

## **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 Rajasthan* [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:-** (1) This Act may be called The Protection Against Sexual Harassment of Women Act, 2005.

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

(3) 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 of 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 individual's 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.)

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**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 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 harassment 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.

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## 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.
- (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 lodged as a consequence to the filling *and prosecuting* of a complaint under this Act.
- (i). 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.
- (j). 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 carry out a Dispute Resolution, if so requested by the complainant, and to carry out an enquiry into 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:-** 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.

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## 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 authenticity thereof. The refusal to endorse the same by either party shall be endorsed by the convener. 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.

k). 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 of 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 instalments 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 take 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.

**64. 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 of, 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.

(2). 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 the 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 meetings.

**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.

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**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

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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 Complaint 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, HORTICULTURE, SERICULTURE**

- a. cashew processing
- b. gardening and parks maintenance
- c. horticulture and floriculture
- d. plantation (other than those covered under Plantations Labour Act, 1951 (Act No.69 of 1951))
- e. sericulture (silk rearing)

**7. FORESTS & ALLIED ACTIVITIES**

- 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**

