore, no hesitation in placing reliance on the above for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our Constitution.

The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to compass all the facets of gender equality including prevention of sexual harassment or abuse.

Independence of Judiciary forms a part of our constitutional scheme. The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms fro construing domestic law when there is no inconsistency between them and there is a void in the domestic law. The High Court of Australia in Minister fro Immigration and Ethnic Affairs vs. Tech. 128 ALR 535, has recognised the concept of legitimate expectation of its observance in the absence of contrary legislative provision, even in the absence of a Bill of Rights in the Constitution of Australia.

In Nilabati Behera vs. State of Orissa 1993(2) SCC 746, a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right', as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

In view of the above, and the absence of enacted law to provide fro 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.

The GUIDELINES and NORMS prescribed herein are as under:-

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 the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of 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 amounts to mis-conduct 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. Complaints Committee
The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor 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 under 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 suitable manner.

10. 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.

Accordingly, we direct that the above guidelines and norms would be strictly observed in all work places for the preservation and enforcement of the right to gender equality of the working women. These directions would be binding and enforceable in law until suitable legislation is enacted to occupy the field. These writ petitions are disposed of, accordingly.

Appendix 2
NCW Draft Bill

THE SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE

(PREVENTION AND REDRESSAL) BILL, 2004

A Bill to provide for the prevention and redressal of sexual harassment of women at workplaces, or arising during or out of the course of their employment and matters connected thereto, in keeping with the principles of equality, freedom, life and liberty as enshrined in the Constitution of India and in pursuance of the Convention signed ...for the elimination of all forms of discrimination against women.

CHAPTER I
PRELIMINARY

1. (1) This Act may be called the Sexual Harassment of Women at the Workplace (Prevention and Redressal) Act, 2004.

   (2) It extends to the whole of India except the State of Jammu and Kashmir.

   (3) It shall come into force with immediate effect.

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

   (a) "aggrieved woman" means any female person, whether major or minor and includes a woman employed or working or studying, who has been subjected to sexual harassment;

   (b) "appropriate Government" means -

      (i) in relation to any department of the Central Government or any establishment or

undertaking wholly or substantially financed by that Government, or such other bodies or corporations established by or under the control of the Central Government, the Central Government; and

(ii) in relation to any department of a State Government or any establishment or undertaking wholly or substantially financed by that Government, or any local authority, or any establishment or undertaking established by or under the control of the State Government, the State Government.

(c) "complainant" means-

(i) an aggrieved woman herself;
(ii) an aggrieved woman for herself and on behalf of others, in the case of more than one aggrieved woman;
(iii) the legal heir or representative, in the case of death of an aggrieved woman; or
(iv) a registered trade union or a women's organisation or a non-governmental organisation, on behalf of aggrieved woman or women referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii) who files a complaint of sexual harassment under this Act.

(d) "Complaints Committee" includes the Internal Complaints Committee constituted under section 5;

(e) "defendant" means a person against whom a complaint is filed by a complainant;

(f) "District Special Officer" or "Special Officer" means a person appointed under section 6 or section 7, as the case may be;

(g) "educational institution" means a university, college, school, private coaching centre or any other institution at which education or training is provided;

(h) "employee" means a person employed for any work directly, or by or through any agency (including a contractor), with or without the knowledge of the principal employer, whether for remuneration or not,

or working on a voluntary basis, whether the terms of employment are express or implied, and includes any person employed as a temporary, casual, badli, probationer, trainee, apprentice or by whatever name called, and a domestic servant employed in a house or dwelling place or any other establishment.

(i) "employer" means,-

(i) in relation to a department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an establishment or undertaking wholly or substantially by the Central Government or the State Government or any local authority of a State Government, as the case may be, the authority prescribed in this behalf, or, where no person is so prescribed, the Chief Executive Officer;

(iii) in a workplace not covered under sub-clauses (a) and (b), the person who, or the authority which, whether called a manager, managing director, managing agent, mukadam, or by whatever name called, is responsible for the supervision and control of the workplace or house, in which the employee is employed, and in respect of a contract employee includes the principal employer of the workplace in which the employee is working, as well as the contractor;

(iv) in any other case, the person who is in a position of authority whether evaluatory, pecuniary or fiduciary including the owner or trustee of an educational institution.

(j) "Internal Complaints Committee" means a committee constituted by the employer under section 4;

(k) "Local Complaints Committee" means a Committee constituted under section 9;

(l) "owner", in relation to an educational institution,

means the person who establishes an educational institution, or a trustee or the person who is responsible to manage it as a principal, manager or by whatever name called;

(m) "panel of experts" means the list of experts prepared and maintained by the District Special Officer under section 8;

(n) "proceedings" means any proceedings carried out by any authority prescribed or persons authorised under this Act;

(o) "sexual harassment" means any unwelcome sexually determined conduct whether physical, verbal or non-verbal, including but not limited to, sexual advances, demands or requests for sexual favours, molestation, sexually nuanced gestures, comments, remarks or jokes either verbal, textual, graphic or electronic;

(p) "workplace", in relation to an employee, means any place where an aggrieved woman or defendant is employed or works, or visits in connection with work during the course of or arising out of employment, including, but not limited to the following, namely:-

(i) a factory, mine, plantation or forest;
(ii) a place where any agricultural operation is carried out;
(iii) a place of sale of agricultural or other products;
(iv) a brick kiln or a construction site;
(v) a shop, business establishment, a corporation or a private office;
(vi) an office or establishments of a professional or consultants;
(vii) an industrial establishment;
(viii) a banking or financial institution;
(ix) a restaurant, club, hotel, resort or other hospitality establishment;
(x) a hospital, nursing home or a health centre;
(xi) a court premise, police station, remand home or any judicial or quasi - judicial establishment;
(xii) an establishment wherein a person is employed for exhibition or performance of sporting or any other form of entertainment or

preparation thereof;

(xiii) a house, dwelling place whether permanent, temporary or in transit;

(xiv) any government, semi-government, establishment or department including telegraph office, post office, telephone exchange, railways, statutory board or any governmental scheme instituted for profit or otherwise;

(xv) a free trade zone or special economic zone;

(xvi) a non-governmental organisation, a public or charitable trust, a religious body, trust or institution, a co-operative housing society or association;

(xvii) a street;

(xviii) any form of transportation whether by road, sea or air;

(xix) any other public place.

CHAPTER II
SEXUAL HARASSMENT OF WOMEN

3. (1) No employer, supervisor or co-employee shall, in any manner whatsoever, sexually harass a female,-

(a) employee at the workplace where she is working;

(b) who, for whatsoever reason, is present in or at the workplace; or

(c) who, comes into contact with the employer, supervisor or employee in connection with her work or with the work of these persons.

(2) No owner or employee, including the teaching staff, of an educational institution, shall in any manner whatsoever, sexually harass a woman student who attends class or training or visits the educational institution.

(3) Notwithstanding anything contained in any other law for the time being in force, sexual harassment shall,-

(i) Amount to misconduct in any employment and the service rules or regulations relating to conduct and discipline at the workplace or educational institution and such rules or

regulations shall include provision for prohibiting sexual harassment and provide for appropriate penalties against an offender;

(ii) amount to an unfair labour practice within the meaning of clause (ra) of section 2 of the Industrial Disputes Act, 1947.

CHAPTER III
COMPLAINTS COMMITTEES

4. (1) Every employer who employs or has employed fifty or more employees or every owner who registers or has registered fifty or more students in the preceding twelve months in a calendar year shall constitute an Internal Complaints Committee:

Provided that an employer or owner who employs or has employed less than fifty employees or registers or has registered students in any preceding twelve months in a calendar year may constitute an Internal Complaints Committee;

Provided further that the employer who has more than one office or branch office or the owner who has more than one educational institution or branch thereof shall constitute an Internal Complaints Committee in each of them;

Provided also that where an employer or owner has at any time constituted an Internal Complaints Committee under this section, such a Committee shall continue to exist notwithstanding that the number of employees or students at any time thereafter falls below fifty.

5. (1) An Internal Complaints Committee shall consist of a woman President and not less than one half of its members should be women:
Provided that an Complaints Committee shall nominate a representative of a non-governmental organisation or any other body which is working for the cause of upliftment of women and is familiar with the issue of sexual harassment.

(2) Not less than one half of the members of the Internal

Complaints Committee shall be women:
Provided that where it is not possible to constitute an Internal Complaints Committee with the one half of women members due to non-availability of suitable women, the Committee shall be constituted with as many women members as near to one half of the total membership, after recording reasons therefore.

(3) It shall be the duty of an Internal Complaints Committee to make preliminary investigations into a complaint made to it by a complainant, hold enquiries into such complaints, to resolve the matter by amicable settlement, if so requested by the complainant, and to issue orders pursuant to the findings of the enquiry.

6. (1) Every employer and owner shall designate a female employee to be a Special officer in every department or educational institution or branch or office of such department or educational institutions under his or its control to receive complaints under this Act.

(2) Every employer or owner shall endeavour to publicise widely the name or designation and duties of the Special Officer in every department or educational institution under his or its control.

7. (1) The appropriate Government shall appoint a District Special Officer for every district, as may be prescribed, to deal with complaints arising out of provisions of this Act.

(2) The District Special Officer, referred to in sub-section (1), shall be of the rank not lower than the Assistant Labour Commissioner and shall have his or her office in the office of the Labour Commissioner.

(3) The District Special Officer shall be a female, wherever a female officer in the rank specified in sub-section (2) is available.

(4) It shall be the duty of the District Special Officer to-

(a) receive complaints from the district concerned;
(b) prepare and maintain a panel the of experts;
(c) constitute a Local Complaints Committee; and

(d) forward a copy of an Order passed by the Local Complaints Committee to the complainant, defendant and employer or owner for compliance and carry out any other functions assigned to her or him under this Act.

8. Every District Special Officer shall prepare and maintain a panel of Group of Experts consisting of eminent persons from various fields who are generally involved with women's issues, women's rights activists, social workers, counsellors, lawyers, doctors, psychiatrists, trade unionists, journalists etc as enumerated in section 2 (1) (j) at each district.

9. (1) When a complaint is received by a District Special Officer, the District Special Officer shall constitute a Local Complaints Committee consisting of not less than three persons from the panel of experts:
Provided that not less than one half of its members shall be women.
Provided further that in case of non-availability of a suitable woman, such Committee shall be constituted without one half of the women members after recording reasons in writing therefore.

(2) The Local Complaint Committee shall be headed by a woman, who shall be its chairperson.

CHAPTER IV
PROCEDURE FOR LODGING A COMPLAINT

10. (1) Where an Internal Complaints Committee has been set up in a workplace or an educational institution, a complaint under this Act may be lodged with any member of the Internal Complaints Committee:
Provided that if a complaint is made to the employer it shall be forwarded to the Internal Complaints Committee.
Provided further that in case where a complaint of sexual harassment is against the employer or owner, the aggrieved woman shall make the complaint to the Special Officer or to any member of the Internal Complaints Committee.

(2) If the aggrieved woman complaints that she has been subject to an act of sexual harassment at another

branch or office to which she has been deputed or to which she has visited in connection with her work or studies, a complaint in this regard shall be made either to the Internal Complaints Committee relating to her regular branch or office or to the Internal Complaints Committee relating to the branch office where the act of sexual harassment has allegedly taken place.

11. (1) Save and except for the cases specified in section 12, a complaint under this Act may be made to the District Special Officer.

(2) When a Complaint is made to the Special Officer, he or she shall constitute the Local Complaints Committee from the panel of experts within fifteen days of the said complaint and designate a female member as its chairperson.

(3) The Local Complaint Committee shall operate from the local proximity of the complainant's workplace or educational institution.

12. Where an oral complaint is made to the employer or owner, or Internal Complaints Committee or any of its members, or the Special Officer, it shall be duty of the employer or owner , or the Internal Complaints Committee or its member, or the Special Officer, as the case may be, to reduce the said complaint in writing and read out the complaint to the complainant and obtain the signature thereon of the complainant.

13. (1) A complaint made under section 10 or section 11 by a complainant referred to in sub-clause (iii) or sub-clause (iv) of clause (c) of section 2 shall be made only after obtaining a written consent of the aggrieved woman or, in the case of her death, her heirs or legal representative, authorising the organisation or individual to file the complaint on her or their behalf.

(2) The consent given under sub-section (1) may be withdrawn at any stage of the proceedings by the aggrieved woman or her legal heir or representative, as the case may be.

14. (1) Without prejudice to any proceedings initiated or any

action taken under this Act, where the conduct of a sexual harassment amounts to an offence under the provisions of the Indian Penal Code or any other law for the time being in force, it shall be the duty, of the employer or owner, or the Internal Complaints Committee or its member, or the Special Officer, as the case may be, who receives such a complaint, to immediately inform the complainant of her right to initiate action in accordance with law before the appropriate authority.

(2) Notwithstanding that whether the complainant opts to initiate any criminal proceedings under the provisions of the Indian Penal Code or any other law for the time being in force, the employer or owner, or the Internal Complaints Committee or any of its members, or the Special Officer, as the case may be, shall be bound to initiate proceedings as provided by or under this Act.

15. All the complaints made under this Chapter shall be confidential and it shall be the duty of the members of the Internal Complaints Committee or the Special Officer to ensure that its confidentiality is maintained for ever.

CHAPTER V
PROCEDURES BEFORE THE COMPLAINTS COMMITTEE

16. (1) On receiving a complaint of sexual harassment, the Internal Complaints Committee shall conduct an inquiry into the complaint by interviewing the complainant and defendant and any witnesses, determining if there are individuals with direct or indirect information regarding the complaint, and, if so, by interviewing them or by obtaining information from such other persons and making such inquiries as it thinks fit.

(2) The Internal Complaints Committee shall complete its inquiry within ninety days from the date of the complaint, record in writing its findings and take appropriate action on the basis of the findings.

(3) During the course of enquiry, the complainant and the

defendant shall be called separately to ensure freedom of expression and an atmosphere free of intimidation:
Provided that the complainant shall be entitled to accompany one representative during the enquiry.

(4) An Internal Complaints Committee shall be free to adopt its own procedure for carrying out the inquiry having regard to the sensitive nature of the complaint and the respective power position of the parties.

17. (1) The Internal Complaints Committee shall, for the purposes of an enquiry under this Chapter, have the power to summon witnesses or call for documents or any information.

(2) If it has reason to believe that a person is capable of furnishing such documents or information, it may direct that person to produce the documents or information by serving notice in writing on that person, summoning the person or calling for documents or information at such place and within such time as may be specified in the notice.

(3) Where an information is recorded or stored by means of a mechanical, electronic or other device, to produce the same or to produce a clear reproduction in writing of the information.

(4) Where the documents or information are produced before the Internal Complaints Committee in accordance with this section, the Committee may-

(i) take possession of the documents and make copies or take extracts therefrom;

(ii) Retain the possession of the documents for such period as may be deemed necessary for the enquiry.

18. The Internal Complaints Committee shall have the power to issue appropriate interim orders directing the employer or owner, on the demand of either the complainant or any witness giving evidence in her support, to implement such measures as transferring, changing shift of either the complainant, witness or defendant to protect the complainant or witnesses against victimisation or discrimination or may issues such other interim orders as

may be deemed necessary to ensure the safety of the complainant or supporter or witness.

19. The complainant and the defendant shall have the right to receive copies of the proceedings, documents or any other evidence produced during the course of enquiry.

CHAPTER VI
FINDINGS AND DIRECTIONS

20. (1) On the completion of an enquiry by an Internal Complaints Committee or a Local Complaints Committee, it may by a reasoned order, -

(a) dismiss the complaint which was the subject-matter of the inquiry; or

(b) pass any one or more of the following directions, namely:-

(i) that the defendant shall not repeat or continue such unlawful conduct; or

(ii) that the defendant shall perform any reasonable act or course of conduct to redress any loss or damage suffered by the complainant; or

(iii) that the defendant shall pay to the aggrieved woman or her legal heirs damages by way of compensation for any loss or damage suffered by her or her legal heirs by reason of the conduct of the defendant; or

(iv) that the defendant shall give a written apology to the aggrieved woman clearly undertaking that such behaviour will not be repeated and that no retaliatory steps will be taken by him or on his behalf; or

(v) that a punishment in addition to above be imposed upon the defendant, where the defendant is an employee, by the employer or owner, according to the gravity of the act of which he has been found guilty and in accordance with the service rules or standing orders applicable to the workplace or the educational institution;

(iv) Provided that where there is no service rules or standing orders, the Committee may direct that, any of the following punishments, having regard to the gravity of the act of

which he has been found guilty, be imposed on the defendant-

minor penalties:

(a) give him a warning or censure in writing;
(b) fine him, subject to and in accordance with the provisions of the Payment of Wages Act, 1936;
(c) withhold an increment for a period not exceeding one year;
(d) suspend him for a period not exceeding four days;

major penalties:

(e) withhold an increment for more than a year;
(f) reduce his rank or grade;
(g) terminate his services, by discharging or dismissing him, after paying any dues to which he is entitled to in law:

Provided further that before any action is taken under this clause, the defendant shall be given an opportunity to show cause as to why the proposed action should not be taken against him.

Explanation- For the purpose of this sub-section, "damage" shall include the injury to the feelings of the aggrieved woman or the humiliation suffered by her.

(2) Where the defendant is the employer or owner, or is a co-employee involved in the sexual harassment, or a complaint, led to or resulted in any adverse change to the service conditions of the aggrieved woman or any witness or representative, or any prejudice being caused to the victim or any witness in terms of their service conditions and employment, the concerned Committee may, in addition to any of the above directions, direct that -

(a) The employer restore the particular service condition of the aggrieved woman or witness or representative, with retrospective effect and full benefits from the date it was adversely changed, including where the aggrieved woman or witness of sexual harassment has been terminated from service, to reinstate her or him with full back wages and continuity of services;
(b) The employer grant to the aggrieved woman or

witness the particular service condition to which she or he would have been entitled but for the act of sexual harassment or consequences of the same, with retrospective effect and full benefits from the date the said service condition would have been granted to her or him but for the act of sexual harassment or consequences of the same.

(3) The findings and dirctions of the Internal Complaints Committee or the Local Complaints Committee shall be binding on the employer or the owner.

22. (1) Where the order has been passed by an Internal Complaints Committee, the said Committee shall forward a copy of the order each to the complainant, defendant and the employer or owner.

(2) Where the order has been passed by a Local Complaints Committee, it shall submit its order to the concerned Special Officer, who shall forward a copy of the same to the complainant, defendant and the employer or owner.

CHAPTER VII
DUTIES AND LIABILITIES OF AN EMPLOYER

23. (1) Every employer or owner shall,-

(a) ensure a safe work or study environment free from sexual harassment including prevention and deterrence;
(b) maintain a proactive program to educate all employeesor students as to the definition of sexual harassment and procedure for redressal;
(c) facilitate initiation of proceedings under this Act if an act of sexual harassment has been brought to his or her notice;
(d) ensure that the complainant or supporter or witness is not victimised, harassed or discriminated against for initiating or supporting or giving evidence in, proceedings under this Act;
(e) not alter to the prejudice of the aggrieved woman or witness or representative concerned, the conditions of service prevailing immediately

prior to the complaint being lodged as a consequence to the making and prosecuting of a complaint under this Act;

(f) ensure that complainant or supporter or witness is not punished by discharging, transferring, dismissing or otherwise for any misconduct, as a consequence to the complaint save with express permission in writing of the Internal Complaints Committee;

(g) if the situation so demands, immediately transfer the defendant.

(2) Every employer or owner shall take all necessary and reasonable steps to prevent and ensure that no woman is subject to sexual harassment in his workplace or educational institution by any third party and where any such sexual harassment occurs, the employer shall take all necessary and reasonable steps to assist the aggrieved woman to redress the act of sexual harassment.

(3) The onus shall be on the employer or owner to prove that he had taken all reasonable measures to comply with the duties entrusted to him under this Act.

24. (1) Where an employer or owner,-

(a) fails to perform duties entrusted to him under section 23

(b) fails to constitute an Internal Complaints Committee as required under section 4;

(c) protects a person found guilty of sexual harassment;

(d) in any manner pressurises the aggrieved woman or witnesses or supporters from initiating or participating in proceedings under this Act or pressurise her to withdrawing a complaint;

(e) fails to implement the order of the Internal Complaints Committee; or

(f) in any manner violates the provisions of this Act;

a complaint to this effect may be made to the Internal Complaints Committee or Special Officer, or the said Committee or Officer may take cognizance of the same suo moto and the matter will be dealt with by the said Committee or Officer in accordance with the procedure specified for dealing with complaints under this Act.

(2) In addition to the reliefs set out above, the Internal Complaints Committee or the Local Complaints Committee may direct the employer to pay a penalty, to be deposited in the "Sexual Harassment Fund" through the office of the Special Officer or compensation to the complainant or witness commensurate with the loss or injury suffered or damages caused to her by the above wrongful actions of employer or owner.

(3) In addition to the above, where any woman is subject to an act of sexual harassment due to the employer of or owner where the act took place, not having taken all necessary and reasonable steps to prevent the same, the aggrieved woman may file a suit for damages, and other relief, against the employer in a civil court.

CHAPTER IX
APPEAL

25. (1) In taking any decisions and submitting any reports under this Act, Complaints Committees or District Level Special Officer & Person from the Group of Experts shall, for the purposes of this section, be deemed to be acting on behalf of the employer of the defendant, and where the defendant is himself the employer , then the said Committees/ persons shall be deemed to be acting on behalf of the said employer.

(2) Any defendant aggrieved by a decision or report of a Complaints Committee or District Level Special Officer & person from the Group of Experts finding him guilty of sexual harassment, and / or against whom action has been taken by the employer, may:

(a) If he is a "workman" under Industrial Dispute Act, 1947:

(i) make a complaint in writing on points of fact and law, as if the decision had been taken by the employer to the Industrial Tribunal in whose jurisdiction his workplace falls, and on receipt of such a complaint, the Industrial Tribunal shall adjudicate upon the same as if it were a dispute referred to it in accordance

with the provisions of the Industrial Disputes Act, 1947, and shall submit its award to the Appropriate Government and the provisions of the Industrial Disputes Act, 1947 shall apply accordingly;

Provided that where a defendant is aggrieved by any decision or report referred to in sub-section (2) and where the woman who was the victim of the sexual harassment was harassed at her workplace / in connection with her work, then any complaint referred to in subsection (2) (a) (i)shall be filed in the Industrial Tribunal in whose jurisdiction the said woman's workplace falls;(ii) file any other legal proceedings, on points of fact and law, as if the decision had been taken by the employer

(b) If she is not a "workman" under industrial law, file proceedings, on points of both fact and law, before the forum / court before whom he would ordinarily file proceedings against a decision of, or action taken by, the employer.

(3) Any aggrieved woman who is aggrieved by a decision or report of an Internal Complaints Committee or a Local Complaints Committee / District Labour Officer & person from the Group of Experts taken under this Act, and/or action taken, or not taken by an employer or head of the educational institution in this regard, may: -

(a) If she is a "workman" under industrial law:

(i) make a complaint in writing on points of fact and law, as if the decision had been taken by the employer, to the Industrial Tribunal in whose jurisdiction her workplace falls, and on receipt of such a complaint, the Industrial Tribunal shall adjudicate upon the same as if it were a dispute referred to it in accordance with the provisions of the Industrial Disputes Act, 1947, and shall submit its award to the Appropriate Government and the provisions of the Industrial Disputes Act, 1947 shall apply accordingly;

(ii) File any other legal proceedings, on points of fact and law, as if the decision had been taken by the employer.

(b) If she is not a "workman" under industrial law, file proceedings, on points of both fact and law, before the forum / court before whom she would ordinarily file proceedings against a decision of, or action taken by, the employer.

CHAPTER X
MISCELLANEOUS

26. Employers and others responsible for the implementation of this Act will recognize that confidentiality is important and will respect the confidentiality and privacy of complainants or defendants, to the extent reasonably possible.

27. On the request of a Complainant, a counsellor shall be made available to her, at the cost of the employer, at any time after the lodging of a complaint, whether before an Internal Complaints Committee or District Level Special Officer, which shall be in addition to any proceedings / enquiries which have been instituted under the Act.

28. (1) If at any stage after the filing of a complaint and during any proceedings in respect of it under this Act by the Complaints Committee, the aggrieved woman shall have the right to withdraw the complaint and the Committee/person shall permit her to withdraw the complaint and if an inquiry has commenced, shall discontinue the inquiry.

(2) If it is brought to the notice of the Complainants Committee, or the Committee is of the opinion that, pressure is being brought on the complainant or the witnesses to withdraw their statements or not go through with the complaint then the committee will record this.

29. If a complaint of sexual harassment is dismissed by a Complaints Committee under this Act, no action whatsoever (including the recovery of any costs involved in investigating / enquiring into the complaint) may be

taken in regard to the same against the complainant/witnesses/supporters by the employer.

30. Where an aggrieved woman institutes any suit or legal proceedings in a civil court in respect of an act of sexual harassment which is unlawful under this Act, no court fees will be payable by the woman.

31. Every Internal Complaints Committee shall furnish from time to time to the District Special Officer concerned and every District Special Officer shall together with his return forward such return to the Central Government and to the State Government as they may require to monitor the effective implementation of the provisions of this Act.

32. Every employee shall have the right to raise issues of sexual harassment at the worker's meeting and in any other appropriate for

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

Provided that nothing in this Act shall effect any law, agreement, contract, terms and conditions of service or policy regarding sexual harassment at the workplace which applies to any woman employee or student on the date on which this Act comes into force, if any such law, agreement, contract, terms and conditions of service or policy regarding sexual harassment at the workplace is or are more favourable to the women concerned than the provisions of this Act.

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

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

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more

successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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

SCHEDULE I

The following item shall be added as Item 17 to The Fifth Schedule, Part I, of the Industrial Disputes Act, 1947:

"To dismiss, discharge or in any way adversely alter the service conditions of a female employee, (or any fellow employee who stands as a witness in this regard), on account of her making or having made an allegation of sexual harassment.

SCHEDULE II

The following item shall be added as Item 11 to Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.

"To dismiss, discharge or in any way adversely alter the service conditions of a female employee, (or any fellow employee who stands as a witness in this regard), on account of her making or having made an allegation of sexual harassment."

Appendix 3
Alternate Draft Bill

THE PROTECTION AGAINST SEXUAL HARASSMENT OF WOMEN BILL, 2005

Preamble

(A Bill conferring upon women the right to protection against sexual harassment and towards that end for the prevention and redressal of sexual harassment of women)

CHAPTER I

Whereas Sexual Harassment infringes the fundamental right of a woman to gender equality under Article 14 of the Constitution of India and her right to life and live with dignity under Article 21 of the Constitution which includes a right to a safe environment free from sexual harassment.

And Whereas the right to protection from sexual harassment and the right to work with dignity are recognized as universal human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) which has been ratified by the Government of India.

And Whereas the Supreme Court in Vishakha vs State of Rajashthan [1997(7) SCC.323] has formulated guidelines to address sexual harassment until a suitable legislation is enacted in this respect.

Be it enacted by Parliament in the _____ year of the Republic of India as follows:

PRELIMINARY

1. Short title, extent and commencement:-

   (i) This Act may be called The Protection Against Sexual Harassment of Women Act, 2005.

   (ii) It extends to the whole of India except the State of Jammu & Kashmir.

   (iii) It shall come into force with immediate effect.

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

   (a) "Aggrieved Woman /Women" means any female person/persons , whether major or minor, who alleges that she/they have been subjected to sexual harassment and who can make a complaint regarding the same under the provisions of this Act.

   (b) "Apex Internal Complaints Committee" means an Internal Complaints Committee set up at the Head office of any Public establishment/University either at the State/Central level.
   Illustration:
   (i) Committee set up at the head office of every University.
   (ii) Committee set up at the head office of each Public establishment at the State and Central level.

   (c) "Appropriate Government" shall have the same meaning as defined in Section 2(a) of the Industrial Disputes Act, 1947.

   (d) "Bar Council" means the All India Bar council or the State Bar Council Constituted under the Advocates Act 1961.

   (e) "Complainant" means
   (i) an aggrieved woman
   (ii) in case of death of the aggrieved woman, her legal heir or representative;
   (iii) In case of more than one aggrieved woman, all or any one or more of them on behalf of herself and

others, or

(iv) With the authorization on behalf of persons covered by clauses (i) (ii) and (iii) above:
   (a) a registered trade union;
   (b) a women's organisation or a non-governmental organization;
   (c) a co-employee

(f) "Consumer" shall have the same meaning as defined under section 2(d) of the Consumer protection Act, 1986.

Provided that a person shall be deemed to be a consumer under sec 2(d) of the Consumer protection Act for all purposes under this act whether any consideration has been paid for the services or not.

(g) "Contractual Services" would mean any contract for service whereby one part undertakes to render services to or for another in the performance of which he/she is not subject to detailed direction and control but exercises professional or technical skill and uses his/her own knowledge and discretion
Illustration of contractual services

   (i) People performing a service of acting, singing, and painting or like services.
   (ii) Services of a consultant for an establishment.

(h) "Council of Architects " Means the Council as constituted under the Architects Act , 1972.

(i) "Council of Chartered Accountants " means the Council of the Institute of Chartered Accountants Constituted under the Chartered Accountants Act 1949.

(j) "Courts" include The Supreme Court of India, The High Courts of the respective States, the Consumer Courts, Labour Courts and Industrial Courts and Tribunals and any other court or tribunal as by law constituted.

(k) "Defendant" means a person against whom an allegation of sexual harassment is made under this Act or any person who according to the complainant

has either aided or abetted such Sexual Harassment.
Explanation: It is clarified that inaction upon any complaint of Sexual Harassment or failure to respond to the grievance of a victim of Sexual Harassment would be deemed to constitute aiding and abetting of such harassment;

(l) "Deficiency in Services" would mean deficiency as defined in in section 2(g) of the consumer protection Act ,1986 and shall also include Sexual harassment to the Consumer while accessing a service.
Explanation: An aggrieved woman shall be deemed to be a consumer under the Consumer protection Act 1986 for the purposes of complaints relating to Sexual Harassment.

(m) "Educational Institution" means a school, college, university as by law established and includes any private coaching class, or any other institution or establishment at which education or training is provided;

(n) "Employee" means a person employed for any work directly, or by or through any agency (including a contractor), with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis, whether the terms of employment are express or implied, and includes any person employed as a temporary, casual, badli, piece-rated or contract worker, probationer, trainee, apprentice or by any other name called;

(o) "Employer" means:
   (i) In relation to an undertaking or department which is carried on by or under the authority of the Central Government, or a State Government, the authority prescribed in this behalf, or, where no authority is prescribed, the head of the department / undertaking;
   (ii) In relation to an establishment under any local authority, the authority prescribed in this behalf, or, where no person is so prescribed, the Chief Executive Officer;
   (iii) In an establishment not covered under (i) and (ii) hereinabove, the person who, or the authority which, whether called a Manager, Managing

Director, Managing Agent, contractor or by any other name, is responsible for the ultimate supervision and control of the affairs of the establishment, in which the employee is employed, and in respect of a contract employee includes the Principal Employer of the establishment in which the employee is working, as well as the contractor;

(p) "Enquiry Committee" means a committee to conduct enquiry into misconduct as defined by this act and by any other law for the time being in force.

(q) Establishment" means any venture, organization or institution carrying on systematic activity by co-operation for the production , supply or distribution of goods and services with a view to satisfy human wants and wishes irrespective of whether it is an "industry" within the meaning of section 2(j) of the Industrial Disputes Act, 1947 or whether it is performing any inalienable sovereign function and irrespective of whether the goods and services are provided for any remuneration or not.

Illustration of establishment;

(i) a factory, mine, plantation or forest;
(ii) a place of sale of agricultural or other products;
(iii) a brick kiln or a construction site;
(iv) a shop, business establishment, a corporation, or a private office;
(v) an office or establishments of a professional and/or consultants, etc as defined in Section 2(ag)
(vi) an industrial establishment;
(vii) a banking or financial institution;
(viii) a restaurant, club, hotel, resort or other hospitality establishment;
(ix) a hospital, nursing home;
(x) a mental Health centre as defined in section 2(z);
(xi) Prison as defined in section 2(ad);
(xii) Juvenile home as defined in Section 2(w);
(xiii) A court premise, police station;
(xiv) Any judicial or quasi judicial establishment;
(xv) An educational institution as defined in section 2(m);

(xvi) an establishment wherein persons are employed for exhibition or performance o f sporting or any other form of entertainment or preparation thereof;

(xvii) any government, semi government, establishment or department including telegraph office, post office, telephone exchange, railways, Statutory board etc., including any governmental scheme instituted for profit or otherwise;

(xviii) any office of elected representatives, including Parliament and State Assemblies and institutions of local Government such as Municipalities, and Municipal Corporations and Panchayats.

(xix) a free trade zone or a special economic zone;

(xx) a non-governmental organization, a public or charitable trust a religious body, trust or institutions, a co-operative housing society

(xxi) an association;

(xxii) Any form of transportation whether by road, sea or air;

(xxiii) Bar Council of India or the State Bar Council as defined in section 2(d);

(xxiv) Medical Council of India as defined in Section 2(aa);

(xxv) Council of the Institute of chartered Accountants of India as defined in section 2(i);

(xxvi) Council of Architects under the Indian Institute of Architects as defined in section 2(h).

(r) Group of Experts" means the list of experts drawn up by the Local Officer under this Act, consisting of persons from various fields who have worked for / in the field of women's rights, including women's rights activists; social workers; activists from NGOs; counselors; lawyers; doctors; psychiatrists; trade unionists; journalists etc.

(s) "Head of the Establishment" means the Secretary , Managing director, Manager or the person by whatever name called who is responsible for the affairs and has ultimate control of the establishment.

(t) "Home" means home as defined under Sec2 (d) of the Orphanages and other Charitable Homes (Supervision and Control) Act, 1960.

(u) "Hostile Work Environment" is said to be created when any act of Sexual Harassment has the purpose or effect of unreasonably interfering with an individuals work performance or creating an intimidating ,hostile or offensive working environment.

(v) "Internal Complaints Committee" means a committee constituted by the persons in charge of the establishments under Chapter III of this Act.

(w) "Juvenile Home" would include a Children's home , an Observation home and a Special home as defined under section 34, 8 and 9 of the Juvenile Justice (care and protection of children) Act 2000.

(x) "Local Complaints Committee" means a Committee constituted under Chapter III of this Act,

(y) "Local Officer" means a person so appointed under Section 14 of this Act;

(z) Mental Health Centre " includes Psychiatric Hospital as defined in Section 2(q) of the Mental health Act , 1987 and all observation wards ,day care centre , inpatient treatment in general hospitals , ambulatory treatment facilities and other facilities , convalescent homes and half - way homes for mentally ill persons.

(aa) "Medical Council of India" Means the Medical Council constituted under the Medical Council of India Act, 1956.

(ab) "Misconduct" means misconduct as defined in the Central Civil Services (Conduct) Rules 1964 , State Civil Services Rules , The Industrial Employment (Standing Order) Act , 1946 , the Advocates Act 1961, the Indian Medical Council Act 1956 , The Chartered Accountants Act 1949 , The Architects Act 1972 or in any other laws rules , regulations for the time being in force.

(ac) "Parliament" means Parliament as defined in article 79 of the Constitution of India.

(ad) "Prison" means any jail , sub jail , camp or place , open or semi open , used permanently or temporarily under the general or special orders of the government for the detention and reformation of prisoners and includes all lands and buildings appurtenant / as defined in sec 3(1) of the Prisons Act 1894.

(ae) "Police Lock Ups" means a place of detention for the purposes of detaining a person in the lawful custody of the Police under any Law for the time being in force.

(af) "Proceedings" means any proceedings carried out by any authority prescribed or persons authorized under this Act.

(ag) "Professionals' includes but are not limited to Doctors , architects, Lawyers, chartered accountants etc.

(ah) "Public Establishments" means any government, semi government, establishment or department including telegraph office, post office, telephone exchange, railways, Police stations statutory board and., includes any governmental scheme instituted for profit or otherwise.

(ai) "Services" means service of any description irrespective of whether it is provided for any consideration or not which is made available to potential users and users and includes the provision of facilities in connection with banking financing , insurance, transport, processing, supply of electrical and other energy, boarding , housing or lodging, entertainment, sporting activities amusement , the purveying of news of other information or the services of a professional.

(aj) "Sexual Harassment" includes such unwelcome sexually determined behavior as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is

discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.
Explanation: It is clarified that it is the reasonable perception of the woman that would be relevant in determining whether any conduct was sexually coloured and, if so, whether such conduct was unwelcome or not.

(ak) "State Legislature" means State Legislature as defined in Article 168 of the Constitution of India.

(al) "Unorganised Sector" includes all sectors as stated under schedule II.

CHAPTER II
RIGHT TO BE FREE FROM SEXUAL HARASSMENT

Sexual Harassment Unlawful:-

3. Every woman shall have a right to be free from Sexual Harassment and the Right to work in an environment free from any form of Sexual Harassment.

4. (i) No employer or any person who is a part of the management or ownership, a supervisor or a co-employee shall, sexually harass a female employee of the establishment where she is employed; whether the harassment occurs in / at the workplace, or at a place where the said persons have gone in connection with the work or the workplace, or at any place whatsoever.
   (ii) No employer or any person who is a part of the management or ownership, a supervisor or a co-employee shall sexually harass a woman who, for whatsoever reason is present in / at the workplace of the said persons, or who comes into contact with the employer, supervisor or employee in connection with her work or the work of the said persons.
   (iii) Sexual Harassment will amount to misconduct in employment and the service rules / regulations governing employment shall govern such misconduct, in addition to the provisions of this

Act;

(iv) Every employer shall take all necessary and reasonable steps to prevent and ensure that no woman employed in the establishment is subject to sexual harassment by any third party during the course of employment. Where any such Sexual Harassment occurs, the employer shall take all necessary steps to assist the aggrieved woman to redress the act of Sexual harassment.

5. No member of a Public establishment shall sexually harass an outsider who visits the establishment for a legitimate purpose.

6. (i) No employee, member of the teaching staff, or student of an Educational Institution shall sexually harass

(a) a person seeking admission to that establishment as a student or

(b) a student of that establishment

(c) a member of the teaching staff

(ii) No student or a member of a teaching staff of an Educational institution shall sexually harass an employee of the Institution.

7. (i) No person shall sexually harass another person in the course of providing or offering to provide goods or services to that other person.

(ii) Sexual harassment of a client in the course of providing services shall amount to Misconduct under The Advocates Act 1961 , The Indian Medical Council Act 1956 , The Architects Act 1972 , The Chartered Accountants Act 1949 and all the laws and rules governing conduct of professionals.

8. (i) No person in custody of a juvenile home, prison or Mental Health care Centre shall sexually harass an employee of such an institution .

(ii) No employee of a juvenile home, prison or Mental Health care Centre or an inmate shall sexually harass a person in custody of the above institution or an outsider or a visitor who visits the premises for a legitimate purpose.

9. (i) No person in the custody of a home as defined under

sec 2(d) of the Orphanages and other charitable Homes (Supervision and Control) Act 1960 shall sexually harass an employee of such an institution.

(ii) No employee of a home as defined under sec 2(d) of the Orphanages and other charitable Homes (Supervision and Control) Act 1960 or an inmate shall sexually harass a person in custody of the above institution or an outsider or a visitor who visits the premises for a legitimate purpose.

10. No Member of Parliament or a State Legislative Assembly or Council shall sexually harass a member of the staff or any Member of Parliament, a State Legislative Assembly or Council or any other person in the course of carrying out their duties Parliament or a State Legislative Assembly or Council.

11. No judicial officer or any staff employed by such judicial officer or court shall sexually harass a non - judicial Officer, a member of the staff of a Court of which the judicial officer is a Member or any person who visits the Court premise for a legitimate reason.

12. No person shall sexually harass a woman in the course of seeking to enter into a contract for service or during the period of service.

13. Without prejudice to the rights and remedies available under this act and in addition thereto thereunder, a person aggrieved shall have the right to claim compensation from the defendant for any sexual harassment to which she may have been subjected to in an appropriate Court of law.

14. In any claim under the preceding clause, the appropriate Court or forum, upon satisfaction on a balance of probabilities that the defendant has committed sexual harassment, shall award appropriate just and reasonable compensation to the person aggrieved taking into account the following factors:

(a) The mental trauma, pain , suffering and emotional distress caused to the person aggrieved.

(b) The loss in career opportunities due to this particular incident.

(c) Medical expenses incurred by the victim for

physical or psychiatric help.

(d) The income and financial status of the defendant.

(Explanation: in any action under clause (14), the person aggrieved may submit an authorized or certified report of the Internal Complaints Committee or the Local Complaints Committee, the Court or forum shall presume that sexual harassment has taken place and shall proceed to award compensation without requiring the person aggrieved to establish her claim of sexual harassment. However, the defendant in such a case shall have the opportunity to establish the such report of the Internal Complaints Committee or the Local Complaints Committee, as the case may be, is perverse and contrary to law or in violation of the principles of natural justice.)

CHAPTER III
AUTHORITIES UNDER THIS ACT

15. Duty of the Establishment to Constitute Internal Complaints Committees :-

(1) It shall be mandatory for every Establishment who employs or has employed in the preceding 12 months, more than 50 employees, to constitute an Internal Complaints Committee. An employer who has less than such number may constitute such Internal Complaints Committee at its option. In the event of an establishment having more than one office or branch, it will be mandatory for the employer to constitute an Internal Complaints Committee in each of them.

Provided that an establishment where an Internal Complaints Committee has been already set up, the continuance of such a Committee shall be mandatory notwithstanding that the number of employees then or at any time thereafter falls below the number prescribed.

16. Constitution of Internal Complaints Committee: -

(1) The Internal Complaints Committee shall consist of not less than three members. The Committee shall be headed by a woman, who shall be its chairperson. There shall be at least one external expert on the

committee.

(2) Not less than half of its members shall be women, except in situations of non-availability of a suitable woman and for reasons recorded in writing.

(3) No external expert on the Internal Complaints Committee shall be in any way, either personally or professionally related or in any ways connected to the employer in whose establishment the Committee has been established, or to a defendant against whom a complaint is received, or to the complainant who has lodged the complaint. If the external expert is so related or in any way connected to the employer, any complainant may seek his disqualification on this ground, and the employer shall be bound to replace him with another external expert. If the external expert is so related to a defendant or complainant in a particular case, the complainant / defendant may seek, at any time during the proceedings, his disqualification on this ground, and the employer shall replace him with another external expert for that particular case.

(4) If a member of the Complaints Committee is junior in the hierarchy of the establishment concerned to the defendant, then for that particular case, and if the complainant so requests, at any time during the proceedings, that member shall be substituted on the Committee by another person.

(5) An Internal Complaints Committee constituted under section 12 shall be appointed for a period of three years, after which a new Committee shall be appointed. Provided that the previous Committee or individual members of the previous Committee may be reappointed.

17. In public establishments where an Internal Complaints Committee should have been set up but has not been set up, an aggrieved woman may approach the concerned Apex Internal Complaints Committee. In private establishments where an Internal Complaints Committee should have been set up but has not been set up, an aggrieved woman may approach the concerned Local Complaints Committee.

18. Appointment of Local Officer for every District:-

(1) The appropriate Government shall appoint a Local Officer for every district in metropolitan areas, and at every block level for non-metropolitan areas, as may be specified in Rules framed under this Act, to deal with complaints arising out of provisions of Section 4 of this Act, that are made by persons in establishments employing less than 50 employees or in sectors that fall under schedule II of this Act. Provided that, where, given the number of employees employed therein and nature of the establishment, a Local officer is of the opinion that any establishment in a sector that falls under schedule II of this Act, should constitute an Internal Complaints Committee in that establishment, the Local Officer may direct that establishment to do so.

(2) The Local Officer specified in sub-section (1) above, shall not be of a rank lower than the Asst. Labour Commissioner in metropolitan areas and he / she shall be based in the office of the Labour Commissioner / Deputy Labour Commissioner. The Local Officer specified in sub-section (1) above, shall not be of a rank lower than the --------- in non-metropolitan areas and he / she shall be based in the office of the ----------.

(3) The Local Officer shall be a female whenever a female officer meets the criteria in Section 18 (2).

(4) Every Local Officer shall draw up a list of a Group of Experts as enumerated in section 2 (q) at each District / Block Level.

(5) As and when deemed necessary, the Local officer may appoint Special officers at district / block level to receive complaints and to perform all others tasks.

19. Constitution of Local Complaints Committee:-

(1) It shall be the responsibility of the Local Officer under this Act, to constitute a Local Complaints Committee.

(2) The said Committee shall consist of at least three persons. At least one person shall be selected from the Group of Experts as constituted under section 14(4) of this Act, one person shall be an employers'

representative, selected from employers association in the district concerned and one person shall be an employees' representative, selected from a trade union functioning in the district concerned. Whatever the size of the Committee, there shall be an equal number of employers' and employees' representatives. The Committee shall be headed by a woman, who shall be its chairperson, and at least 50% of the members shall be women, except in situations of non-availability of suitable women and for reasons recorded in writing.

(3) No external expert on the Local Complaints Committee shall be in any way, either personally or professionally related or connected to a defendant against whom a complaint is lodged before the Committee, or to the complainant who has lodged the complaint, or to the employer in whose establishment the defendant or complainant is employed.
If the external expert is so related or connected to the employer or defendant or complainant, then the complainant, or defendant as the case may be, may seek her / his disqualification on this ground, and the Local Officer shall be bound to replace her / him with another external expert for that particular case.

(4) No employers' representative on the Local Complaints Committee shall, in relation to a particular case, be in any way, either personally or professionally related or connected to the defendant or complainant or to the employer in whose establishment the defendant or complainant is employed, and the said expert shall not be the member / representative of any association of employers of which the said employer is a member.
No employees' representative on the Local Complaints Committee shall, in relation to a particular case, be in any way, either personally or professionally related or connected to the employer in whose establishment the defendant or complainant is employed or to the defendant or complainant, and the said expert shall not be the member / representative of a trade union of which either the defendant or complainant is a member.
If in any of the said instances the employers or employees representative is so related or connected

to the employer, defendant or complainant, then the complainant, or defendant as the case may be, may seek her / his disqualification on this ground, and the Local Officer shall be bound to replace her / him with another employers or employees representative, as the case may be, for that particular case.

(5) A Local Complaints Committee constituted under sub-section 1 shall be appointed for a period of three years, after which a new Committee shall be appointed. Provided that the previous Committee or individual members of the previous Committee may be reappointed.

(6) The members of the Local Complaints Committee shall be paid from the fund of the Local Complaints Committee, a traveling allowance, at such rates as may be prescribed, for each day on which they are required to attend the office from which the Committee functions or travel anywhere else in connection with the work of the Committee.

(7) A Fund for the costs of running the Local Complaints Committees shall be established by the Finance Department and made available to the Local Officer of each such Committee.

20. A Public Establishment shall be required to:

(a) Constitute at every district an Internal Complaints committee, comprising:
   (i) Two Officers not below the rank of a Joint Director (Preferably women) of the concerned ministry under whose administrative control the establishment functions.
   (ii) An external activist or expert working in the area of women's rights.

(b) The secretary of that particular department shall be ultimately responsible for the timely disposal of all complaints of sexual harassment in such establishment and for carrying out the functions of the Internal complaints Committee under this act.

21. It shall be the duty of the Head of the Educational Institution to:

(a) Form an Internal Complaints Committee headed by a woman, comprising:
   (i) A representative of the teaching staff.
   (ii) A representative of the staff.
   (iii) A representative of the student's body.
   (iv) An external activist or expert working in the area of women's rights.

   Provided that the manner and method of selection of the above member of the committee shall be determined by the relevant laws, rules, regulations and ordinances governing the establishment if any. Provided further that the existing Internal complaints committee shall be deemed to be the Internal Complaints committee under this act.

(b) The head of the institution shall be finally responsible for the timely address of all complaints of sexual harassment in such establishment.

(c) Every University shall constitute an Apex Internal Complaints Committee body to carry out the Functions of the Internal Complaints Committee.

The Vice Chancellor of the University shall be ultimately responsible for the timely disposal of all complaints of Sexual Harassment in any given University and for carrying out the functions of the Internal Complaints Committee under this Act.

22. It shall be the duty of the Superintendent of each prison to:
(a) To constitute for every prison, an Internal Complaints Committee, Headed by a woman, comprising of:
   (i) Two member from the Board of Visitors constituted under section 59 of the Prisons Act.
   (ii) An external activist or expert working in the area of women's rights and prisoner's rights.

(b) It shall be the duty of every superintendent of a prison to inform all inmates of their rights to be free from sexual harassment.
(c) The Superintendent shall be responsible for the timely address of all Complaints of Sexual Harassment in such establishment.

The Inspector general of that particular area shall be

responsible for the timely address of all complaints of sexual harassment made in prisons that fall under his jurisdiction.

23. It shall be the duty of the Medical Officer in charge of the Mental Health Centre, as defined under sec 2(j) of the Mental Health Act, 1987, to:

(a) Make sure that written notices are put up at every doctor's room, the reception and the dormitories explaining the mechanism of the complaints committee and encouraging people to file their grievances in relation to Sexual Harassment.

(b) Inform all patients and family members about their rights to be free from sexual harassment.

(c) Constitute an Internal complaints Committee, headed by a woman, comprising of:

(i) Two members from the Board of Visitors under section 37 of the Mental Health Act, 1987.

(ii) An external activist or an expert working in the area of Women's Rights.

(d) The Medical Officer in Charge of the Mental Health Centre shall be responsible for the timely address of all complaints of sexual harassment in such establishment.

24. It shall be the duty of the head of the Observation Homes, Special Homes and Children's Homes, as constituted under Sections 8, 9 and 34 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to

(a) Constitute an Internal complaints committee,Headed by a woman , under Sec 35 of the Juvenile Justice (Care and Protection of Children) Act, 2000, to comprising:

(i) Two lady member of the Child Welfare Committee constituted under Section 29 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

(ii) An external activist or an expert working in the area of Women's Rights.

(b) The person in charge of the Observation Homes, Special Homes and Children's Homes shall be responsible for the timely address of all complaints of sexual harassment in such establishment.

25. It shall be the duty of the manager of the home under sec 21 of the The Orphanages and other Charitable Homes

Supervision and control Acts, 1960 to

(a) Constitute an Internal Complaints Committee headed by a woman under Sec 30 (c) of The Orphanages and other Charitable Homes Supervision and control Acts , 1960 comprising of
   (i) Two lady members of the Board of control constituted under sec 5 of The Orphanages and other Charitable Homes Supervision and control Acts , 1960.
   (ii) An external activist or an expert working in the area of Women's Rights.

(b) The manager of that particular home shall be responsible for the timely address of all complaints of sexual harassment in such establishment.

26. It shall be the duty of the Bar Council of India and the Bar Council of all respective states constituted under the Advocates Act, 1961, to

(a) Constitute a Standing complaints committee,headed by a woman comprising of:
   (i) Two members of that said Bar Council, preferably women.
   (ii) An external activist or an expert working in the area of Women's Rights.

(b) Notwithstanding anything contained in the Advocates Act such committee shall be deemed to be the disciplinary body under this act for the purpose of enquiring into a complaint of sexual.

(c) The chairman of the said Bar Council shall be responsible for the timely address of all complaints of sexual harassment in connection with advocate members of such Bar Council.

27. It shall be the duty of the Medical Council of India under Medical Council Act, 1956, to

(a) Constitute a committee at the state or union territory level, headed by a woman, comprising of:
   (i) Two senior doctors of that particular state or union territory.
   (ii) An external activist or an expert working in the area of Women's Rights.

(b) Notwithstanding anything contained in the Indian medical council Act 1956, the Internal Complaints committee shall be deemed to be the Disciplinary committee under this act for dealing with Complaints of Sexual Harassment.

(c) The Chairman of the said Medical Council of India shall designate for each state or union territory one member of the Medical Council of India (elected from the State Medical Register of such state or union territory) who shall be responsible for the timely address of all complaints of sexual harassment in connection with members of the Medical Council of India.

28. It shall be the duty of the Council of Architects constituted under Sec 3 of the Architects Act, 1972 to

(a) To constitute a committee headed by a woman, under sec 10 of the architects Act 1972 at the state or the union territory level, comprising of:

(i) Two Senior Architects of that particular State or Union Territory members of the architects council.

(ii) An external activist or an expert working in the area of Women's Rights.

(b) Notwithstanding anything contained in the Architects act 1972 , the said committee shall be deemed to be the disciplinary committee under this act for dealing with complaints regarding sexual harassment .

(c) The president of the said Council of Architects shall designate for each state or union territory one member of the Council of Architects as responsible for the timely address of all complaints of sexual harassmet in connection with members of the Council of Architects..

29. It shall be the duty of the Council of the institute of Chartered Accountants of India to

(a) Constitute a committee, headed by a woman, under sec 17(2) of the Chartered Accountants Act at every state or the union territory level, comprising of:

(i) Two members of the Council (preferably women)

(ii) An external activist or an expert working in the area of Women's Rights.

(b) Notwithstanding anything contained in the chartered accountants act 1949 the above committee shall be deemed to be the disciplinary committee under this act dealing with complaints of sexual harassment.

(c) The President of the Council of Institute of Chartered Accountants shall designate for each state or union territory one member of the Institute of Chartered Accountants to be responsible for the timely address

of all complaints of sexual harassment in connection with members of the Institute of Chartered Accountants.

30. It shall be the duty of the Chairman or Speaker of the each house of Parliament of the State Legislature to

(a) Constitute a standing committee headed by a woman, comprising of:
   (i) Two woman members of the House.
   (ii) An external activist or an expert working in the area of Women's Rights.

(b) The standing committee shall be deemed to be the internal complaints committee under this act dealing with complaints of Sexual harassment

(c) The Chairman or the Speaker shall be responsible for the timely address of all complaints dealing with sexual harassment .in connection with members of each house of the parliament or the state assembly.
   Explanation: It shall be the duty of the Chairman or the speaker to ensure that none of the members of the Complaints committee belong to the same political party as that of either of the parties.

31. It shall be the duty of the:

(a) District and Sessions Judge to constitute a District Level Committee on Sexual Harassment, headed by a woman, comprising of:
   (i) Two additional District and Sessions Judge (Preferably a woman).
   (ii) An activist or an expert working in the area of Women's Rights.

(b) The Chief Justice of a High Court to constitute a State Level Committee on Sexual Harassment headed by a woman, comprising of:
   (i) Two Judges of the High Court
   (ii) An activist or an expert working in the area of Women's Rights.

(c) The Chief Justice of India to constitute a Supreme Court Committee on Sexual Harassment headed by a woman, comprising of:
   (i) Two Judges of the Supreme Court
   (ii) An activist or an expert working in the area of Women's Rights.

(d) These committees shall be deemed to be the internal complaints committee under this Act dealing with complaints of sexual Harassment.

(e) The District and Sessions Judge, The Chief Justice of a High Court and The Chief Justice of India shall be responsible for the timely address of all complaints dealing with Sexual Harassment in their respective committees.

32. Complaints Committees for Statutory Boards: Wherever a Statutory Board has been set up by the Central or a State Government to regulate employment in a particular field (for example, the Mathadi Workers'Board, the Security Guards' Board) then the Chairperson, or whoever is the designated Head of the Board concerned, shall constitute a Complaints Committee to deal with any complaints of sexual harassment made by or against employees who are covered under the said Board. In setting up such a Committee and dealing with such complaints, the Chairperson / designated Head of the Board concerned shall follow exactly the same procedures contained in this Act in respect of Local officers and Local Complaints Committees.

33. All Complaints Committees set up under this Act will be headed by a woman member of the Complaints Committee.

CHAPTER IV
DUTIES OF AUTHORITIES UNDER THIS ACT

34. General duties of an establishment: -

(1) Every establishment shall:

(a) Ensure a safe environment free from sexual harassment including prevention and deterrence of Sexual Harassment

(b) Maintain a proactive program to educate all employees as to the definition of sexual harassment and procedure for redressal.

(c) Undertake workshops and training programmes at regular intervals for sensitizing the members

(d) Prominently display notices in various places in the establishment spreading awareness about the issue of "Sexual harassment at the Workplace" and giving information about the redressal mechanism that has been put in place and encouraging people to file their grievances.

(e) Facilitate initiation of proceedings under this Act

If an act/s of sexual harassment has been brought to his/her notice.

(f) Prepare and prominently display a policy for the prevention and prohibition of Sexual Harassment and until such a policy is prepared and published the policy as per Schedule I shall apply.

(g) Not alter to the prejudice of the Complainant/Supporter/Witness concerned, the conditions of service of the Complainant/Supporter/Witness prevailing immediately prior to the complaint being lodged as a consequence to the filling and prosecuting of a complaint under this Act.

(h) Not alter to the prejudice of the Complainant/Supporter/Witness concerned, the conditions of service of the Complainant/Supporter/Witness prevailing immediately prior to the complaint being, after such complaint has been made and pending its prosecution under this Act.

(i) Bear the expenses of the committee members incurred in relation to the complaint such as travel allowance.

(2) The onus shall be on the head of the establishment to prove that he/she had taken all reasonable measures to comply with the duties cast upon the establishment under this Act.

35. Duties of the Internal Complaints Committee, :-

(1) It shall be the duty of all Internal Complaints Committees constituted under this Act, to promote and facilitate measures taken in the establishment concerned for the prevention of Sexual Harassment in that establishment and for conscientisation and Sensitisation regarding the same; to to carry out a Dispute Resolution, if so requested by the complainant, and to carry out an enquiry into in complaints of Sexual Harassment referred to it,.

Notwithstanding anything to the contrary contained in any law or rules where such an Internal complaints committee is carrying out an inquiry into Misconduct as defined under the Central Civil Services (Conduct) Rules 1964 or the Industrial Employment (Standing Orders) Act 1946 then such committee shall be deemed to be the Disciplinary Committee formed

under such Rules and shall carry out the inquiry under the provisions of the relevant authority.

Provided however in establishments employing less than 100 employees and those employed in sectors as specified in schedule II, the Internal complaints committee shall not carry out any inquiry into any complaints of misconduct and complaints after being received by the Internal Complaints Committee shall be forwarded to the Local Complaints Committee. The enquiry into a complaint of misconduct shall be conducted by the Local Complaints Committee and such enquiry shall be deemed to be a disciplinary enquiry under the relevant laws.

36. Duties of Local Officers: - It shall be the duty of the Local Officer to receive complaints under this Act in the district concerned; to draw up a list of the Group of Experts and constitute a Local Complaints Committee, furnish a copy of an Order passed by the Local Complaints Committee to the complainant, defendant and the employer concerned and carry out any other functions assigned to her / him under this Act.

37. Duties of the Local Complaints Committee:-

(1) It shall be the duty of all Local Complaints Committees constituted under this Act, to promote and facilitate measures for the prevention of sexual harassment and for conscientisation and sensitization regarding the same and if so requested by the complainant, to carry out a Dispute Resolution process and bring out a settlement in complaints of sexual harassment referred to it, and ,conduct an enquiry into misconduct in all establishments employing less than 100 employees and all sectors that fall under schedule II of this act. ;

(2) Notwithstanding anything contained in any other law for the time being in cases where the local complaints committee has carried out an enquiry into Misconduct mentioned under Section 37(1) , the said enquiry shall be deemed to be a disciplinary enquiry under the relevant rules.

38. Prohibition of Victimisation

(1) No person shall be victimized for anything said or done in relation to any complaints or proceeding

under this Act.

(2) A person victimizes another person if the person subjects the other person or threatens to subject the other person to any detriment in connection with employment or recruitment or promotion because such person

(i) Has brought proceedings under this Act against any person.

(ii) The other person associates with the complainant.

(iii) Has given evidence or information or produced a document, in connection with any proceedings under this Act.

(iv) Has otherwise done anything in accordance with this Act in relation to any person.

(v) Has alleged that any person has contravened a provision of this Act

Explanation: In determining whether a person victimizes another person it is irrelevant

(a) Whether or not a factor in the above sub section is the only or dominant reason for the treatment or threatened treatment as long as it is a substantial reason;

(b) Whether the person acts alone or in association with any other person.

(3) A person shall not request, instruct, induce, encourage, authorize or assist another person to contravene a provision of Section 38(2).

39. Vicarious liability:

(1) If an employer or any person who is the head of the establishment in the course of employment or while acting as an agent contravenes a provision in Chapter II or Section 38(2) or engages in any conduct which contravenes the provision of chapter II or Section 38(2) then both the head of the establishment and the employer must be taken to have contravened the provision and a complaint about the contravention may be lodged against either or both of them.

(2) An employer or the head of the establishment is not vicariously liable for a contravention of Chapter II or Section 38(2) if the employer or principal proves, on the balance of probabilities, that the employer or the principal took reasonable precautions to prevent the

employee or agent contravening the Bill and took reasonable action upon receipt of a complaint relating to Sexual Harassment.

CHAPTER V
PROCEDURE FOR LODGING A COMPLAINT

40. Before the Internal Complaints Committee: -

(1) However in an establishment where an Internal Complaints Committee has been set up, a complaint under this Act may be lodged with the appropriate authority or any person designated to receive complaints or with any member of the Internal Complaints Committee so appointed or constituted under this Act.

(2) If the aggrieved woman alleges that she has been subject to an act of sexual harassment at another branch or office to which she has been deputed, or has visited in connection with her work, a complaint in this regard can be filed either with the Internal Complaints Committee in her regular branch or office or with the Internal Complaints Committee in the branch or office in which the act of sexual harassment allegedly took place.

(3) Within 1 week of receipt of the complaint, the appropriate authority or member of the Committee to whom the complaint is made shall communicate the same to the chairperson of the Internal Complaints Committee.

41. Before the Local Officer / Local Complaints Committee:-

(1) Save and except for the cases specified in Section 40 above, a Complaint under this Act may be lodged with the Local Officer.

Provided that:

(i) In cases where the allegation of sexual harassment is against the employer of the aggrieved woman, or against the person in charge of the establishment concerned, she may lodge the complaint with the Local Officer if she so chooses;

(ii) Where an Internal Complaints Committee should have been set up by an employer under the provisions of this Act, but has not been set up, an aggrieved woman employed by the said

employer may lodge a complaint of sexual harassment with the Local Officer.

(iii) Where the Local Officer has reason to believe that a number of women in an establishment are being subjected to sexual harassment, but that due to grave danger or fear of repercussions, they are not in a position to file a complaint or give a written consent for the filing of a complaint regarding the same, the Local Officer may act suo motto in the matter and proceed as if a complaint regarding the same had been filed before her.

(2) When a Complaint is lodged before the Local Officer, the said Officer shall constitute the Local Complaints Committee from the Group of Experts within 15 days of the receipt of the said complaint and designate a female member as its Chairperson.

(3) The Committee so constituted shall sit within the local proximity of the Complainant's workplace.

42. Oral Complaints to be Reduced in Writing: - It shall be duty of the Authority / person before whom an oral complaint is made under this Act to reduce the said complaint in writing and read out the complaint to the complainant in the language requested by the complainant and obtain the signature of the complainant.

43. Written Consent Mandatory in Specific Situations:-

(1) A complaint lodged under section 40 or 41 of this Act by a complainant under Section (2)(d)(iii) or (iv) on behalf of the aggrieved woman, or in the event of her death by her heir or legal representative, shall be filed only after obtaining a written consent of the aggrieved woman or, in the case of her death, her heirs or legal representative, authorising the organisation or individual to file the complaint on her/their behalf.

(2) The consent given under subsection (1) herein may be withdrawn at any stage of the proceedings by the aggrieved woman or her legal heir/representative.

44. Where sexual harassment amounts to criminal offence:-

(1) Where the conduct of sexual harassment amounts to a specific offence under the Indian Penal Code or under any other law; it shall be the duty of the appropriate authority / Member of the Committee /

Local Officer who receives such a complaint 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.

Any such action or proceedings initiated shall be in addition to proceedings initiated and /or any action taken under this Act.

(2) Irrespective of whether the complainant opts to initiate criminal proceedings under the Indian Penal Code, the Special Officer / Local Officer / Member of the Committee and the Complaints Committees shall be bound to initiate and conduct proceedings as laid out under this Act.

45. Confidentiality of Complaints:-

(1) It shall be the duty of all the persons and authorities designated under this Act to ensure that all complaints lodged under this chapter shall be as confidential as possible.

(2) The name of the aggrieved woman shall not be referred to in any records of proceedings, or any orders or Judgements given under this Act;

(3) The name of the aggrieved woman nor her identity shall be revealed by the press / media or any other persons whilst reporting any proceedings, case, order or Judgement under this Act.

CHAPTER VI
PROCEDURE IN CASE OF MISCONDUCT

46. Complaints Committee :- On receiving a complaint of sexual harassment, an Internal Complaints Committee, or Local Complaints Committee as the case may be, shall follow the below detailed procedure, and constitute an enquiry committee to enquire into the misconduct.

47. Representation:- Notwithstanding anything contained in any other Act for the time being in force, both the complainant and the defendant shall have the right to be represented in any proceedings under this Act by any person of their choice in any enquiry into misconduct.

48. Dispute Resolution prior to enquiry :-

(1) The Internal Complaints Committee or the Local Complaints Committee may if, and only if so

requested by the aggrieved woman, try to resolve the matter informally by intervening and thereby permitting the parties to resolve the matter mutually before the commencement of the formal enquiry proceedings referred to in section 49. The person to carry out the Dispute Resolution Process shall be chosen from the Internal Complaints Committee by the aggrieved woman. The Local Officer shall carry out the Dispute Resolution Process on a Local Complaints Committee.

(2) Any settlement brought about by such Dispute Resolution must be mutually acceptable to both the aggrieved woman and defendant.

(3) Where any settlement between the aggrieved woman and defendant, as per sub-section (2) is reached, the Internal Complaints Committee or the Local Complaints committee will record the Dispute Resolution process and the settlement reached and send it to the employer. A copy of the same will be furnished to the aggrieved woman and the defendant.

(4) Notwithstanding what is stated in sub-section (2) and (3) above, the aggrieved woman shall have the right to withdraw from any Dispute Resolution process undertaken under this section, or to challenge any settlement on the ground that her consent for the settlement was obtained by force, fraud, coercion or undue influence or on the ground that the terms of settlement have been breached;

(5) Where no mutually agreeable settlement can be reached during such above-mentioned Dispute Resolution process, the Internal Complaints Committee or the Local Complaints Committee shall write a report to that effect, and within a period of two weeks from the termination of the Dispute Resolution process, proceed to hold an enquiry as per section 49.

(6) Any Dispute Resolution carried out by the Internal Complaints Committee or the Local Complaints committee under this section shall be completed within a period of one month of the receipt by the Committee of the complaint of sexual harassment.

49. Conducting of Enquiry:-

(1) Where no Dispute Resolution process referred to in section 48 has been requested by the aggrieved

woman, or if requested and carried out, has not been successful, the Internal Complaints Committee or the Local Complaints Committee as the case may be, shall within a period of two weeks from the completion of any mediation process held, or if not held, within two weeks of its receipt of the complaint, proceed to conduct a full enquiry into the allegation of sexual harassment, in accordance with the rules and regulations governing misconduct for that establishment and as per the procedures set out below.

(2) Provided further that where a Dispute Resolution process has been held as per section 48, but not succeeded, the report of the failed Dispute Resolution process shall not be used in the enquiry or made available to the Complaints Committee members.

50. Participation of Complainant: -

(1) Notwithstanding anything contained in any law for the time being in force, the complainant and her representative shall have the right to remain present throughout the enquiry proceedings, to lead evidence and produce witnesses and to cross examine the defendant and any witnesses produced by him.

51. Framing of Charge sheet: If a complainant feels that a charge sheet issued to a defendant pursuant to the complainant's complaint of sexual harassment does not fully or properly deal with the allegations leveled in her complaint, she can bring the same to the notice of the Complaints Committee, which shall inform the employer of the same and request the employer to reframe the chargesheet accordingly.

52. Procedure To Be Followed by the Internal Complaints Committee or the Local Complaints Committee In Conducting of Enquiry:-

(1) In conducting an enquiry under this Act the Enquiry Committee shall abide by the established procedures and principles of natural justice followed while conducting domestic enquiries and in conducting an enquiry under this Act in respect of establishments covered by the Central Civil Services (Conduct) Rules, 1964, or State Civil Service Rules,

or the Industrial Employment (Standing Order) Act 1946, the Complaints Committee shall follow the procedures laid down for conducting a domestic enquiry in the said Act and Rules, whichever is applicable except to the extent modified hereunder:

(a) The employer / establishment shall hand over to the convenor of the Committee a copy of the chargesheet issued to the defendant and reply/explanation (if any) of the defendant prior to the commencement of the enquiry, and the Committee shall hand over copies of the same to the complainant by hand delivery duly acknowledged or by Regd. A.D post within 3 days of its receipt of the same and prior to the commencement of the enquiry;

(b) The Committee shall give 7 days notice by hand delivery duly acknowledged or by regd A, D Post to the complainant and the defendant to appear for the first date of the enquiry which shall be specified. The notice shall state that the complainant and defendant shall be given an opportunity of producing evidence, examining witnesses etc if any;

(c) At the commencement of the enquiry the committee shall explain to both the complainant and defendant the procedure which will be followed in the enquiry;

(d) The enquiry shall be conducted in Hindi, English or the local language, whichever is requested by the defendant;

(e) If the complainant or the defendant desire to examine any witnesses they shall submit in writing to the Convenor of the Committee the names of witnesses whom they propose to so examine. If the complainant or defendant desires to tender any documents by way of evidence before the Committee, they shall furnish such documents to the Committee with copies of the same for the defendant / complainant to whom the Committee shall hand over the said copies. All documents tendered to the Committee shall be taken on record by it and given an exhibit number;

(f) The evidence of the employer/ establishment and of the complainant and their witnesses be recorded. After the witness has deposed, he

shall be offered for cross-examination to the defendant. After the completion of the cross examination the evidence of the next witness shall be recorded. After the evidence of the employer / establishment and of the complainant has been completed, the evidence of the complainant and any witnesses produced by him shall be recorded. After the defendant and each witness has deposed, he/she shall be offered for cross-examination to the employer / establishment and the complainant. Sufficient opportunities shall be given to examine all witnesses notified by both parties;

(g) All proceedings of the Enquiry Committee will be recorded and the same together with the statement of witnesses shall be endorsed by the complainant defendant and representative of the employer / establishment in token of authencity thereof. The refusal to endorse the same by either party shall be endorsed by the convenor. All parties involved in the process are at liberty to place on record any objections or observations As well as the Defendant, the Complainant shall be furnished with a copy of the enquiry proceedings at the end of each proceeding;

(h) The Committee shall see that every reasonable opportunity is extended to the complainant and to the defendant, for putting forward and defending their case;

(i) The venue of the enquiry should be as per the convenience of the complainant;

(j) On the completion of the enquiry, the Committee shall submit a written Enquiry Report. The enquiry report shall specify the details of the charge against the defendant, the evidence led in the enquiry and the reasons by which the Committee has reached its decision. No observations regarding the work and behaviour of either the complainant or defendant shall be made which are not related to the alleged act of sexual harassment. However, the Committee may consider as relevant any earlier complaints of sexual harassment against the defendant. The Committee will also consider the various myths and facts in relation to Sexual Harassment so as to give a well-thought out decision.

53. Rules of Evidence before Complaints Committee:-

(1) Notwithstanding anything contained in this Act, in conducting an Enquiry under this Act, an Enquiry Committee may give directions relating to procedure that, in its opinion, will enable delay to be reduced and will help to achieve a prompt hearing in a manner which is appropriate to the matters at issue between the parties.

(2) In particular, in conducting such an enquiry, the Enquiry Committee:

(i) shall be sensitive to the covert, private and insidious nature of sexual harassment and shall take into account that often the aggrieved woman may not be able to lead direct or corroborative evidence.

(ii) shall not permit any evidence or examination based on the aggrieved woman's character, personal life, conduct, personal and sexual history.

(iii) shall take note of the respective socio-economic positions of the parties, their hierarchy in the respective organization / workplace, the employer-employee equations and other power differences while appreciating the evidence.

(iv) shall, inform the alleged victim of sexual harassment, that she may give her evidence in writing provided that she makes herself available for cross examination on the same, unless the alleged victim of sexual harassment opts to give her evidence orally;

(v) may direct the Defendant to submit the intended questions for cross-examination in writing and the Committee may disallow questions it feels are derogatory, irrelevant or slanderous to the aggrieved woman.

(vi) shall, inform the alleged victim of sexual harassment, that she may give her answers to questions of a sensitive nature in writing immediately in the enquiry proceedings during cross examination.

54. Power to Issue Interim Orders:-

(1) The Enquiry Committee shall have the power to issue appropriate interim orders directing the

employer, on the demand of either the complainant or any witness giving evidence in her support, to implement such measures as transfer, changing shifts etc. of either the complainant, witness or defendant, granting of leave to the complainant, so as to protect the complainant and witnesses against victimisation and discrimination and mental or physical distress.

(2) May issues such other interim orders as may be deemed necessary to ensure the safety of the complainant/supporter/witness.

55. Where an enquiry is held by a Local Complaints Committee, the employer of the complainant shall pay to her and any other employee who deposes on her behalf travel allowance and wages for the days attended before the Committee.

56. Enquiry to be completed within 90 days:- Notwithstanding anything contained in any law for the time being in force an enquiry under this chapter shall be completed, including the submission of the Enquiry Report, within a period of 90 days from the date on which the enquiry is commenced. Any delay in completion shall be done for reasons given in writing.

57. Findings and Directions:

(1) On the completion of an enquiry under section 49 of this Act by an Internal Complaints Committee or a Local Complaints Committee, the said Committee may by a detailed and reasoned order:

(a) Dismiss the complaint which was subject of the Inquiry.

(b) Find the complaints proven on a balance or probabilities and give a finding to that effect.

(c) Recommend to the employer that a punishment be imposed upon the defendant, according to the gravity of the offence of which he has been found guilty of and in accordance with the service rules/standing orders applicable to the establishment. In absence of such rules/orders, the committee may direct that the punishment to be imposed on the defendant should be according to the gravity of the act which he has been found guilty of. In addition,

the Committee may recommend that the

defendant give a written apology to the aggrieved woman clearly indicating that such behaviour will not be repeated and that no retaliatory steps will be taken by him/others on his behalf.

(2) Further, if a Local Complaints Committee finds a defendant guilty of the sexual harassment complained of, the Local Complaints Committee can recommend that the defendant pay compensation to the aggrieved woman, commensurate with the gravity of the act of sexual harassment and the wage of the defendant. Any such compensation shall be deducted by the employer from the monthly wages of the defendant, in such installments as the employer deems fit, and paid over to the aggrieved woman.

58. Action to Be Taken After Enquiry:

(1) The report of the Enquiry committee shall be deemed to be an inquiry report under the Central Civil Services (Conduct) Rules , 1964 and the Standing Orders of the establishment / Model Standing Orders under the Industrial Employment (Standing Order) Act , 1946 or any other rules enabling the conduct of an enquiry into misconduct as the case may be. Thereafter the disciplinary authority will act on the report in accordance with the said rules. However, the employer shall act upon the findings and recommendations in the report and implement the same. If the employer disagrees with or wishes to modify the same, he / she may do so by stating the reasons in writing.

(2) The disciplinary authority shall however only take such action after giving both the complainant and defendant an opportunity to make an oral representation (and written if they so chose) regarding the same, which representation shall be made within 2 weeks of their respective receipt of the copy of the report. The disciplinary authority shall takes its decision within two weeks of its receipt of the said representation.

(3) No person accused of an act of sexual harassment under this Act shall be part of the decision making process referred to in this section.

(4) Where the person accused of sexual harassment is a sole proprietor of a proprietary undertaking, or a partner of a partnership undertaking not registered

under the Companies Act, 1956, and an Enquiry has been held by a Local Complaints Committee, then the findings and recommendations of the Local Complaints Committee referred to in this section shall be binding on the said undertaking.

59. Delay in filing the Complaint:- Any perceived delay in filing a complaint under this Act, by itself, shall not be a relevant factor in deciding the veracity of the complaint or in appreciating evidence presented.

CHAPTER VII

60. Appeals Against Decisions / Reports of Complaints Committees:-

(1) Any defendant aggrieved by a decision/ action taken by his employer following an enquiry instituted under this Act, may challenge the same before the court / forum to which he is ordinarily entitled to approach to challenge any decision of the management taken against him in respect of any misconduct.

(2) Any aggrieved woman who is aggrieved by a decision of the employer or the report of Complaints Committee in respect of a complaint of sexual harassment filed by her, may:

(a) If both she and the defendant fall within the purview of the Central Civil Services (Conduct) Rules, 1964, or State Civil Service Rules:

(i) challenge the report / decision on points of fact and law, before the forum to which the defendant would ordinarily be entitled to approach to challenge any decision of the management taken against him in respect of any misconduct, and pray that action as per the said rules be taken by the employer against the defendant;

(b) If both she and the defendant are employed in an establishment falling within the purview of the Industrial Disputes Act, 1947, and both are a "workman" within the meaning of the said Act:

(i) Make a complaint in writing on points of fact and law, and praying that action as per the said rules be taken by the employer against the defendant, to the Industrial Tribunal / Court to whom a dispute raised by the defendant against a decision regarding misconduct would ordinarily be referred,

and on receipt of such a complaint, the Industrial Tribunal / Court shall adjudicate upon the same as if it were a dispute referred to it in accordance with the provisions of the Industrial Disputes Act, 1947, and shall submit its award to the Appropriate Government and the provisions of the Industrial Disputes Act, 1947 shall apply accordingly;

(c) If the establishment concerned, or either the aggrieved woman or the defendant does not fall within the purview of the Industrial Disputes Act, 1947, or the Central Civil Services (Conduct) Rules, 1964, or State Civil Service Rules, file proceedings, on points of both fact and law, before a civil court, praying that action as per the service rules / rules and regulations applicable to the establishment, be taken by the employer against the defendant.

(3) Any aggrieved woman who is aggrieved by a decision of the employer not to issue a chargesheet against a person alleged by her to be guilty of sexual harassment, may challenge the same before the forums indicated above, praying that a chargesheet be issued against the said person and proceedings be instituted against him under this Act.

(4) Any aggrieved woman who feels that a chargesheet issued to a defendant pursuant to the complainant's complaint of sexual harassment does not fully or properly deal with the allegations leveled in her complaint may challenge the same before the forums indicated above, praying that a chargesheet be issued against the said person fully and properly dealing with the allegations leveled in her complaint.

(5) Any aggrieved woman who is aggrieved by the failure of an employer not to constitute a Complaints Committee as per the provisions of this Act, or who is aggrieved by the nature of the constitution of a Complaints Committee, may challenge the same before the forums indicated above.

CHAPTER VIII
MISCELLANEOUS

61. Confidentiality:-

(1) Employers, members of Complaints Committees and others responsible for the implementation of this Act will recognize that confidentiality is important and will respect the confidentiality and privacy of individuals reporting or accused of sexual harassment to the extent reasonably possible.

(2) The name of the aggrieved woman shall not be referred to in any records of proceedings, or any orders or Judgements given under this Act;

(3) The name of the aggrieved woman nor her identity shall be revealed by the press / media or any other persons whilst reporting any proceedings, case, order or Judgement under this Act.

62. Services of Counsellor to be made available to the Complainant:- On the request of a Complainant, a counsellor shall be made available to an aggrieved woman, at the cost of the employer or the head of the Establishment , at any time after the lodging of a complaint, whether before an Internal Complaints Committee or Local Officer. This shall be in addition to any proceedings / enquiries which have been instituted under the Act.

63. Withdrawal of Complaint:- At any stage after the filing of a complaint and during any proceedings in respect of it under this Act by the Complaints Committee, the aggrieved woman shall have the right to withdraw the complaint and the Committee/person shall permit her to withdraw the complaint and if an inquiry has commenced, shall discontinue the inquiry.

If it is brought to the notice of the Complainants Committee, or the Committee is of the opinion that, pressure is being brought on the complainant or the witnesses to withdraw their statements or not go through with the complaint then the committee will record this.

Complainant/Witnesses/Supporters not be penalized:- If a complaint of sexual harassment is dismissed by a Complaints Committee under this Act, no action whatsoever (including the recovery of any costs involved

in investigating / enquiring into the complaint) may be taken in regard to the same against the complainant/witnesses/supporters by the employer.

65. No court fees payable:- Where an aggrieved woman institutes any suit or legal proceedings in a civil court in respect of an act of sexual harassment which is unlawful under this Act, no court fees will be payable by the woman.

66. Where an establishment contravenes any of the provisions for, fails to carry out any of its duties under, this Act, then any person concerned with that establishment may file a case against the establishment, praying for relief including a direction to the establishment to comply with the provisions of the Act, in a civil court, or, if the establishment is covered under the provisions of the Industrial disputes Act, then raise a demand under the said Act, and if it is covered by the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, file a complaint under the said Act, which shall be amended accordingly.
Any person concerned with that establishment may also lodge a complaint in this regard against the establishment with the Local Complaints Committee in the district / block level, and the Local Complaints Committee may direct the establishment to comply with the provisions of the Act, and impose a fine of a minimum of Rs.10,000/- for its non-compliance with the Act.

67. Complaints Committees to submit Annual Reports:- Each Internal Complaints Committee shall make an annual report to the appropriate government / head of the department of the relevant Ministry/Local officer . The same shall be forwarded by the Local Officer to thetings.
e Central Government, Ministry of Labour, along with the Local Officer's own annual report of the complaints dealt with and action taken by her and the Local Complaints Committee constituted by her.

68. Workers Initiative: - Employees should be allowed to raise issues of sexual harassment at the worker's meeting and in any other appropriate forum and it shall be affirmatively discussed in employer-employee me

69. Act not in derogation of any other Law:-

(1) The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
Provided that nothing in this Act shall effect any law, agreement, contract, terms and conditions of service or policy regarding sexual harassment at the workplace which applies to any woman employee / student on the date on which this Act comes into force, if any such law, agreement, contract, terms and conditions of service or policy regarding sexual harassment at the workplace is/are more favourable to the women concerned than the provisions of this Act.

(2) Any proceedings instituted by an aggrieved woman under this Act shall be in addition to any other proceedings, whether civil or criminal, which she may chose to file under any other provision of law before any other court, tribunal , authority or forum.

70. Power to make rules:- The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

71. To address the issue of Sexual harassment the following acts as mentioned in schedule I shall stand amended.

SCHEDULE I

1. The following item shall be added as Item 17 to The Fifth Schedule, Part I, and as Item – to The ----- Schedule, Part I of the Industrial Disputes Act, 1947:
"to, in any manner whatsoever, sexually harass a female employee"

The following item shall be added as Item 18 to The Fifth Schedule, Part I, of the Industrial Disputes Act, 1947:
"To dismiss, discharge or in any way adversely alter the service conditions of a female employee, (or any fellow employee who stands as a witness in this regard), on account of her making or having made an allegation of sexual harassment, or to fail to carry out any duties cast under the Protection Against Sexual Harassment of Women Bill, 2005".

2. The following item shall be added as Item 11 to Schedule IV and as Item — to Schedule III of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.
"to, in any manner whatsoever, sexually harass a female employee"

The following item shall be added as Item 12 to Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.
"To dismiss, discharge or in any way adversely alter the service conditions of a female employee, (or any fellow employee who stands as a witness in this regard), on account of her making or having made an allegation of sexual harassment, or to fail to carry out any duties cast under the Protection Against Sexual Harassment of Women Bill, 2005."

3. The following item shall be added into Item 9 of the Schedule in The Industrial Employment (Standing Order) Act 1946
"Note: Any complaints of Sexual Harassment shall also be included as misconduct"
The Following Item shall be added (L) to Rule 14(3) of the Industrial Employment (Standing Orders) Central Rules , 1946.
"In any manner whatsoever sexually Harasses a female employed in the establishment"

4. The Following Item shall be added to Section 2(g) the Consumer Protection Act, 1986
"Any form of Sexual harassment faced by the consumer at the time of accessing services shall also be a deficiency in service".

5. The following Item shall be added as section 6(c) to The Advocates Act 1961.
" Note : all cases of Sexual Harassment shall also fall under the definition of Misconduct".

The following Item shall be added as section 7(b) to The Advocates Act 1961.
"Note: Prohibition of Sexual harassment shall also fall under the definition of Professional Conduct".

The following Item shall be added as section 35(1) B to The Advocates Act 1961.
Note : All complaints of sexual Harassment shall also be Included in the definition of Professional Misconduct".

6. The following item shall be added as Section 33(o) to The Indian Medical Council of India Act, 1956.
"Protection against Sexual Harassment".
The following item shall be added as Section 20A (3) to the Indian Medical Council of India Act, 1956.
"Any form of Sexual Harassment shall also be included in this definition".
The following shall be added as explanation to Sec 7.4 of The Indian Medical Council (Professional Conduct Etiquette and Ethics) Regulations, 2002
"Explanation: any form of Sexual harassment shall be to be an improper Conduct".

7. The following shall be added to Section 22(3) of the Architects Act 1972.
"Prohibition of Sexual harassment shall also be included under the definition of Professional Conduct and Code of Ethics"
The following shall be added to Section 45(2)(i) of the Architects Act 1972.
"Any form of Sexual Harassment shall also be included under the definition of Professional conduct and code of Ethics"
The following shall be added as Section 2(1)(xxvi) of the Architects (Professional Conduct) Regulations , 1989
"Not Sexually harass any person in the course of providing services".

8. The following item shall be added as Item 13 to the part I of Schedule I of the Chartered Accountants Act 1949.
"In any manner whatsoever, sexually harasses a client".
The following item shall be added as Item (d) to the part II of Schedule I of the Chartered Accountants Act 1949.
"In any manner whatsoever, sexually harasses a client".

9. The following item shall be added as Section 13(4) to the Mental Health Act, 1987.
Any Compliant of Sexual Harassment made to the concerned authority shall also be included under this clause".

10. The following item shall be added as Subsection (3) to Section 11 of the Prisons Act 1894
"It shall also be the duty of the superintendent to constitute an Internal complaints committee to deal with complaints regarding Sexual harassment".
The following item shall be added as subsection (29) to section 59 of the Prisons act, 1894 "To prevent and prohibit Sexual harassment"

11. The following item shall be added as item (3) to Section 35 to the Juvenile Justice (Care and Protection of Children) Act, 2000,
"Committees for Inquiring into Sexual harassment shall also be one of the Inspecting Committees appointed under this section".

12. The following item shall be added into Sec 21 of the Orphanages and Other Charitable Homes (Supervision and Control)Act, 1960.
" It shall also be the duty of the manager to constitute an Internal Complaints committee to deal with complaints regarding Sexual Harassment".
The following item shall be added as Subsection 30(2)(k) to section 30 of the Orphanages and Other Charitable Homes (Supervision and Control) Act , 1960.
"Prevention and redressal of complaints of Sexual Harassment in homes"

SCHEDULE II

LIST OF EMPLOYMENTS IN THE UNORGANISED SECTOR

1. AGRICULTURE
a. agriculture
b. agricultural machinery handling
c. small scale farming

2. CONSTRUCTION

a. construction work
b. brick-kiln work
c. building and road maintenance
d. Carpentry
e. construction of tents and pandals, supply of utensils and decorations for functions
f. quarry work
g. welding
h. stone crushing
i. minor minerals and mines work
j. sand mining

3. HANDLOOMS & POWERLOOMS, DYEING

a. handloom weaving of cotton and silk
b. powerloom weaving
c. cloth printing
d. bleaching & dyeing
e. ginning

4. FISH

a. fishing
b. fish selling
c. fishery production
d. fish processing

5. POULTRY & ANIMAL HUSBANDRY

a. animal husbandry
b. dairying and allied activities
c. shepherding

6. TEA, COFFEE, RUBBER, CASHEW, PLANTATION, PROCESSING, HORTICULUTURE, SERICULTURE

a. cashew processing
b. gardening and parks maintenance
c. horticulture and flori culture
d. plantation (other than those covered under Plantations Labour Act, 1951 (Act No.69 of 1951)
e. sericulture (silk rearing)

7. FORESTS & ALLIED ACTIVITES

a. forestry operation
b. honey gathering
c. minor forest produce gathering

d. tendu leaves collection

8. TREE CLIMBING, COIR
a. coir processing / manufacture
b. toddy tapping
c. coconut peeling
d. tree climbing

9. HOME BASED WORK
a. agarbatti making
b. beads making / piercing
c. beedi & cigar manufacture
d. bindi work
e. coaching service
f. envelope & file making
g. masala making
h. matches manufacture
i. pappad making
j. pickle making

10. VENDORS
a. hawking and vending
b. newspaper vending
c. panwallaha service

11. HANDICRAFTS
a. blacksmithy
b. goldsmithy
c. pottery
d. artist
e. sculpture
f. cane / reed work
g. carpet weaving
h. chikan work
I. hand embroidery work
j. floral work and garland making

12. SERVICES (TRADITIONAL & MODERN)
a. beautician
b. hair dressing
c. health service
d. rag picking
e. scavenging
f. shoe shining work
g. sweeping

h. laundry work
i. child care
j. cook
k. security service
l. band playing
m. cable TV operation
n. folk arts
o. video & photography
p. sound & light service

13. SHOPS & ESTABLISHMENTS

a. shops & establishment service
b. catering
c. clubs and canteens service
d. coaching service.
e. computer and information technology related services
f. courier service
g. data entry operation
h. distribution of petroleum products
i. electronic and electrical goods repairs
j. health services
k. hotel and restaurant services
l. ngo services
m. packing and packaging
n. petrol bunk / pump and allied service
o. security service
p. telephone booth service
q. jute products
r. band playing
s. cable TV operation
t. folk arts
u. video & photography
v. sound & light service

14. TRANSPORT & ALLIED

a. transport services (driving, conducting, cleaning etc)
b. auto rickshaw
c. bicycle repair
d. boat / ferry operation
e. bullock / camel - cart operation
f. rickshaw pulling
g. service station work
h. wayside mechanics and workshop services
i. automobile work

15. SALT PANS

a. salt pan work
b. loading & unloading

16. SMALL SCALE & COTTAGE INDUSTRIES

a. arrack and liquor production and vending
b. bakery work
c. bangles manufacture
d. bindi work
e. brush making
f. breweries, distilleries
g. bulb manufacture
h. carpet weaving
i. electroplating
j. envelope making
k. fire work / crackers production
l. flour mills operation
m. foundry
n. garment manufacture
o. glassware manufacturing
p. lock making
q. masala making
r. matches manufacture
s. papped making
t. pickle making
u. plastic manufacture
v. printing press work
w. rice mills, oil mills, dhal mills
x. sawmill work
y. soap manufacture
z. sports goods manufacture
aa. steel vessels and utensils manufacture
ab. timber industry (furniture manufacturing saw mills)
ac. toy making
ad. butchery
ae. welding
af. engineering work
ag. tin containers
ah. sago
ai. nib making
aj. tanning (including hides and skill production), leather goods manufacture
ak. footwear production

17. DOMESTIC

a. gardening;
b. baby sitting,
c. cook
d. cleaning & washing
e. care of the sick & aged

18. LOADING UNLOADING GOODS SHEDS, YARDS MARKETS ETC
a. headload work
b. cleaning
c. stacking

19. TAILORING

Appendix 4
CEDAW

INTRODUCTION

On 18 December 1979, the Convention on the Elimination of All Forms of Discrimination against Women was adopted by the United Nations General Assembly. It entered into force as an international treaty on 3 September 1981 after the twentieth country had ratified it. By the tenth anniversary of the Convention in 1989, almost one hundred nations have agreed to be bound by its provisions.

The Convention was the culmination of more than thirty years of work by the United Nations Commission on the Status of Women, a body established in 1946 to monitor the situation of women and to promote women's rights. The Commission's work has been instrumental in bringing to light all the areas in which women are denied equality with men. These efforts for the advancement of women have resulted in several declarations and conventions, of which the Convention on the Elimination of All Forms of Discrimination against Women is the central and most comprehensive document.

Among the international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women. The present document spells out the meaning of equality and how it can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

In its preamble, the Convention explicitly acknowledges that "extensive discrimination against women continues to exist", and emphasizes that such discrimination "violates the principles of equality of rights and respect for human dignity". As defined in article 1, discrimination is understood as "any distinction, exclusion or restriction made o.1 the basis of sex...in the political, economic, social, cultural, civil or any other field". The Convention gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men"(article 3).

The agenda for equality is specified in fourteen subsequent articles. In its approach, the Convention covers three dimensions of the situation of women. Civil rights and the legal status of women are dealt with in great detail. In addition, and unlike other human rights treaties, the Convention is also concerned with the dimension of human reproduction as well as with the impact of cultural factors on gender relations.

The legal status of women receives the broadest attention. Concern over the basic rights of political participation has not diminished since the adoption of the Convention on the Political Rights of Women in 1952. Its provisions, therefore, are restated in article 7 of the present document, whereby women are guaranteed the rights to vote, to hold public office and to exercise public functions. This includes equal rights for women to represent their countries at the international level (article 8). The Convention on the Nationality of Married Women - adopted in 1957 - is integrated under article 9 providing for the statehood of women, irrespective of their marital status. The Convention, thereby, draws attention to the fact that often women's legal status has been linked to marriage, making them dependent on their husband's nationality rather than individuals in their own right. Articles 10, 11 and 13, respectively, affirm women's rights to non-discrimination in education, employment and economic and social activities. These demands are given special emphasis with regard to the situation of rural women, whose particular struggles and vital economic contributions, as noted in article 14, warrant more attention in policy planning. Article 15 asserts the full equality of women in civil and business matters, demanding that all instruments directed at restricting

women's legal capacity "shall be deemed null and void". Finally, in article 16, the Convention returns to the issue of marriage and family relations, asserting the equal rights and obligations of women and men with regard to choice of spouse, parenthood, personal rights and command over property.

Aside from civil rights issues, the Convention also devotes major attention to a most vital concern of women, namely their reproductive rights. The preamble sets the tone by stating that "the role of women in procreation should not be a basis for discrimination". The link between discrimination and women's reproductive role is a matter of recurrent concern in the Convention. For example, it advocates, in article 5, "a proper understanding of maternity as a social function", demanding fully shared responsibility for child-rearing by both sexes. Accordingly, provisions for maternity protection and child-care are proclaimed as essential rights and are incorporated into all areas of the Convention, whether dealing with employment, family law, health core or education. Society's obligation extends to offering social services, especially child-care facilities, that allow individuals to combine family responsibilities with work and participation in public life. Special measures for maternity protection are recommended and "shall not be considered discriminatory". (article 4). "The Convention also affirms women's right to reproductive choice. Notably, it is the only human rights treaty to mention family planning. States parties are obliged to include advice on family planning in the education process (article I O.h) and to develop family codes that guarantee women's rights "to decide freely and responsibly on the number and spacing of their children and to hove access to the information, education and means to enable them to exercise these rights" (article 16.e).

The third general thrust of the Convention aims at enlarging our understanding of the concept of human rights, as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. These forces take shape in stereotypes, customs and norms which give rise to the multitude of legal, political and economic constraints on the advancement of women. Noting this interrelationship, the preamble of the Convention stresses "that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality of men and women". States parties are therefore

obliged to work towards the modification of social and cultural patterns of individual conduct in order to eliminate "prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women" (article 5). And Article 10.c. mandates the revision of textbooks, school programmes and teaching methods with a view to eliminating stereotyped concepts in the field of education. Finally, cultural patterns which define the public realm as a man's world and the domestic sphere as women's domain are strongly targeted in all of the Convention's provisions that affirm the equal responsibilities of both sexes in family life and their equal rights with regard to education and employment. Altogether, the Convention provides a comprehensive framework for challenging the various forces that have created and sustained discrimination based upon sex.

Implementation of the Convention is monitored by the Committee on the Elimination of Discrimination against Women (CEDAW). The Committee's mandate and the administration of the treaty are defined in the Articles 17 to 30 of the Convention. The Committee is composed of 23 experts nominated by their Governments and elected by the States parties as individuals "of high moral standing and competence in the field covered by the Convention".

At least every four years, the States parties are expected to submit a national report to the Committee, indicating the measures they have adopted to give effect to the provisions of the Convention. During its annual session, the Committee members discuss these reports with the Government representatives and explore with them areas for further action by the specific country. The Committee also makes general recommendations to the States parties on matters concerning the elimination of discrimination against women.

The full text of the Convention is set out herein

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

The States Parties to the present Convention,

> Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of

men and women,

Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex,

Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights,

Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women,

Noting also the resolutions, declarations and recommendations adopted by the United Nations and the specialized agencies promoting equality of rights of men and women,

Concerned, however, that despite these various instruments extensive discrimination against women continues to exist,

Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity,

Concerned that in situations of poverty women have the least access to food, health, education, training and opportunities for employment and other needs,

Convinced that the establishment of the new international economic order based on equity and justice will contribute significantly towards the

promotion of equality between men and women,

Emphasizing that the eradication of apartheid, all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women,

Affirming that the strengthening of international peace and security, the relaxation of international tension, mutual co-operation among all States irrespective of their social and economic systems, general and complete disarmament, in particular nuclear disarmament under strict and effective international control, the affirmation of the principles of justice, equality and mutual benefit in relations among countries and the realization of the right of peoples under alien and colonial domination and foreign occupation to self-determination and independence, as well as respect for national sovereignty and territorial integrity, will promote social progress and development and as a consequence will contribute to the attainment of full equality between men and women,

Convinced that the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields,

Bearing in mind the great contribution of women to the welfare of the family and to the development of society, so far not fully recognized, the social significance of maternity and the role of both parents in the family and in the upbringing of children, and aware that the role of women in procreation should not be a basis for discrimination but that the upbringing of children requires a sharing of responsibility between men and women and society as a whole,

Aware that a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women,

Determined to implement the principles set forth in the Declaration on the Elimination of Discrimination against Women and, for that purpose, to adopt the measures required for the elimination of such discrimination in all its forms and manifestations,

Have agreed on the following:

PART I

Article I

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 2

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;
(b)To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
(g) To repeal all national penal provisions which constitute discrimination against women.

Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to en sure the full development and advancement of women , for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 4

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

Article 5

States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 6

States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.

PART II

Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 9

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband

during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

PART III

Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;
(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;
(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;
(d) The same opportunities to benefit from scholarships and other study grants;
(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particulary those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;
(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same Opportunities to participate actively in sports and physical education;
(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on family planning.

Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;
(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of

pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 12

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph I of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Article 13

States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

(a) The right to family benefits;

(b) The right to bank loans, mortgages and other

forms of financial credit;
(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 14

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;
(b) To have access to adequate health care facilities, including information, counselling and services in family planning;
(c) To benefit directly from social security programmes;
(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self employment;
(f) To participate in all community activities;
(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
(h) To enjoy adequate living conditions,

particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

PART IV

Article 15

1. States Parties shall accord to women equality with men before the law.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases

the interests of the children shall be paramount;

(e)The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f)The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g)The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h)The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

PART V

Article 17

1. For the purpose of considering the progress made in the implementation of the present Convention, there shall be established a Committee on the Elimination of Discrimination against Women (hereinafter referred to as the Committee) consisting, at the time of entry into force of the Convention, of eighteen and, after ratification of or accession to the Convention by the thirty-fifth State Party, of twenty-three experts of high moral standing and competence in the field covered by the Convention. The experts shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical

distribution and to the representation of the different forms of civilization as well as the principal legal systems.

2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

3. The initial election shall be held six months after the date of the entry into force of the present Convention. At least three months before the date of each election the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

4. Elections of the members of the Committee shall be held at a meeting of States Parties convened by the Secretary-General at United Nations Headquarters. At that meeting, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

5. The members of the Committee shall be elected for a term of four years. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these nine members shall be chosen by lot by the Chairman of the Committee.

6. The election of the five additional members of the Committee shall be held in accordance with the provisions of paragraphs 2, 3 and 4 of this article, following the thirty-fifth ratification or accession. The terms of two of the additional members elected on this occasion shall expire at the end of two years, the names of these two members having been chosen by lot by the Chairman of the Committee.

7. For the filling of casual vacancies, the State Party whose expert has ceased to function as a member of the Committee shall appoint another expert from among its nationals, subject to the approval of the Committee.

8. The members of the Committee shall, with the approval of the General Assembly, receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide, having regard to the importance of the Committee's responsibilities.

9. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

Article 18

1. States Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect:

(a) Within one year after the entry into force for the State concerned;
(b) Thereafter at least every four years and further whenever the Committee so requests.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Convention.

Article 19

1.The Committee shall adopt its own rules of procedure.
2. The Committee shall elect its officers for a term of two years.

Article 20

1. The Committee shall normally meet for a period of

not more than two weeks annually in order to consider the reports submitted in accordance with article 18 of the present Convention.

2. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. (amendment, status of ratification)

Article 21

1. The Committee shall, through the Economic and Social Council, report annually to the General Assembly of the United Nations on its activities and may make suggestions and general recommendations based on the examination of reports and information received from the States Parties. Such suggestions and general recommendations shall be included in the report of the Committee together with comments, if any, from States Parties.

2. The Secretary-General of the United Nations shall transmit the reports of the Committee to the Commission on the Status of Women for its information.

Article 22

The specialized agencies shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their activities. The Committee may invite the specialized agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities.

PART VI

Article 23

Nothing in the present Convention shall affect any provisions that are more conducive to the achievement of equality between men and women which may be contained:

(a) In the legislation of a State Party; or

(b) In any other international convention, treaty or

agreement in force for that State.

Article 24

States Parties undertake to adopt all necessary measures at the national level aimed at achieving the full realization of the rights recognized in the present Convention.

Article 25

1. The present Convention shall be open for signature by all States.

2. The Secretary-General of the United Nations is designated as the depositary of the present Convention.

3. The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. The present Convention shall be open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 26

1. A request for the revision of the present Convention may be made at any time by any State Party by means of a notification in writing addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall decide upon the steps, if any, to be taken in respect of such a request.

Article 27

1. The present Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying the present Convention or acceding to it after the deposit of the twentieth

instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.

Article 29

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.

3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 30

The present Convention, the Arabic, Chinese, English, French, Russian and Spanish texts of which are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF the undersigned, duly authorized, have signed the present Convention.

Appendix 5
Contact Information for NGOs Working on Prevention of sexual Harassment at Workplace, in India.

Andhra Pradesh
Human Rights Law Network
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Fax: 040-27733745
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Jungpura
New Delhi 110 014
Tel: 011-24379855/56/57
Fax: 011-24324502

Maadhyam Helpline: 011-24374503
E-mail: wjl.delhi@hrln.org

National Commission for Women
1st Floor, ICCW Building
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Tel: 011-23239571 / 011-23234918

Sakshi
B-67 First Floor
South Extension Part I
New Delhi 110 049
Tel: 011-24623295
Fax: 011-24643496
E-mail: sakshi_ngo@rediffmail.com

Jagori: Women's Training Documentation & Communication Centre
C-54 Top Floor
South Extension Part II
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E-mail: jagori@spectranet.org, jagori_jagori@yahoo.com

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Karelibaug
Vadodara 2390 019
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Vikas Nagar
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Legal Resource Centre for Women
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Fax: 022-23433698
E-mail: cash@ichrl.org

Akshara A Women's Resource Centre
501 Neelambari, Road No. 86
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Dadar (West), Mumbai 400 028
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E-mail: aksharacentre@vsnl.net

Special Cell for Women and Children
Office of the Commissioner of Police
Annexe III, Ground Floor
Mumbai 400 001
Tel: 022-2620111
Special Cell (Kandivali)
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Stree Mukti Sanghatana
Lakshman Prasad Poddar Girls School
Senapati Bapat Road
Dadar (West), Mumbai 400 028

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Robertsganj
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WAMA (Women's Association for Mobilisation and Action)
U.P Women Activists' Network
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Lucknow 226 006
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Appendix 6
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We dedicate this book to Seymour Melman, 1918-2004

Notes

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In 1997, The Supreme Court of India issued the Vishakha Guidelines on Sexual Harassment at the Workplace. These groundbreaking guidelines made it mandatory for every workplace to have a redress mechanism in the form of a Complaints Committee for employees facing sexual harassment. However it has been observed that few workplaces have implemented the Supreme Court Guidelines. In order to remedy this situation, India Centre for Human Rights and Law has been conducting awareness sessions on this issue.

The User's Manual was written for the trainers and participants of Sexual Harassment at the Workplace trainings. In conjunction with the rest of the training package, it equips the reader with a thorough knowledge of both conceptual and legal aspects of the issue. For this reason, the book is divided into sections that target certain groups: women, NGOs, employers, etc. to inform female employees of their rights, while simultaneously informing employers, NGOs and Complaints Committee members of their responsibilities. The manual also includes draft bills, judgments and other legal documents in the "Appendices" section in order to make it as comprehensive as possible.

India Centre for Human Rights and Law (ICHRL) is a unit of Human Rights Law Network and works on a variety of human rights issues. The Centre was established in 1997 by a group of lawyers and social activists determined to ensure equal rights for marginalised and vulnerable sections of society. Since then, ICHRL has burgeoned into an centre committed to fighting poverty, religious intolerance, caste discrimination, sexual harassment, homophobia, patriarchy, unrestricted economic globalization, unsustainable development and other such social injustices. ICHRL carries out its work in these areas through various methods such as campaigns, litigation, publications, documentation, awareness and sensitivity trainings and legal education.

Human Rights Law Network: Our Vision

To protect fundamental human rights, increase access to basic resources for marginalised communities and eliminate discrimination.

To create a justice delivery system that is accessible, efficient, accountable, and affordable and works for the poor. To raise the level of pro bono legal expertise for the poor to make the work uniformly competent as well as compassionate.

To equip, through professional training, a new generation of young public interest lawyers and paralegals who are comfortable both in the world of law as well as in social movements, and who learn from the social movements to refine legal concepts and strategies.

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