

**ALL INDIA COUNCIL FOR TECHNICAL EDUCATION
New Delhi**

NOTIFICATION

Dated 01-07-2009

Sub: Prevention and prohibition of Ragging in technical Institutions, Universities including Deemed to be Universities imparting technical education.

F.No.37-3/Legal/AICTE/2009 – In exercise of the powers conferred under Section 23 read with Section 10 (b), (g), (p) and (q) of AICTE Act, 1987, the All India Council for Technical Education, hereby makes the following Regulations:-

1. Short title and commencement:-

- (i) These Regulations may be called the All India Council for Technical Education (Prevention and Prohibition of Ragging in Technical Institutions, Universities including Deemed to be Universities imparting technical education) Regulations 2009.
- (ii) They shall come into force on the date of the notification.

2. Objectives:-

In view of the directions of the Hon'ble Supreme Court in SLP No. 24295 of 2006 dated 16-05-2007 and in Civil Appeal number 887 of 2009, dated 08-05-2009 to prohibit, prevent and eliminate the scourge of ragging including any conduct by any student or students whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness a fresher or any other student, or indulging in rowdy or undisciplined activities by any student or students which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in any fresher or any other student or asking any student to do any act which such student will not in the ordinary course do and which has the effect of causing or generating a sense of shame, or torment or embarrassment so as to adversely affect the physique or psyche of such fresher or any other student, with or without an intent to derive a sadistic pleasure or showing off power, authority or superiority by a student over any fresher or any other student, in all higher education institutions in the country, and thereby, to provide for the healthy development, physically and psychologically, of all students, the All India Council for Technical Education,(AICTE) brings forth these Regulations.

3. Definitions:-

- (a) **“Act”** means the All India Council for Technical Education Act 1987 (52 of 1987);
- (b) **“Technical Institution”** means an institution of Government, Government Aided and Private (self financing) conducting the courses/programmes in the field of technical education, training and research in Engineering, Technology including MCA, Architecture, Town Planning, Management, Pharmacy, Hotel Management & Catering Technology, Applied Arts & Crafts and such other programmes and areas as notified by the Council from time to time;
- (c) **“University”** means a University defined under clause (f) of section 2 of the University Grants Commission Act, 1956 and includes an institution deemed to be a University under section 3 of that Act.
- (d) **“Academic year”** means the period from the commencement of admission of students in any course of study in the institution up to the completion of academic requirements for that particular year.
- (e) **“Head of the institution”** means the Vice-Chancellor in case of a university or a deemed to be university, the Principal or the Director or such other designation as the executive head of the institution or the college is referred.
- (f) **“Fresher”** means a student who has been admitted to an institution and who is undergoing his/her first year of study in such institution.
- (g) Words and expressions used and not defined herein but defined in the Act or in the General Clauses Act, 1887, shall have the meanings respectively assigned to them in the Act or in the General Clauses Act, 1887, as the case may be. And
- (h) All other words and expressions used herein and not defined but defined in the All India Council for Technical Education Act, 1987 (52 of 1987), shall have the meanings respectively assigned to them in the said Act;

4 **What constitutes Ragging:** - Ragging constitutes one or more of any of the following acts:

- a. any conduct by any student or students whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness a fresher or any other student;
- b. indulging in rowdy or undisciplined activities by any student or students which causes or is likely to cause annoyance, hardship, physical or psychological harm or to raise fear or apprehension thereof in any fresher or any other student;
- c. asking any student to do any act which such student will not in the ordinary course do and which has the effect of causing or generating a sense of shame, or torment or embarrassment so as to adversely affect the physique or psyche of such fresher or any other student;
- d. any act by a senior student that prevents, disrupts or disturbs the regular academic activity of any other student or a fresher;
- e. exploiting the services of a fresher or any other student for completing the academic tasks assigned to an individual or a group of students.
- f. any act of financial extortion or forceful expenditure burden put on a fresher or any other student by students;
- g. any act of physical abuse including all variants of it: sexual abuse, homosexual assaults, stripping, forcing obscene and lewd acts, gestures, causing bodily harm or any other danger to health or person;
- h. any act or abuse by spoken words, emails, posts, public insults which would also include deriving perverted pleasure, vicarious or sadistic thrill from actively or passively participating in the discomfiture to fresher or any other student;
- i. any act that affects the mental health and self-confidence of a fresher or any other student with or without an intent to derive a sadistic pleasure or showing off power, authority or superiority by a student over any fresher or any other student.

5. Measures for prevention of ragging:-

It shall be mandatory for every technical Institution, University, deemed to be University imparting technical education to take following measures for prevention of ragging at such institutions.

1. The advertisement issued for admission by a technical institution, University including Deemed to be University concerned and/or the admission authority/ affiliating University/State Govt./UT/Central Govt. as the case may be, shall clearly mention that ragging is totally banned and anyone found guilty of ragging and/or abetting ragging is liable to be punished.
2. The 'Prospectus' and other admission related documents shall contain directions of the Supreme Court Affiliating University/admission Authority/State Govt/Central Govt. shall make it mandatory for the institutions under their jurisdiction to compulsorily incorporate such information in their 'Prospectus'. These Regulations shall be printed in the brochure of admission/instruction booklet for candidates.
3. The application form for admission/enrolment shall have a printed affidavit, preferably both in English and Hindi and/or in one of the regional languages. The affidavit should be filled up and signed by the candidate to the effect that he/she is aware of the law regarding prohibition of ragging as well as the punishments, and that he/she, if found guilty of the offence of ragging and/or abetting ragging, is liable to be punished appropriately.
4. The application form shall also contain a printed affidavit, preferably both in English and Hindi and/or in one of the regional languages and the affidavit should be signed by the parent/guardian of the applicant to the effect that he/she is also aware of the law in this regard and agrees to abide by the punishment meted out to his/her ward in case the latter is found guilty of ragging and/or abetting ragging.
5. The application for admission shall be accompanied by a document along with the School Leaving Certificate/Character Certificate which shall include a report on the behavioral patter of the applicant, so that the institution can thereafter keep intense watch upon the student who has a negative entry in this regard.
6. A student seeking admission to the hostel shall have to submit another affidavit along with his/her application for hostel accommodation that he/she is also aware of the law in this regard and agrees to abide by the punishments meted out if he/she is found guilty of ragging and/or abetting ragging.
7. Every technical institution, University including Deemed to be University imparting technical education shall maintain a proper record of the affidavits obtained to ensure its safe up keep thereof, including digital copies of the affidavits and such digital copy should be made available to the AICTE or to an Agency identified/nominated by AICTE.

8. The AICTE or an Agency identified/nominated for the purpose and affiliating Universities and Directorate of Technical Education of the concerned State Govt./UT shall maintain an appropriate data base of the affidavits in the digital form obtained from every student at the time of admission to the technical institutions, Universities including Deemed to be Universities imparting technical education.
9. Each batch of freshers should be divided into small groups and each such group shall be assigned to a member of staff. Such staff member should interact individually with each member of the group on daily basis to ascertain the problems/difficulties, if any faced by the freshers in the Institution and extend necessary help.
10. Incase of freshers admitted to a Hostel it shall be the responsibility of the teacher incharge of the group to co-ordinate with the warden of the Hostel and to make surprise visits to the rooms in the hostel where the members of the group are lodged. Freshers should be lodged in a separate hostel block wherever possible and where such facilities are not available, the college/institution shall ensure that seniors' access to freshers' accommodation is strictly monitored by wardens, Security Guards and Staff.
11. Every institution should engage or seek the assistance of professional counselors at the time of admissions to counsel 'freshers' in order to prepare them for the life ahead, particularly for adjusting to the life in hostels. At the commencement of the academic session the Head of the technical Institution, University including Deemed to be University imparting technical education shall convene and address a meeting of various functionaries/agencies, like Wardens, representatives of students, parents/guardians, faculty, district administration including police, to discuss the measures to be taken to prevent ragging and steps to be taken to identify the offenders and punish them suitably.
12. Every fresher admitted to the technical Institution, University including Deemed to be University imparting technical education shall be given a printed information booklet detailing when and whom he/she has to turn to for help and guidance for various purposes (including Wardens, Head of the institution, members of the anti-ragging committee, relevant district and police authorities), addresses and telephone numbers of such persons/authorities, etc.
13. The technical institutions, University including Deemed to be University imparting technical education through the information booklet mentioned

above shall explain to the new entrants the arrangements for their induction and orientation which promote efficient and effective means of integrating them fully as students.

14. The information booklet mentioned above shall also tell the freshers about their rights as bona fide students and clearly instructing them that they should desist from doing anything against their will even if ordered by the seniors, and that they have nothing to fear as the institution cares for them and shall not tolerate any atrocities against them.
15. The information booklet mentioned above shall contain a calendar of events and activities laid down by the institution to facilitate and complement familiarization of juniors with the academic environment of the institution.
16. To make the community at large and the students in particular aware of the dehumanizing effect of ragging, and the approach of the institution towards those indulging in ragging, big posters (preferably with different colors for the provisions of law, punishments, etc.) shall be prominently displayed on all Notice Boards of all departments, hostels and other buildings as well as at vulnerable places. Some of such posters shall be of permanent nature in certain vulnerable places.
17. The technical Institution, University including Deemed to be University imparting technical education shall request the media to give adequate publicity to the law prohibiting ragging and the negative aspects of ragging and the institutions 's resolve to ban ragging and punish those found guilty without fear or favor.
18. The technical Institution, University including Deemed to be University imparting technical education shall identify, properly illuminate and man all vulnerable locations.
19. The technical Institution, University including Deemed to be University imparting technical education shall tighten security in its premises, especially at the vulnerable places. If necessary, intense policing shall be resorted to at such points at odd hours during the early months of the academic session.
20. The technical Institution, University including Deemed to be University imparting technical education shall utilize the vacation period before the start of the new academic year to launch wide publicity campaign against ragging through posters, information booklets, seminars, street plays, etc.

21. The faculties/departments/units of the technical Institution, University including Deemed to be University imparting technical education shall have induction arrangements (including those which anticipate, identify and plan to meet any special needs of any specific section of students) in place well in advance of the beginning of the academic year with a clear sense of the main aims and objectives of the induction process.
22. Mobile Phones and other communication devices may be permitted in residential areas including hostels to provide access to the students particularly freshers, to reach out for help from teachers, parents and Institution authorities.
6. **Monitoring mechanism in technical institution, University including Deemed to be University imparting technical education:-**
- a) **Anti-ragging Committee:** Every institution University including Deemed to be University imparting technical education shall constitute a Committee to be known as the Anti-ragging Committee to be nominated and headed by the Head of the Institution, and consisting of representatives of civil and police administration, local media, Non Government Organizations involved in youth activities, representatives of faculty members, representatives of parents, representatives of students belonging to the freshers' category as well as senior students, non-teaching staff; and shall have a diverse mix of membership in terms of level as well as gender.
- b) It shall be the duty of the Anti-Ragging Committee to ensure compliance with the provisions of these Regulations as well as the provisions of any law for the time being in force concerning ragging; and also to monitor and oversee the performance of the Anti-Ragging Squad in prevention of ragging in the institution.
- c) **Anti-Ragging Squad:** Every institution University including Deemed to be University imparting technical education shall also constitute a smaller body to be known as the Anti-Ragging Squad to be nominated by the Head of the Institution with such representation as may be considered necessary for maintaining vigil, oversight and patrolling functions and shall remain mobile, alert and active at all times. Provided that the Anti-Ragging Squad shall have representation of various members of the campus community and shall have no outside representation.
- d) It shall be the duty of the Anti-Ragging Squad to be called upon to make surprise raids on hostels, and other places vulnerable to incidents and having the potential for ragging and shall be empowered to inspect such places.

- e) It shall also be the duty of the Anti-Ragging Squad to conduct an on-the-spot enquiry into any incidents of ragging referred to it by the Head of the institution or any member of the faculty or any member of the staff or any student or any parent or guardian or any employee of a service provider or by any other person, as the case may be; and the enquiry report along with recommendations shall be submitted to the Anti-Ragging Committee for action. Provided that the Anti-Ragging Squad shall conduct such enquiry observing a fair and transparent procedure and the principles of natural justice and after giving adequate opportunity to the student or students accused of ragging and other witnesses to place before it the facts, documents and views concerning the incidents of ragging, and considerations such other relevant information as may be required.
- f) **Mentoring Cell:** Every institution shall, at the end of each academic year, in order to promote the objectives of these Regulations, constitute a Mentoring Cell consisting of students volunteering to be Mentors for freshers, in the succeeding academic year; and there shall be as many levels or tiers of Mentors as the number of batches in the institution, at the rate of one Mentor for six freshers and one Mentor of a higher level for six Mentors of the lower level.
- g) **Monitoring Cell on Ragging:-** The State Govt./UT and the affiliating University shall set up a Monitoring Cell on Ragging to coordinate with the institutions to monitor the activities of the Anti-Ragging Committees, Squads, and Mentoring Cells, regarding compliance with the instructions on conducting orientation programmes, counseling sessions, etc., and regarding the incidents of ragging, the problem faced by wardens and other officials, etc. This Cell shall also review the efforts made by such institutions to publicize anti-ragging measures, cross-verify the receipt of affidavits from candidates/students and their parents/guardians every year, and shall be the prime mover for initiating action by the University authorities to suitably amend the Statutes or Ordinances or Bye-laws to facilitate the implementation of anti ragging measures at the level of the institution.
- h) The Monitoring Cell shall coordinate with the the institutions, universities including deemed to be universities imparting technical education to achieve the objectives of these Regulations; and the Monitoring Cell shall call for reports from the Heads of institutions in regard to the activities of the Anti-Ragging Committees, Anti-Ragging Squads, and the Mentoring Cells at the institutions, and it shall also keep itself abreast of the decisions of the Anti-Ragging Committees etc.

- i) The Monitoring Cell shall also review the efforts made by institutions to publicize anti-ragging measures, soliciting of affidavits from parents/guardians and from students, each academic year, to abstain from ragging activities or willingness to be penalized for violation; and shall function as the prime mover for initiating action for amending the Statues or Ordinances or Bye-laws to facilitate the implementation of anti-ragging measures at the level of the institution.
7. **Action to be taken against the Principal or the Head of the Institution/Faculty Members/Non-Teaching staff of technical institution, Universities including Deemed to be Universities imparting technical education.**
1. The Head of the Institution along with other administrative authorities should take adequate measures for prevention of ragging. Any lapse on the part of these authorities shall make them liable for criminal action for negligence of duty. The technical Institution, University including Deemed to be University imparting technical education should incorporate a clause in their letter of appointment that the Director, Faculty and other administrative Heads should ensure all possible steps for prevention of ragging in the premises of the educational institutions, and that they are liable for action, in case of non-compliance.
 2. The Principal or Head of the Institution/Department shall obtain an affidavit from every employee of the Institution including teaching/non-teaching staff, contract labor employed in the premises either for running canteen or as watch and ward staff or for cleaning or maintenance of the building, lawns etc. that he/she would report promptly any case of ragging which comes to his/her notice. A provision shall be made in the service rules for issuing certificates of appreciation to such members of the staff who report ragging which will form part of their service records.
 3. Departmental enquiries shall be initiated, in addition to penal consequences against such heads of the Institution/Faculty members/non-teaching staff who display an apathetic or insensitive attitude towards complaints of ragging and would not take timely steps in the prevention of ragging and punishing those who rag.
 4. The Principal or the Head of the Institution/Faculty Members/Non-Teaching staff, if found negligent in taking necessary measures for ensuring safety of students and preventing the ragging would be declared unfit for holding any post in any technical institution, University including Deemed to be University imparting technical education.

8. Actions to be taken against students for indulging and abetting ragging in technical institutions Universities including Deemed to be University imparting technical education:-

1. The punishment to be meted out to the persons indulged in ragging has to be exemplary and justifiably harsh to act as a deterrent against recurrence of such incidents.
2. Every single incident of ragging a First Information Report (FIR) must be filed without exception by the institutional authorities with the local police authorities.
3. The Anti-Ragging Committee of the institution shall take an appropriate decision, with regard to punishment or otherwise, depending on the facts of each incident of ragging and nature and gravity of the incident of ragging.
4. a) Depending upon the nature and gravity of the offence as established the possible punishments for those found guilty of ragging at the institution level shall be any one or any combination of the following:-
 - (i) Cancellation of admission
 - (ii) Suspension from attending classes
 - (iii) Withholding/withdrawing scholarship/fellowship and other benefits
 - (iv) Debarring from appearing in any test/examination or other evaluation process
 - (v) Withholding results
 - (vi) Debarring from representing the institution in any regional, national or international meet, tournament, youth festival, etc.
 - (vii) Suspension/expulsion from the hostel
 - (viii) Rustication from the institution for period ranging from 1 to 4 semesters
 - (ix) Expulsion from the institution and consequent debarring from admission to any other institution.
 - (x) Collective punishment: when the persons committing or abetting the crime of ragging are not identified, the institution shall resort to collective punishment as a deterrent to ensure community pressure on the potential raggars.
- b) An appeal against the order of punishment by the Anti-Ragging Committee shall lie,

- i. In case of an order of an institution, affiliated to or constituent part, of the University, to the Vice-Chancellor of the University;
 - ii. In case of an order of a University, to its Chancellor.
 - iii. In case of an institution of national importance created by an Act of Parliament, to the Chairman or Chancellor of the institution, as the case may be.
5. The institutional authorities shall intimate the incidents of ragging occurred in their premises along with actions taken to the Council from time to time.

9 Action to be taken against the technical Institution, University including Deemed to be University imparting technical education which fail to take measures for prevention of ragging:-

1. Role of the concerned technical institutions, Universities including Deemed to be Universities imparting technical education shall be open to scrutiny for the purpose of finding out whether they have taken effective steps for preventing ragging and action taken against provision indulged and/or abetting ragging. The Council shall constitute Committees to inspect technical institutions, Universities including Deemed to be Universities imparting technical education to verify the status of anti ragging measures and to investigate specific instances of ragging and take appropriate action.
2. The technical Institution, University including Deemed to be University imparting technical education should submit an affidavit along with its compliance report submitted to AICTE annually with details of measures taken for prevention of ragging in technical institutions. The Compliance Report should also contain the details of the instances of ragging and action taken against students, and others for indulging and abetting ragging.
3. All Letters of Approval issued by AICTE such as extension of approval letters, letters issued for additional courses/increase in intake and letters issued for new technical institutions, release of grants, letters of approval issued to integrated campus, second shift etc. shall contain a specific clause of prevention of ragging.
4. The AICTE shall, in respect of any institution that fails to take adequate steps to prevent ragging or fails to act in accordance with these Regulations or fails to punish perpetrators or incidents of ragging suitably, take one of more of the following measures, namely;

- i. No admission/Withdrawal of approval granted under section 10(k) of AICTE Act.
 - ii. Withholding any grant allocated.
 - iii. Declaring the institution ineligible for consideration for any assistance under any of the general or special assistance programmes of the AICTE.
 - iv. Informing the general public, including potential candidates for admission, through a notice displayed prominently in the newspapers or other suitable media and posted on the website of the AICTE, declaring that the institution does not possess the minimum academic standards.
 - v. Taking such other action within its powers as it may deem fit and impose such other penalties as may be provided in the Act for such duration of time as the institution complies with the provisions of these Regulations.
5. As regards the Universities including Deemed to be Universities imparting technical education the actions proposed to be taken such as stopping release of grants, withdrawal of approval/recognition will be sent to University Grants Commission (UGC), Ministry of Human Resource Development (MHRD), Govt. of India and the concerned State Govt./UT. The UGC, MHRD Govt. of India, and the State Govt./UT concerned shall initiate immediate action on the recommendations of the Council.

10. Duties and Responsibilities of the All India Council for technical Education:-

- a) All India Council for technical Education, or the Central Government or the agency authorized for the purpose shall establish, fund and operate, a toll-free Anti-Ragging Helpline, operational round the clock, which could be accessed by students in distress owing to ragging related incidents.
- b) Any distress message received at the Anti-Ragging Helpline shall be simultaneously relayed to the Head of the Institution, the Warden of the Hostels, the Nodal Officer of the affiliating University, if the incident reported has taken place in an institution affiliated to a University, the concerned District authorities and if so required, the District Magistrate, and the Superintendent of Police, and shall also be web enabled so as to be in the public domain simultaneously for the media and citizens to access it.
- c) The Head of the institution shall be obliged to act immediately in response to the information received from the Anti-Ragging Helpline as at sub-clause (b) of this clause.


- d) The telephone numbers of the Anti-Ragging Helpline and all the important functionaries in every institution, Heads of institutions, faculty members, members of the anti-ragging committees and anti-ragging squads, district and sub-divisional authorities and state authorities, Wardens of hostels, and other functionaries or authorities where relevant, shall be widely disseminated for access or to seek help in emergencies.
- f) The All India Council for technical Education, the Central Government or the agency authorized for the purpose shall maintain an appropriate data base to be created out of affidavits, affirmed by each student and his/her parents/guardians and stored electronically by the institution; and such database shall also function as a record of ragging complaints received, and the status of the action taken thereon.
- g) The All India Council for technical Education, the Central Government or the agency authorized for the purpose shall make available the database to a non-governmental agency to be nominated by the Central Government, to build confidence in the public and also to provide information of non compliance with these Regulations to the Councils and to such bodies as may be authorized by the All India Council for technical Education/Central Government.

11. The All India Council for technical Education shall take the following regulatory steps, namely;

- a) The All India Council for technical Education shall make it mandatory for the institutions to incorporate in their prospectus, the directions of the Central Government or the State Level Monitoring Committee with regard to prohibition and consequences of ragging, and that non-compliance with these Regulations and directions so provided, shall be considered as lowering of academic standards by the institution, therefore making it liable for appropriate action.
- b) The All India Council for technical Education shall verify that the institutions strictly comply with the requirement of getting the affidavits from the students and their parents/guardians as envisaged under these Regulations.
- c) The All India Council for technical Education shall include a specific condition in the Utilization Certificate, in respect of any financial assistance or grants-in-aid to any institution under any of the general or special schemes of the All India Council for technical Education, that the institution has complied with the anti-ragging measures.

- d) Any incident of ragging in an institution shall adversely affect its accreditation, ranking or grading by National Board of Accreditation or by any other authorised accreditation agencies while assessing the institution for accreditation, ranking or grading purposes.
- e) The All India Council for technical Education shall constitute an Inter-Council Committee, consisting of representatives of the various Councils, the Non-Governmental agency responsible for monitoring the database maintained by the All India Council for technical Education/Central Government and such other bodies in higher education, to coordinate and monitor the anti-ragging measures in institutions across the country and to make recommendations from time to time; and shall meet at least once in six months each year.
- f) The All India Council for technical Education shall institute an Anti-Ragging Cell within the AICTE as an institutional mechanism to provide secretarial support for collection of information and monitoring, and to coordinate with the State Level Monitoring Cells and University Level Committees for effective implementation of anti-ragging measures, and the Cell shall also coordinate with the Non-Governmental agency responsible for monitoring the database maintained by the All India Council for technical Education/central Government.

(Member Secretary)


PRINCIPAL
KK MUNIRAJAH COLLEGE
OF TECHNOLOGY
T.N. PALAYAM (Po)-638 506.
GOBI (Tk), ERODE (Dt).



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HANDBOOK

on

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

for Employers / Institutions / Organisations/
Internal Complaints Committee / Local Complaints Committee



Towards a new dawn

Government of India
Ministry of Women and Child Development

November 2015

Heem
PRINCIPAL
JKK MUNIRAJAH COLLEGE
OF TECHNOLOGY
T.N. PALAYAM (Po)-638 506.
GOBI (Tk), ERODE (Dt).

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मेनका संजय गांधी
Maneka Sanjay Gandhi



मंत्री
महिला एवं बाल विकास मंत्रालय
भारत सरकार
नई दिल्ली-110001

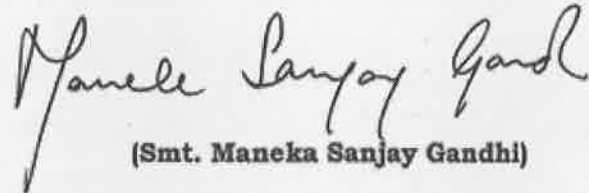
MINISTER
MINISTRY OF WOMEN & CHILD DEVELOPMENT
GOVERNMENT OF INDIA
NEW DELHI-110001

MESSAGE

With improved access to education and employment, millions of Indian women are entering the country's workforce today. Many working women face sexual harassment at the workplace on a daily basis. It is crucial therefore that as a country, we strive to eliminate work-place sexual harassment since women have the right to work in safe and secure environment. It is the responsibility of every employer to ensure safety of women in a work environment and improve their participation. This will contribute to realization of their right to gender equality and result in economic empowerment and inclusive growth and benefit the nation as a whole.

I am pleased to present this Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It provides key information about the provisions of the Act in an easy-to-use and practical manner. The Handbook has been developed with the aim to ensure that the citizens of India are aware of their rights and obligations in terms of creating safe workplace environment for women.

Government of India is committed to promote gender equality and women's empowerment across every sector. This Handbook reflects our commitment to empower women as economic agents and improve their ability to access markets on competitive and equitable terms. I am confident that this Handbook which advocates and enforces the rules as laid out in the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, will be beneficial to everyone. The practical and user-friendly procedures outlined in the Handbook will be useful for actual implementation of the Act.


(Smt. Maneka Sanjay Gandhi)

V. Somasundaran



सचिव
भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली - 110001

Secretary
Government of India
Ministry of Women & Child Development
Shastri Bhawan, New Delhi-110001
Website : <http://www.wcd.nic.in>

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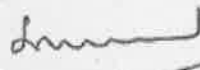
FOREWORD

I am pleased to share with you this Handbook on Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This Handbook is of immense importance because combating sexual harassment involves developing deeper understanding of what is sexual harassment and change of attitudes in all - be it employer, employees, colleagues, friends, or the policy makers.

Sexual Harassment at workplace is an extension of violence in everyday life and is discriminatory and exploitative, as it affects women's right to life and livelihood. In India, for the first time in 1997, a petition was filed in the Supreme Court to enforce the fundamental rights of working women, after the brutal gang rape of Bhanwari Devi a social worker from Rajasthan. As an outcome of the landmark judgment of the Vishaka and Others v State of Rajasthan the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, was enacted wherein it was made mandatory for every employer to provide a mechanism to redress grievances pertaining to workplace sexual harassment and enforce the right to gender equality of working women. The Act is also unique for its wide ambit as it is applicable to the organized sector as well as the unorganized sector.

The legislation, however, requires the support and commitment of all stakeholders for its effective and successful implementation in preventing workplace sexual harassment. It casts an obligation upon the employer to address the grievances in respect of sexual harassment at workplace in a time bound manner. It is in this context that this Handbook would be very useful as it provides clear definition of what constitutes sexual harassment and explains how the complaint process works.

I am sure that the Handbook will be extremely useful to all agencies concerned and help them in taking pro-active measures to eradicate the problem/menace of workplace sexual harassment in the country.


(V. Somasundaran)

प्रीति सूदन
PREETI SUDAN
अपर सचिव

Additional Secretary
Tel. : 011-23383823
Fax : 011-23070480



सत्यमेव जयते

भारत सरकार
महिला एवं बाल विकास मंत्रालय
शास्त्री भवन, नई दिल्ली - 110001
Government of India
Ministry of Women & Child Development
Shastri Bhawan, New Delhi-110001
Website : <http://www.wcd.nic.in>
Email id : sudanp@nic.in

Dated: 17th November, 2015

PREFACE

The Government of India is committed to ending all forms of violence against women that negatively impact society, hamper gender equality and constricts the social and economic development of the country.

Since, sexual harassment results in violation of the fundamental rights of a woman to equality as per Articles 14 and 15 and her right to live with dignity as mentioned under Article 21 of the Constitution, the Government of India enacted the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Act is an extension of the Vishaka Guidelines issued by the Supreme Court in 1997. The Supreme Court of India, for the first time in the Vishaka Guidelines, acknowledged Sexual Harassment at the workplace as a human rights violation. Further, the Act also reflects the commitment of the Government to the ratification of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) on July 09, 1993. This new legislation makes every effort to be a user friendly tool in the hands of the employers and employees, to create safe and secure workplaces for all women.

With the enactment of the Act, India is now a part of a select group of countries to have prohibited sexual harassment at workplace through national legislation. The Act is unique in its broad coverage which includes all working women from organised and unorganised sectors alike, as also public and private sectors, regardless of hierarchy. Effective implementation of the Act is a challenge. The Handbook is designed to be a Ready Reckoner for organisations vested with responsibility to enforce the law.

The Handbook is structured into six sections. The first section is an introduction and detail regarding the genesis of the Act, the second sets the context by defining the workplace and sexual harassment and impact of such behaviour, the third focuses on the key individuals and institutions involved in prohibition and prevention processes and their responsibilities, section four discusses the redressal mechanism followed by monitoring requirement in section five and important international frameworks and best practices on sexual harassment at the workplace in the concluding section.



Tel. : 23367573

Fax : 23362946

Telegrams : WOMEN CHILD

भारत सरकार

महिला एवं बाल विकास मंत्रालय

GOVERNMENT OF INDIA

MINISTRY OF WOMEN & CHILD DEVELOPMENT

जीवन विहार, नई दिल्ली-110 001, दिनांक

Jeevan Vihar, New Delhi-110 001, Dated

लोपामुद्रा मोहंती

Lopamudra Mohanty

ACKNOWLEDGEMENTS

In our journey towards preparing this Handbook, which required a lot of guidance and assistance from many people, whose names may not be enumerated, I am thankful to all of them for their contributions towards the completion of the task.

I would like to express my sincere thanks to the UN Women (United Nations Entity for Gender Equality and Empowerment of Women) for their valuable contributions with their experience in women's movement and expertise in gender rights in supporting the Ministry to prepare the Handbook with key information on the Act in an easy-to-use practical manner and designing with appropriate illustrations.

I would like acknowledge the important contributions made by Ms. Risha Syed, Legal Consultant for the hardwork put by her coupled with her experience and expertise as a legal professional and commitment to gender issues in bringing out the Handbook.

I am also thankful to Dr. Paramita Majumdar, Senior Consultant, Gender Budgeting for reviewing the manuscript with meticulous scrutiny and scholarly advice. I would like to mention with appreciation for Shri Samuel Paul, Assistant Secretary for showing not only his keen interest on the subject, but assisting us in the review work.

We hope that this Handbook will be a guide and inspiration to all of us in creating an enabling environment of women in the workplaces.

(Lopamudra Mohanty)

“The meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...”

Late Chief Justice J.S. Verma, Supreme Court of India, Vishaka v. State of Rajasthan

Introduction

“Whereas sexual harassment results in violation of the fundamental rights of a Woman to equality....”

[Preamble, Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act]

As enshrined in the Preamble to the Constitution of India, “equality of status and opportunity” must be secured for all its citizens; equality of every person under the law is guaranteed by Article 14 of the Constitution.

A safe workplace is therefore a woman’s legal right. Indeed, the Constitutional doctrine of equality and personal liberty is contained in Articles 14, 15 and 21 of the Indian Constitution. These articles ensure a person’s right to equal protection under the law, to live a life free from discrimination on any ground and to protection of life and personal liberty. This is further reinforced by the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), which was adopted by the UN General Assembly in 1979 and which is ratified by India. Often described as an international bill of rights for women, it calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women’s dignity violate the principle of equality of rights.

Sexual harassment constitutes a gross violation of women's right to equality and dignity. It has its roots in patriarchy and its attendant perception that men are superior to women and that some forms of violence against women are acceptable. One of these is workplace sexual harassment, which views various forms of such harassment, as harmless and trivial. Often, it is excused as ‘natural’ male behaviour or ‘harmless flirtation’ which women enjoy. Contrary to these perceptions, it causes serious harm and is also a strong manifestation of sex discrimination at the workplace. Not only is it an infringement of the fundamental rights of a woman, under Article 19 (1) (g) of the Constitution of India “to practice any profession or to carry out any occupation, trade or business”; it erodes equality and puts the dignity and the physical and psychological well-being of workers at risk. This leads to poor productivity and a negative impact on lives and livelihoods. To further compound the matter, deep-rooted socio-cultural behavioural patterns, which create a gender hierarchy, tend to place responsibility on the victim, thereby increasing inequality in the workplace and in the society at large.



Though sexual harassment at the workplace has assumed serious proportions, women do not report the matter to the concerned authorities in most cases due to fear of reprisal from the harasser, losing one's livelihood, being stigmatized, or losing professional standing and personal reputation.

Across the globe today, workplace sexual harassment is increasingly understood as a violation of women's rights and a form of violence against women. Indeed, the social construct of male privileges in society continues to be used to justify violence against women in the private and public sphere. In essence, sexual harassment is a mirror reflecting male power over women that sustains patriarchal relations. In a society where violence against women, both subtle and direct, is borne out of the patriarchal values, women are forced to conform to traditional gender roles. These patriarchal values and attitudes of both women and men pose the greatest challenge in resolution and prevention of sexual harassment. Workplace sexual harassment, like other forms of violence, is not harmless. It involves serious health, human, economic and social costs, which manifests themselves in the overall development indices of a nation.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted to ensure safe working spaces for women and to build enabling work environments that respect women's right to equality of status and opportunity. An effective implementation of the Act will contribute to the realization of their right to gender equality, life and liberty, equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The full scale of the problem is not known given the difficulties in documenting the experience of those who have experienced workplace sexual harassment. However, available studies on sexual harassment show that it is certainly prevalent in India today. This is why the legislation is an important step forward within the larger architecture of women's rights, as it tackles this issue to secure the rights of women workers across the country.

While the official figures for women's work participation are low, much of the work that women do is not captured in official data accounts. It is argued¹ that where this is to be captured, women's overall work participation would be 86.2 per cent. While the official data² shows that women's work participation rate is around 25.3 per cent in rural areas and 14.7 per cent in the urban areas, estimates indicate that there is a huge workforce of women, therefore there is a need to secure their workplace and entitlements. Given, that 93 per cent of women workers are employed in the informal sector, they remain unprotected by laws. With no laws or mechanisms to protect them, proactive measures are required to make their workplaces safe.

¹ Professor Jayati Ghosh, Paper on 'What Exactly is Work?' http://www.macrosan.org/cur/oct14/pdf/Exactly_Work.pdf

² NSSO 2011-12



In a landmark judgment, *Vishaka vs. State of Rajasthan* (1997)⁴, the Supreme Court of India created legally binding guidelines basing it on the right to equality and dignity accorded under the Indian Constitution as well as by the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

It included:

- ◆ A definition of sexual harassment
- ◆ Shifting accountability from individuals to institutions
- ◆ Prioritizing prevention
- ◆ Provision of an innovative redress mechanism

The Supreme Court defined sexual harassment as any unwelcome, sexually determined physical, verbal, or non-verbal conduct. Examples included sexually suggestive remarks about women, demands for sexual favours, and sexually offensive visuals in the workplace. The definition also covered situations where a woman could be disadvantaged in her workplace as a result of threats relating to employment decisions that could negatively affect her working life.

It placed responsibility on employers to ensure that women did not face a hostile environment, and prohibited intimidation or victimization of those cooperating with an inquiry, including the affected complainant as well as witnesses.

It directed for the establishment of redressal mechanism in the form of Complaints Committee, which will look into the matters of sexual harassment of women at workplace. The Complaints Committees were mandated to be headed by a woman employee, with not less than half of its members being women and provided for the involvement of a third party person/NGO expert on the issue, to prevent any undue pressure on the complainant. The guidelines extended to all kinds of employment, from paid to voluntary, across the public and private sectors.

Vishaka established that international standards/law could serve to expand the scope of India's Constitutional guarantees and fill in the gaps wherever they exist. India's innovative history in tackling workplace sexual harassment beginning with the *Vishaka* Guidelines and subsequent legislation has given critical visibility to the issue. Workplaces must now own their responsibility within this context and ensure that women can work in safe and secure spaces.

1.3 THE ACT

Having raised the bar of responsibility and accountability in the *Vishaka* Guidelines, the Supreme Court placed an obligation on workplaces, institutions and those in positions of responsibility, to uphold working women's fundamental right to equality and dignity at the workplace. Three key obligations were imposed on institutions to meet that standard, namely:

⁴ (AIR 1997 Supreme Court 3011)



Section 2 sets the context by defining a workplace and sexual harassment. It provides the reader with key elements, such as examples of sexual harassment as well as scenarios and the impact of such behaviour.

Section 3 focuses on the key individuals and institutions involved in the prohibition and prevention processes and their responsibilities.

Section 4 is about redress. This section identifies and defines the key players involved in the complaint mechanism (including the complainant and the respondent). It details the stages of the complaint process. Particular attention is paid to the complaints committee which plays a very important role in this process.

Section 5 describes the monitoring requirements as per the Act.

Section 6 lists the important international frameworks and select best practices on sexual harassment at the workplace.



2.2 WHAT IS A WORKPLACE?

A workplace is defined as “any place visited by the employee arising out of or during the course of employment, including transportation provided by the employer for undertaking such a journey.” As per this definition, a workplace covers both the organised and un-organised sectors.

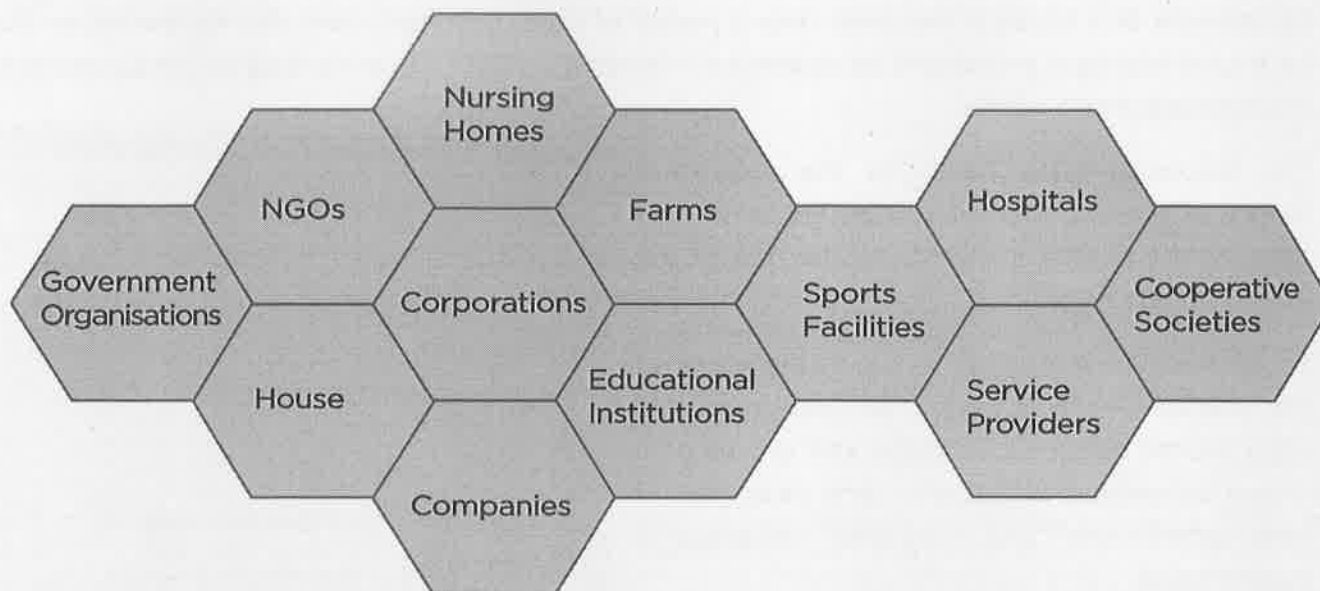
It also includes all workplaces whether owned by Indian or foreign company having a place of work in India. As per the Act, workplace includes:

- Government organizations, including Government company, corporations and cooperative societies;
- Private sector organisations, venture, society, trust, NGO or service providers etc. providing services which are commercial, vocational, educational, sports, professional, entertainment, industrial, health related or financial activities, including production, supply, sale, distribution or service;
- Hospitals/Nursing Homes;
- Sports Institutes/Facilities;
- Places visited by the employee (including while on travel) including transportation provided by employer;
- A dwelling place or house.

The Act defines the Unorganised Sector as:

- Any enterprise owned by an individual or self-employed workers engaged in the production or sale of goods or providing services of any kind;
- Any enterprise which employs less than 10 workers.

All women working or visiting workplaces, for example:





UNWELCOME	WELCOME
Feels bad	Feels good
One-sided	Reciprocal
Feels powerless	In-control
Power-based	Equality
Unwanted	Wanted
Illegal	Legal
Invading	Open
Demeaning	Appreciative
Causes anger/sadness	Happy
Causes negative self-esteem	Positive self-esteem

Impact of inappropriate behaviour

The impact of sexual harassment at the workplace is far-reaching and is an injury to the equal right of women. Not only does it impact her, it has a direct bearing on the workplace productivity as well as the development of the society. Below is a list of select examples of such negative impacts.





2.5 EXAMPLES OF BEHAVIOURS AND SCENARIOS THAT CONSTITUTE SEXUAL HARASSMENT

Below are examples of behaviour that may or may not constitute workplace sexual harassment in isolation. At the same time, it is important to remember that more often than not, such behaviour occurs in cluster. Distinguishing between these different possibilities is not an easy task and requires essential training and skill building.



Some examples of behaviour that constitute sexual harassment at the workplace:

1. Making sexually suggestive remarks or innuendos.
2. Serious or repeated offensive remarks, such as teasing related to a person's body or appearance.
3. Offensive comments or jokes.
4. Inappropriate questions, suggestions or remarks about a person's sex life.
5. Displaying sexist or other offensive pictures, posters, mms, sms, whatsapp, or e-mails.
6. Intimidation, threats, blackmail around sexual favours.
7. Threats, intimidation or retaliation against an employee who speaks up about unwelcome behaviour with sexual overtones.
8. Unwelcome social invitations, with sexual overtones commonly understood as flirting.
9. Unwelcome sexual advances which may or may not be accompanied by promises or threats, explicit or implicit.





3. The normal exercise of management rights.
4. Work-related stress e.g. meeting deadlines or quality standards.
5. Conditions of works.
6. Constructive feedback about the work mistake and not the person.

2.6 FORMS OF WORKPLACE SEXUAL HARASSMENT

Generally workplace sexual harassment refers to two common forms of *inappropriate behaviour*:

- Quid Pro Quo (literally 'this for that')
 - Implied or explicit promise of preferential/detrimental treatment in employment
 - Implied or express threat about her present or future employment status
- Hostile Work Environment
 - Creating a hostile, intimidating or an offensive work environment
 - Humiliating treatment likely to affect her health or safety

2.7 SCENARIOS

The following scenarios have been constructed as examples based on real life experiences of women at workplaces. The scenarios attempt to build an understanding of the two types of workplace sexual harassment as prescribed by the Act i.e. quid pro quo and hostile environment.

The names in the following examples are fictional and in no way refer to any individual alive or dead.

A. Examples of scenarios that constitute quid pro quo or 'this for that' type of sexual harassment at the workplace:

SCENARIO EXAMPLE 1

Kamini is a bright young team leader working in a call centre. Known to be forthright, she is dedicated, hardworking and is a perfectionist.

Kamini stays back at work late one evening with her colleague Ravi to complete work for an important presentation. Ravi offers to buy Kamini dinner and later drop her home since it's been a long day. After dinner, Ravi proposes to Kamini that he would like her to spend the night with him. Kamini refuses politely but firmly and goes home. Next evening, Ravi repeats his request and on Kamini's refusal, threatens her that ***if she doesn't give-in, he will tell everyone*** that she made a pass at him.

What is Workplace 'this for that' Sexual Harassment?

In the above example, Ravi's threat to Kamini that if she does not agree to his 'request' for a sexual favour, he will in return smear her character at the workplace as a person who wants to use sexual



Varghese, Jayanthi's supervisor, often tries to touch her on one or the other pretext. For example, he adjusts her *dupatta* while she is sewing at her workstation on the pretext of covering her back. Jayanthi is very uncomfortable with his behaviour. Her colleagues at the workplace ridicule Jayanthi and mock her for the 'special treatment' by her supervisor. They often gossip about her and Varghese.



What is a Hostile Workplace Environment Sexual Harassment?

In the above example, the physical touching by Varghese is unwelcome and sexual in nature. The gossip, which is based on Varghese's behaviour towards Jayanthi at the workplace, is creating a hostile work environment for Jayanthi.

SCENARIO EXAMPLE 2

Sukhi is a daily wage labourer working at a construction site. Every day at lunch time, Sukhi sits under the shade of the tree to feed her 16-month old baby. She finds Jaswinder, a worker, staring at her from the distance. Sukhi feels uncomfortable and asks Jaswinder to stay away from her while she's feeding the baby. However, Jaswinder persists and always finds a place near her. The group of fellow construction workers now **constantly catcall and whistle** at Sukhi every time she walks their way to refill the cement or mortar. When she questions them, they tell her they are only joking amongst themselves.

What is a Hostile Workplace Environment Sexual Harassment?

Ogling, stalking and gossiping against Sukhi in the above example constitute a hostile work environment, a form of workplace sexual harassment.

SCENARIO EXAMPLE 3

Sumedha is a Captain with the Indian Army. She has refused an offer made by a Senior Officer for a relationship. Sumedha has kept quiet about this experience, but thanks to the rumour-mongering by the Senior Officer, she has acquired a reputation of being a woman of 'easy virtue'. Now she is being *subjected to repeated advances* by three of her senior officer colleagues. When she turns around and protests, *she is singled out for additional physical training*.

What is a Hostile Workplace Environment Sexual Harassment?

In the above example, Sumedha's refusal to the sexual advances of her Senior Officer, leads to her being subjected to rumours, gossip, character assassination, unwelcome sexual advances by other officers, and arbitrary disciplinary action. This constitutes Hostile Work Environment form of workplace Sexual Harassment.

Prevention and Prohibition

“The meaning and content of fundamental rights guaranteed in the Constitution of India are of sufficient amplitudes to encompass all facets of gender equality...”

Late Justice J.S. Verma

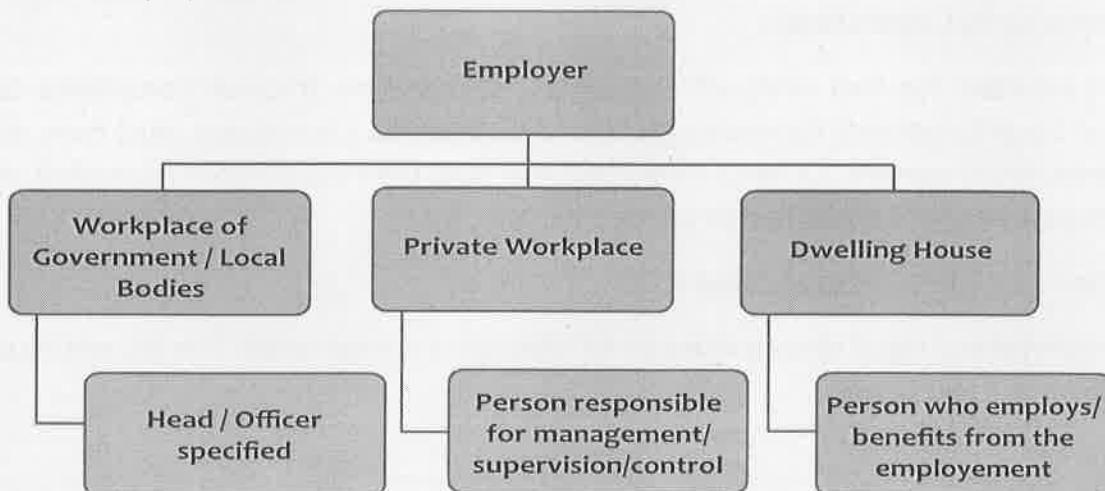
This section describes those who are both responsible and accountable to prevent workplace sexual harassment in compliance with the Act. It also highlights the role of workplaces in prohibiting workplace sexual harassment through an effectively communicated policy.

3.1 PREVENTIVE AUTHORITIES

3.1.1 WHO IS AN EMPLOYER?

An employer refers to:

1. The head of the department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the Appropriate Government or local authority or such officer specified in this behalf.
2. Any person (whether contractual or not) responsible for the management, supervision and control of a designated workplace not covered under clause (i).
3. A person or a household who employs or benefits from the employment of domestic worker or women employees.





No	Member	Eligibility
1.	Chairperson	Women working at senior level as employee; if not available then nominated from other office/units/ department/ workplace of the same employer
2.	2 Members (minimum)	From amongst employees committed to the cause of women/ having legal knowledge/experience in social work
3.	Member	From amongst NGO/associations committed to the cause of women or a person familiar with the issue of Sexual Harassment

Where the office or administrative units of a workplace are located in different places, division or sub-division, an ICC has to be set up at every administrative unit and office.

ICC/LCC ARE MANDATORY

The employee who had a fundamental right to a workplace free of sexual harassment, had complained about sexual harassment. According to the Court, had the organisation complied with the Vishaka Guidelines and set up such a Complaints Committee, the preventative benefit would have been three-fold:

1. Ensured a place where women employees could seek redress;
2. Sent a clear message to the workplace that such complaints would be enquired into by a specially designated committee with external expertise;
3. Prevented a series of litigation that followed.

Hence, the Madras High Court awarded Rs. 1.68 crores in damages to an employee for the non-constitution of a Complaints Committee by the employer, as per the Vishaka Guidelines (at the time of the complaint, the Sexual Harassment of Women at Workplace Act 2013 had not been enacted).

Ms. G v. ISG Novasoft Technologies Ltd. Madras High Court (Crl.R.C.No.370 of 2014 order dated 02.09. 2014. Original Petition No.463 of 2012

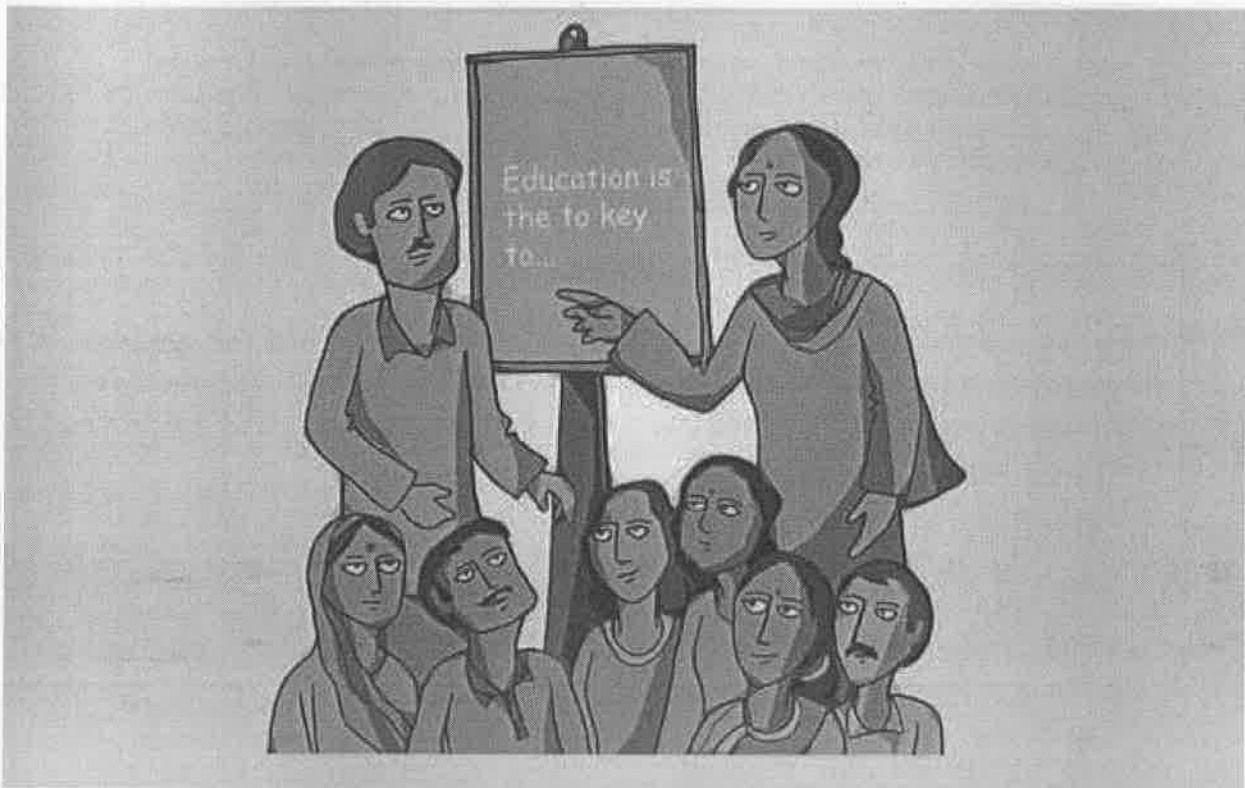
2) Local Complaints Committee (LCC)

The District Officer will constitute an LCC in every district so as to enable women in the unorganised sector or small establishments to work in an environment free of sexual harassment. The LCC will receive complaints:

1. From women working in an organisation having less than 10 workers;
2. When the complaint is against the employer himself;
3. From domestic workers.

3.2.2 Sexual Harassment at Workplace Policy

Employers/District Officers are responsible for complying with prohibition, prevention and redress of workplace sexual harassment. In practice, this means having a policy that: (1) prohibits unwelcome behaviour that constitutes workplace sexual harassment; (2) champions prevention of workplace sexual harassment through orientation, awareness and sensitization sessions; and (3) provides a detailed framework for redress.



3.2.3 Dissemination of Information and Awareness Generation

Employers/ District Officers have a legal responsibility to:

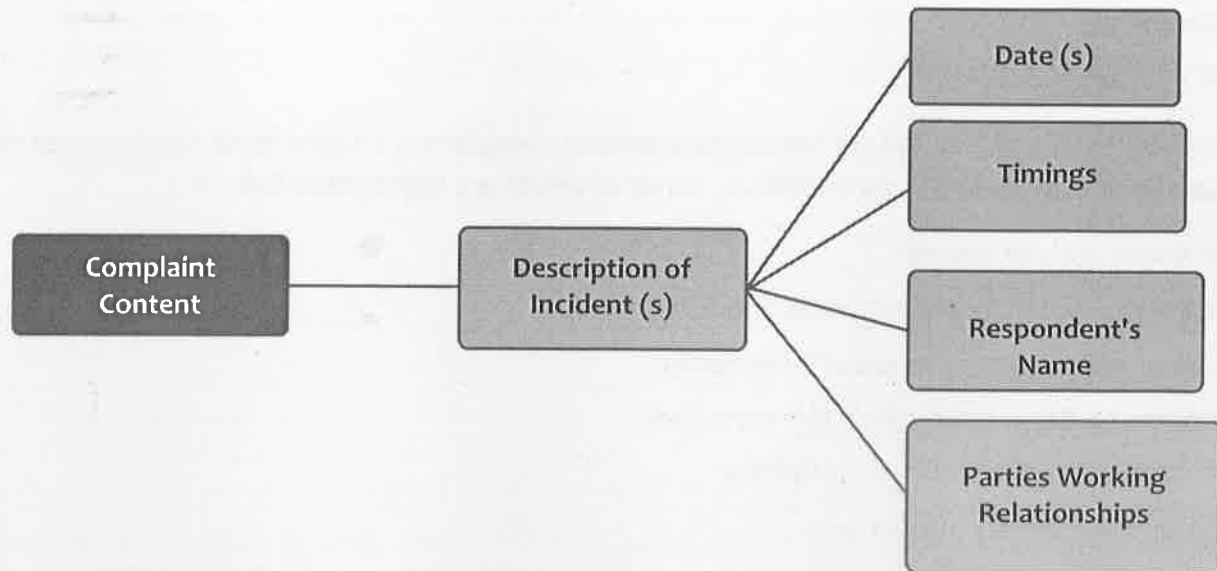
1. Effectively communicate a policy that prohibits unwelcome behaviour that constitutes workplace sexual harassment, and provides a detailed framework for prevention, and redress processes.
2. Carry out awareness and orientation for all employees.
3. Create forums for dialogue i.e. Panchayati Raj Institutions, Gram Sabhas, Women's Groups, Urban Local Bodies or like bodies, as appropriate.
4. Ensure capacity and skill building of Complaints Committees.
5. Widely publicize names and contact details of Complaints Committee members.



Generally, where there are less than ten workers, any woman employee can complain to the Local Complaints Committee with the support of the Nodal Officer, when required. It is the responsibility of the District Officer to designate a person as the Nodal Officer in every block, taluka and tehsil in rural or tribal areas and wards or municipalities in the urban areas, to receive the complaints of workplace sexual harassment from women. The Nodal Officer will forward all such complaints within seven days of its receipt to the concerned Complaints Committee for appropriate action. In most other workplaces, a woman employee can make a complaint to the Internal Complaints Committee.

4.2 WHAT SHOULD THE COMPLAINT CONTAIN?

The written complaint should contain a description of each incident(s). It should include relevant dates, timings and locations; name of the respondent(s); and the working relationship between the parties. A person designated to manage the workplace sexual harassment complaint is required to provide assistance in writing of the complaint if the complainant seeks it for any reason.



4.3 WHAT CAN AN EMPLOYEE/WORKER EXPECT?

When it comes to redress for workplace sexual harassment, employee/worker has a right to expect -a **trained, skilled** and **competent** Complaints Committee, a time bound process, information confidentiality, assurance of non-retaliation, counselling or other enabling support where needed and assistance if the complainant opts for criminal proceedings.

4.3 A. RIGHTS OF THE COMPLAINANT

- An empathetic attitude from the Complaints Committee so that she can state her grievance in a fearless environment
- A copy of the statement along with all the evidence and a list of witnesses submitted by the respondent



A Complaints Committee/s is required to be trained in both **skill** and **capacity** to carry out a fair and informed inquiry into a complaint of workplace sexual harassment. An absence of such training will lead to unequal and unfair results, which can cost employers, employees, complainants as well as respondents.

FAIR AND INFORMED INQUIRY

Within 6 months of joining The Statesman newspaper, Rina Mukerjee lost her job. While the company alleged that her work was “tardy” and “lacking in quality” it suppressed Rina’s complaint of sexual harassment against the news coordinator, Ishan Joshi. Within her first month of work, Rina had taken her complaint directly to the Managing Director, Ravinder Kumar. Time passed, nothing happened and Rina was fired. In a rare display of social context insight and clarity, the Industrial Tribunal (West Bengal) rejected the Statesman’s claim that Rina only referred to “professional” harassment in her complaint to Mr. Kumar. In the Tribunal’s view, Mr. Kumar’s failure to dig deeper was clearly suspect- “... it becomes clear that there was no Committee on Sexual Harassment, as per the Honb’le Supreme Court’s direction in Vishaka vs State of Rajasthan, existing in The Statesman, at that relevant time. ...to expect-the lady workman to file a written complaint and not to believe the same, when it has been filed ‘at a later date’ is sheer bias.” The Statesman was ordered to reinstate Rina and grant her full back wages.

M/s The Statesmen Ltd. and Smt. Rina Mukherjee. Order of K.K. Kumai, Judge, dated 06.02.2013, Fourth Industrial Labour Tribunal (West Bengal)

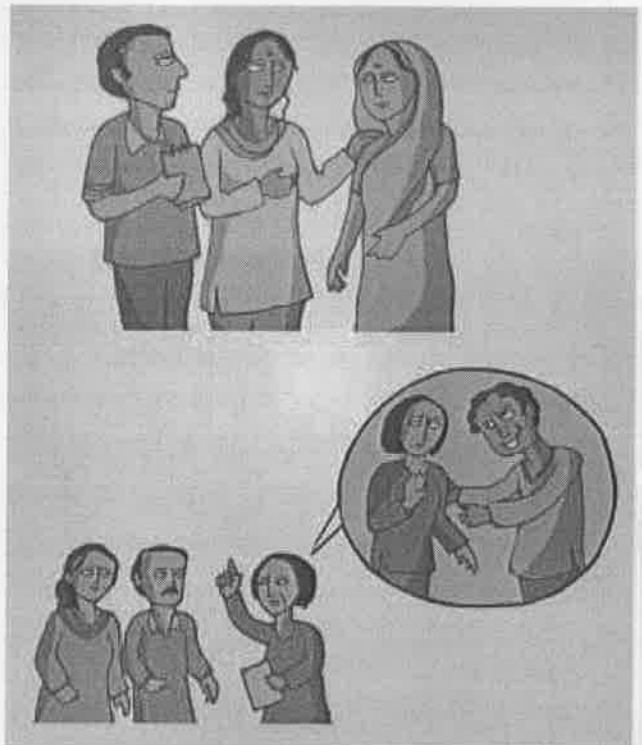
4.6 DO'S AND DON'TS FOR COMPLAINTS COMMITTEE

DO'S

1. Create an enabling meeting environment.
2. Use body language that communicates complete attention to the parties.
3. Treat the complainant with respect.
4. Discard pre-determined ideas.
5. Determine the harm.

DON'TS

1. Get aggressive.
2. Insist on a graphic description of the sexual harassment.
3. Interrupt.
4. Discuss the complaint in the presence of the complainant or the respondent.





Upon receipt, the complaint should be reviewed for:

1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
2. Clarity in the complaint.
3. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

Elements of the Behaviour

The complaint needs to satisfy the following elements:

- | | | | |
|--|---|--|--|
| 1 The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment; | 2 The behaviour was directed at the complainant; | 3 The complainant experienced harm. | 4 The behavior occurred in the workplace or at any location/any event related to work |
|--|---|--|--|

Step 2: Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

However, before recommending conciliation, the Committee must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the Complaints Committee will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICC/LCC who in turn will forward the same to the employer/District Officer for further action based on the resolution. Employers/District Officers are responsible for taking steps to ensure that the complainant is not subject to any backlash.

The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

Step 4: Formal Mechanism

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.



5. Act Quickly

Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes:

- a. The names of the parties and witnesses to be interviewed
- b. Any documentary support that needs to be examined
- c. Timeline

Preparing the Plan - Key Elements to Consider

1. Defining the Issues

What is the complaint

Questions or points that require clarification

2. Determining a violation of the Policy/Act

What information is needed to determine that there has been a violation

3. Logistics

Venue for conducting the interviews. Are special logistics required

Creating timelines for each

4. Critical Information

What documents need to be looked at

Witnesses to be questioned and in what order

5. Areas of Questioning

Questions for each specific incident and party/witness

Questions for each particular issue

Issues likely to require follow-up

Step 7: Consideration

1. Interim Measures

While a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (upto 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment*.



Step 9: Assess the Completeness of the Information Collected

At this stage, the Complaints Committee should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

STAGE FOUR: REASONING

Step 10: Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:-

- Identify the substance of each aspect of the complaint.
- Determine, whether or not, on a **balance of probability**, the unwelcome sexual harassment took place.
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.
- Comment on any underlying factor(s) that may have contributed to the incident.

Step 11: Create a timeline to help establish the sequence of events related to the complaint.

Step 12: Compare similarities and differences within each of the statements made by the interviewees.

STAGE FIVE: FINDING AND RECOMMENDATION

Step 13: Finding

Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.

Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

Step 14: Recommendations

Based on its findings, the Complaints Committee shall then make appropriate recommendations which may include:

1. Where the Complaints Committee is unable to uphold the complaint, it shall recommend no action.
2. Where the Complaints Committee upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules, which may include a warning to terminate.



Given that most workspaces today are gender unequal and male-dominated, it is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

4.9 AT A GLANCE

1) Complaints Committee's Checklist

- Review the written complaints and response to complaints
- Review the applicable policy, the Act/Rules, Vishaka Guidelines and other relevant laws
- Develop a plan
- Meet with the complainant
- Meet with the respondent
- Meet with the witnesses
- Record statements and have them dated and signed
- Review and adapt the plan, as needed
- Proceed with further interviews, as needed
- Analyze all the facts to develop reasoning
- Arrive at the findings
- Give recommendations
- Prepare the report
- Submit the file to the organization or District Officer for implementation of the recommendations and for safe keeping.



2) Timelines as per the Act

Submission of Complaint	Within 3 months of the last incident
Notice to the Respondent	Within 7 days of receiving copy of the complaint
Completion of Inquiry	Within 90 days
Submission of Report by ICC/LCC to employer/DO	Within 10 days of completion of the inquiry
Implementation of Recommendations	Within 60 days
Appeal	Within 90 days of the recommendations

3) Confidentiality

The Act prohibits the publication or making known the contents of a complaint and the inquiry proceedings. Any breach of confidentiality will result in specific consequences.

The Act prohibits the disclosure of:

- Contents of the complaint;
- Identity and address of complainant, respondent and witnesses; Information pertaining to conciliatory/inquiry proceedings or recommendations of the ICC/LCC;
- Action taken by the employer/DO.

Accountability: Any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action taken under the provisions of this Act.

Consequences: As per the Service Rules or Rs.5,000/ to be collected by the employer.

Exception: Dissemination of information regarding the justice secured without disclosure of name, address, identity and particulars of complainant or witnesses.

Section 4 completes the details of the Complaints Committee process in addressing formal complaints. It serves as a guideline to action in providing appropriate redress. The manner in which a complaint is addressed will make all the difference to the equal rights of working women as well as the kind of workplace culture being promoted.



The District Officer will forward a brief report on the annual reports to the appropriate State Government. Such reports must include the following information:

- a. No. of complaints received;
- b. No. of complaints disposed of;
- c. No. of cases pending for more than 90 days;
- d. No. of workshops/awareness programmes carried out;
- e. Nature of action taken by the employer/DO;

The Report of ICC will be forwarded to the DO through the employer.

5.3 Penalties

An employer can be subjected to a penalty of up to INR 50,000 for:

- Failure to constitute Internal Complaints Committee
- Failure to act upon recommendations of the Complaints Committee; or
- Failure to file an annual report to the District Officer where required; or
- Contravening or attempting to contravene or abetting contravention of the Act or Rules.

Where an employer repeats a breach under the Act, they shall be subject to:

- Twice the punishment or higher punishment if prescribed under any other law for the same offence.
- Cancellation/Withdrawal/Non-renewal of registration/license required for carrying on business or activities.

Monitoring is a critical yardstick to measure success in terms of compliance with the Act. Additionally, it highlights those areas, in terms of law and practice, which may require improvement and/or additional information and guidance at both the State as well as the workplace levels.



1. Make sure there is a policy that has been “effectively” communicated to all workers, irrespective of whether they are paid or volunteers.
2. Display details of both informal and formal ways available to a worker to address/complain about workplace sexual harassment.
3. Undertake orientation on workplace sexual harassment for all workers in respective organizations, establishments or institutions.
4. A Complaints Committee which is trained in terms of skill and capacity is critical for building trust.
5. Encourage senior persons/leaders/supervisors or any person who can influence employment-related decisions, to become role models.
6. Men and women should be included in building a culture which no longer tolerates workplace sexual harassment.

Legally, workplace sexual harassment can no longer be dismissed as some moral transgression. The Vishaka Guidelines raised that bar, when for the first time it recognized “each incident of sexual harassment” as a violation of the fundamental right to equality. That notion has found its way into the Act, which promotes the right of women as citizens to a workplace free of sexual harassment. Complaints Committees at all workplaces are now charged with the role to ensure that the right remains intact, through a fair, informed, user-friendly process of redress.

Prioritising prevention and establishing a redress mechanism, which comprises of 50 per cent women, a woman chair and an external third party expert, is India’s innovative model in responding to working women’s experience of sexual harassment. Assuming adequate changes follow, in both law and practice to meet global benchmarks, that model can evolve into an exemplary best practice. To get there, workplaces in India today, must rise to the requirement of promoting gender equality.

ⁱ General Recommendation 12 of 1989, Committee on the Elimination of All Forms of Discrimination against Women.

ⁱⁱ General Recommendation 19 of 1992, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

ⁱⁱⁱ Ibid.

^{iv} Article 3, Declaration on the Elimination of Violence against Women, 1993.

^v The Beijing Platform of Action drawn at the United Nations’ Women’s Conference in Beijing in 1995.

^{vi} United Nations UN Division for the Advancement of Women *Handbook for Legislation on Violence Against Women* (UN Handbook).
<http://www.un.org/womenwatch/daw/vaw/handbook/Handbook%20for%20legislation%20on%20violence%20against%20women.pdf>

^{vii} Article 5, ILO Decent Work for Domestic Workers Convention, 2011 (No. 189).



Towards a new dawn

Government of India
Ministry of Women and Child Development