

தமிழ்நாடு தொடக்கக் கல்வி இயக்குநரின்செயல்முறைகள், சென்னை- 6.

ந.க.எண்.009910/ஜெ2/2020 நாள்.12.09.2020

பொருள் -- தொடக்கக் கல்வி - பெண்கள் நலம் - பணிபுரியும் இடங்களில் பெண்களுக்கு பாலியல் துன்புறுத்தல் (Prevention, Protection and Redressal) Act, 2013 - தேசிய மனித உரிமை ஆணையத்தின் பரிந்துரைகள் - சார்ந்து.

பார்வை -- அரசுக் கடித எண்.13266/GL2/2020-1,நாள்.05.09.2020.

பார்வையில் காணும் அரசுக் கடிதத்துடன் பெறப்பட்ட இணைப்புகள் தக்க தொடர் நடவடிக்கையின் பொருட்டு அனைத்து மாவட்ட முதன்மைக் கல்வி அலுவலர்களுக்கும் அனுப்பப்படுகிறது.

இணைப்பு - மேற்குறிப்பிட்டபடி.

தொடக்கக் கல்வி இயக்குநருக்காக
15/9/20

பெறுநர்

அனைத்து மாவட்ட முதன்மைக் கல்வி அலுவலர்கள்.



School Education Department
Secretariat, Chennai-9.

Letter No.13266/GL2/2020-1, dated 05.09.2020

From
Thiru. M. R. Venkateshwaran, B.Com., M.B.A.,
Deputy Secretary to Government.

009910

Jd (Adm)
By 7/9

To
The Director of Elementary Education, Chennai-6. (w.e.)
The Director of School Education, Chennai-6. (w.e.)
The Director of Matriculation Schools, Chennai-6. (w.e.)
The Director of Non-Formal and Adult Education, Chennai-6. (w.e.)
The Director of State Council of Educational Research and
Training, Chennai-6. (w.e.)
The Director of Government Examinations, Chennai-6. (w.e.)
The Director of Public Libraries, Chennai-2. (w.e.)
The State Project Director, Samagra Shiksha, Chennai-6. (w.e.)
The Member Secretary, Teachers Recruitment Board, Chennai-6. (w.e.)
The Managing Director, Tamil Nadu Text Book Educational and
Services Corporation, Chennai-6. (w.e.)

Sir,

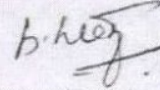
Sub: School Education – Women Welfare – Sexual Harassment
of Women at Workplace (Prevention, Protection and
Redressal) Act, 2013 – Research Project “Status and
Functioning of Local Complaints Committee by National
Human Rights Commission” – Recommendation Action –
Regarding.

- Ref: 1. From the National Human Rights Commission, D.O. Letter
No. 7/7/2018-PRP&P, dated 15.07.2020 received on
31.07.2020.
2. Social Welfare and Nutritious Meal
Programme Department, letter No.6827/SW3(2)/20204,
dated 21.08.2020.

I am directed to enclose a copy of the letter cited, wherein the National Human Rights Commission has sent recommendation on the research project “Status and Functioning of Local Complaints Committee” under Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013.

2. I am therefore to request you to instruct officials under your control to take immediate action and send the consolidated compliance report to Government in this Department in order to send the same to National Human Rights Commission.

Yours faithfully,



for Deputy Secretary to Government.

H. K.

Copy to

Social Welfare and Nutritious Meal
Programme Department, Chennai-9.



Social Welfare and Nutritious Meal
Programme Department,
Secretariat, Chennai-9.

Letter No.6827/SW3(2)/2020-1, dated 21.08.2020

From
Tmt S. Madumathi, I.A.S.,
Secretary to Government

13266

04/09/2020 To
All Departments,
Secretariat, Chennai-9. (w.e)

Sir/Madam,



Sub: Social Welfare and Nutritious Meal Programme Department -
Women Welfare - Sexual Harassment of Women at Workplace
(Prevention, Protection and Redressal) Act, 2013 - Research Project
"Status and Functioning of Local Complaints Committee by National
Human Rights Commission" - Recommendation Action - Requested

Ref: From the National Human Rights Commission, D.O Lr.No.7/7/2018 -
PRP&P, dated 15.07.2020 received on 31.07.2020.

I am directed to enclose a copy of the letter cited, wherein the National Human Rights Commission has sent recommendation on the research project "Status and Functioning of Local Complaints Committee" under Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013.

2. I am therefore to request you to instruct all Head of the Departments under your control to take immediate action and send the consolidated compliance report to Government in this Department in order to send the same to National Human Rights Commission.

Yours faithfully,

R. L. Shridhar
25/08/2020
for Secretary to Government.
25/8/2020

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अनिता सिन्हा, भार.से.
सं. 1 सचिव

ANITA SINHA, IRS
Joint Secretary (P&T)



By Speed Post
राष्ट्रीय मानव अधिकार आयोग
मानव अधिकार भवन, सी-ब्लॉक, जीपीओ कॉम्प्लेक्स,
आईएनए, नई दिल्ली-110 023 भारत
NATIONAL HUMAN RIGHTS COMMISSION
Manav Adhikar Bhawan, C-Block,
GPO Complex, INA, New Delhi-110 023 India
Ph. No. (O) 011-24663217 / 24663269

D.O.No.7/7/2018-PRP&P

Dated: 15th July, 2020



6827
31-07-2020

Dear Shri Kumar,

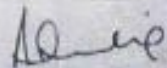
The National Human Rights Commission had sanctioned a research project titled "Status and Functioning of Local Complaints Committees under the Sexual Harassment of Women at Workplace (Prevention, Protection and Redressal) Act, 2013 and awareness levels among women in the work force".

2. The research project has been completed and a copy of the final report containing observations and recommendations emanating from the research project is enclosed for your information and necessary action on the same.

3. The action taken on the basis of the recommendations of the report may please be intimated to the Commission at the earliest.

Regards,

Yours sincerely,


(Anita Sinha)

Encl.: As mentioned above

Shri C. Vijayaraj Kumar, IAS
Principal Secretary,
Welfare of Differently Aabled Persons,
Government of Tamil Nadu,
Chennai-600 009.

DS(WW)

8/1
30/7

? whether have the research report submitted to the Commission?

CHAPTER 5

CONCLUSION AND RECOMMENDATIONS

Sexual harassment at the workplace, fundamentally detrimental to the constitutional edifice of equality, affects women in every kind of workplace setting and at every level of employment, as is clear from the preceding chapters. The problem is more severe in the informal unorganised sector where women workers in low-paid employments are more vulnerable, having fewer protections and limited access to social security or paid leave. Moreover, there is a greater likelihood of their experiencing harassment from multiple sources, including "third party," i.e. customers, vendors, and clients.

The findings of the study are consistent with data that there is a lack of understanding of what constitutes sexual harassment, hence underpinning the obligation of the State to support wide reaching education and awareness programmes. In view of the general absence of awareness among women as to what constitutes sexual harassment at the workplace, or the presence and role of the LCCs and its redressal mechanism, it is not surprising that the LCCs do not receive complaints from the unorganised sector. Hence recommendations are submitted under three categories - (1) Recommendations on basis of interviews with LCC/DM; (2) Legislative changes, and (3) Guidelines for implementation by the State Human Rights Commissions.

At this juncture, it is interesting to note that women themselves have a number of ideas and opinions about how to curb the rampant sexual harassment that exists. Despite not being experts, harassment is a lived reality for these women, therefore they are capable of identifying solutions to their problems. A number of these recommendations are corroborated by the women interviewed, who believe that a change in the Act and stricter implementation and regulation is the only way to ensure a safer and more equitable life for them.

I. RECOMMENDATIONS

Based on the finding of the study and suggestions of the LCC CP/Members in Delhi, Haryana and Odisha, presented below are the following recommendation:-

- i. **RECOMENDATION #1-LCC be provided with training and facilities** : The problem of sexual harassment in the unorganised sector is getting aggravated due to the inadequacies in the functioning of the LCC, as a result of a training deficit and absence of infrastructural facilities, which further is enabling individual sexual harassers to persist in their offensive behaviour.

a) **Training of LCC Members** – The Chairperson and all members of the LCC should be given a standardized training to ensure that they are aware of what behaviours constitute sexual harassment, including the difference between bullying and misogynist behaviour; and instructions in procedures of handling a complaint. In view of the fact that the LCC Members themselves felt the need for specific training to acquire relevant knowledge and skills on how to conduct an inquiry under the POSH Act, the training should be viewed as the means of providing the skills needed by LCC members, each of whom has a role to play in building a positive climate, focussing on safety and respect for the aggrieved woman, and not simply as a method of ensuring compliance with the law. The training and orientation programmes should be well publicised through the district information/labour offices so that an awareness is created in the District of the State's zero tolerance policy towards sexual harassment. The training to include approaches regarding supporting and improving communication with victims/aggrieved women.

b) **Independent Office, Infrastructure and Fees** – The LCC should have a designated office with a board outside displaying details of the LCC. This will not only give the LCC a physical presence making it easily accessible, but also provide privacy to members in having a confidential conversation with the aggrieved woman. A separate office with full facilities will set a clear physical boundary between the LCC and the outside world, making the woman feel she has entered a safe place. Suggestions were invited from the LCC CP/Members and DOs on how the LCC could be made more effective so as to facilitate women in making complaints. Responses ranged from allocation of specific budget for facilities, dedicated office space which women can easily access, to budgetary allocation for fees and transportation. The office to have CCTV coverage, which will act as a deterrent against misbehaviour by parties, who know they are under surveillance. An independent designated office will enhance the authority of the LCC, unlike presently where the Chairperson keeps the files in her car, or has to make numerous requests for availability of room to conduct meeting.

The contact details of LCC office, names of CP/Members alongwith with telephone numbers, and the website should be displayed at prominent places. In rural areas medium of wall painting can be used, similar to how the Gram Sabha projects are prominently displayed. In urban areas posters to be displayed at metro stations, market places, and industrial areas where there is a proliferation of small factories/units. The website can in addition be used to display summons to the respondent and would eliminate problem of service of summons. The Department of Women & Child Development office, is the nodal point of delivery of various schemes at the state/district level, and usually frequented by women, senior

citizens and other marginalized populations; hence display of information about the LCC here will increase visibility. In addition the web sites of the NCW, State Commissions for Women, State Human Rights Commissions, Department of Women & Child Development at the National/State/ District level to include details of LCC.

The LCC CP/Members should be provided financial remuneration in terms of fees and transportation, for committed persons on a full time basis are required. Furthermore, the LCC budget should have provision of granting the aggrieved woman, diet money and transport allowance, on the lines provided to witnesses in criminal cases. If the woman has to spend the night in the district headquarter then arrangement should be made for her accommodation, especially in States like Odisha, where districts are large. Thereby, sending the message that a women's effort to report is encouraged.

The responsibility lies on the shoulders of the DO, who should be made accountable, but before which a separate budget should be sanctioned to every DO district-wise. In case of any default a penalty should be imposed on the DO on the lines of the Right to Information Act 2005 which in Section 20(1) states that 'Public Information Officers' can be penalised, however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

c) Nodal Officers - As per constitution of India and Panchyati Raj Act, villages are administered by the Sarpanch (Head of Village) who is the elected representative of village, (a large number of whom are women due to reservation). Being their elected leader women will have faith and trust in her/him, and as per the suggestions which emerged during a gender sensitisation programme,⁵⁶ the Sarpanch should be made Nodal officer to collect complaints. Furthermore the inquiry proceedings should be held preferable in the village or closeby, may be the closest Police Station.

⁵⁶ Gender sensitisation and awareness workshop conducted by SAFMA on March 18, 2019 at Village Palli, a medium size village located in Golanthara Block of Ganjam district, Orissa. A total of 119 families reside there and the village has population of 510 as per Population Census 2011. The Palli village has a lower literacy rate compared to Odisha, and most of the women work in the stone quarries. The program was attended by over 100 persons and the SAFMA team distributed the oriya booklet on sexual harassment at the workplace. The women appeared to be desperately impoverished and said when they spend 8-10 hours working in the quarry and crushers they have no time to complain and to whom. According to a report (<https://ruralindiaonline.org/articles/visible-work-invisible-women-bricks-coal-and-stone-panel-1>) Visible work, Invisible Women - Bricks Coal and stone by P. Sainath) despite the open violation of minimum wage acts, none of these labourers can seek redress. The outdated laws covering migrant workers do not protect them. For instance, the laws do not compel the labour department of Andhra Pradesh to help the Odias. And the labour authorities of Odisha have no power in Andhra. Bondage also exposes the many women and young girls working in brick kilns to sexual exploitation.

II. RECOMENDATION #2-PREVENTION: The two characteristics of an environment associated with higher rates of sexual harassment as per the findings are (a) male-dominated gender ratios and leadership and (b) a social climate that communicates tolerance of sexual harassment, for a person is more likely to engage in harassing behaviour in an environment that supports such misconduct. Hence it is imperative to consider approaches that address the culture of patriarchy, and replace it by a climate that enables an aggrieved woman to approach the LCC, rather than remaining quiet. Aim being to promote a culture where abusive behavior is seen as an aberration, and not as the norm.

All LCCs underscored the need for prevention, for the legal process alone is not an adequate mechanism for reducing or preventing sexual harassment. Especially in view of the fact that a large number of women are unable to identify or perceive behaviour that is in fact sexual harassment, as indicated by the findings. Resultantly women do not report the misconduct. Women do not realise that if adequate measures are taken to stop the perpetrator at an early stage, they can prevent it's reoccurrence and from becoming a bigger problem later. Adherence to legal requirements is necessary but not sufficient to drive the change needed to address sexual harassment. It cannot be denied that preventing sexual harassment from occurring in the workplace is much less time-consuming, as compared to the time and energy spent by the LCC in proceeding with the inquiry, summoning the respondent in case-by-case incidents, and making the final recommendation which subsequently can only be implemented through the DC.

a) Awareness Workshops – Separate budget should be allocated for awareness and gender sensitisation workshops on the POSH Act, in which acceptable behaviour and the consequences of overstepping the limit is clearly defined. For the general public developed should be a simple one-page flyer or infographics on the POSH Act, containing details of the LCC and consequence of sexual harassing a woman at the workplace; and for LCC members and other professionals and stakeholders a more detailed document on the lines of the legal awareness training conducted for elected women representatives in PRIs.⁵⁷ So that persons, both men and women, are better equipped to identify and respond to harassment – whenever and wherever it occurs. Conversely, individuals who

⁵⁷ The Training Module prepared by Goa Institute of Public Administration & Rural Development (GIPARD), outlines the role of the facilitators and the details of activities to be carried out during a training programme designed for two days. It covers different topics like Legal Safe Guards for women, Family Laws & Right to Property & Succession, Protection of women from Domestic Violence Act, Goa Panchayati Raj Act, 1994 and Children's Act, 2003, unfortunately does not include the POSH Act. One of the points highlighted by participants during the Odisha workshop was the lack of training on sexual harassment among the PRIs.

may have been unaware that their behaviour is inappropriate, may mend their ways and be more careful. Hence, the need to create awareness on appropriate interpersonal behaviour and employer-employee relations, is a critical input for prevention, and best tool for minimization if not total the total elimination of sexual harassment at the workplace.

Workshops should be conducted among target groups specially teachers, students, and anganwadi/ASHA workers, local Panchayati Raj Representatives, whom the LCC CP/Members suggested are a very good medium for spreading awareness, since they interact with several different social groups – family, society and institutes. Gram panchayats and local NGO Members are also considered appropriate bodies for awareness creation.

In states like Odisha where large amount of road construction and other civil works are being undertaken, it should be made mandatory for contractors of road projects to conduct workshops on the POSH Act. In addition the women's helpline should be linked to the LCC/nodal officer.

b) Inclusion of stakeholders – There should be increase in involvement of NGOs at community the level, and Resident Welfare Associations.⁵⁸ LCC should include representation from the labour department, the main function of which is to improve the working conditions and the quality of life of workers, regulating conditions of work, occupational health and safety of workers. The presence of ex-officio members of the WCD department should be reduced to the minimal, since frequent transfers of officials lead to vacancies, and the LCC quorum falls short. The ex-officio members have to coordinate with a number of different agencies and being tied up with their daily routine activities, the work of LCC is not a priority for them.

c) Counselling & linkages – Need to promote the facility of counselling and develop linkages to make the law robust, on the lines of the Protection of Women from Domestic Violence Act, 2005, which provides for counselling under Sections 9 and 14.⁵⁹ It has been recognised that counselling through informal advice in a confidential setting is a step towards registering a formal complaint. The LCC

⁵⁸ Supra note 25. Sanjay Kumar, India director of Harvard's Mittal Institute, says there is a need to create deterrence at the community level. "Residents' welfare associations can start by creating committees for domestic workers to report cases. These can be linked to district authorities where the local complaints committees must be set up," he says.

⁵⁹ According to Protection of Women from Domestic Violence Act, 2005, Section 9 among the duties and functions of the Protection Officers is to maintain a list of all service providers providing legal aid or counselling.

Section 14. - (1) The Magistrate may, at any stage of the proceedings under this Act, direct the respondent or the aggrieved person, either singly or jointly, to undergo counselling with any member of a service provider who possess such qualifications and experience in counselling as may be prescribed.



should convey to the woman that reporting sexual harassment is a courageous action, and regardless of if she desires to file a formal report or not, she can avail support services in the form of counselling. This would provide an alternative and less formal means of recording information about the sexual harassment and encourage more women to come forward. Preferably, family counselling of the aggrieved woman should be included so that there is no pressure from her family to turn hostile. Effectively addressing sexual harassment through the law requires taking into account the fact that targets of sexual harassment, especially in the unorganised sector, are more unlikely to report harassment, and the option for informal reporting through access to counselling can reduce their reluctance to report, as well as lessen the adverse impact the sexual harassment has caused.

The responsibility of maintaining the service provider list should be of the nodal officer who is familiar with the area.

Replicated could be examples of Child Protection Units under the Juvenile Justice (Care And Protection Of Children) Act, 2015, which is a community based child protection system to monitor the most vulnerable children in a systematic manner. On similar lines Vulnerable Women Units could play the role of formal protection mechanisms at the Panchayat and District levels with inclusion from other departments including labour, police, media and judiciary.⁶⁰

iii. **RECOMENDATION #3-EDUCATION for creating an inclusive and respectful environment** : Change is inter-generational, and it cannot be denied that young men in India grow up in a patriarchal society with misdirected notions of masculinity. Gender sensitisation, identity, equality and self-worth all need to be addressed in order to eliminate gender based violence. This initiative has to begin in the life of a child from a young age, through education and in the realm of learning. Not an intervention at a later stage when pre-conceived notions have already been embedded in the mind of the individual.

Education not only empowers those who may encounter sexual harassment to recognize and report it, but also warns persons indulging in inappropriate behaviour by clearly defining violations, and penalties. The syllabus content on gender sensitization for students should be developed to encourage behaviour/practices that promote gender equality, respect and tolerance. Included should be modules focusing on sexual violence and gender based discrimination.

⁶⁰ At SAFMA Workshop, *The Way Ahead - Prevention of Sexual Harassment*, Odisha, March 18, 2019 Ms Nirmala Kumari B.J. Manager Program World Vision India spoke about their work. A novel feature were the Child Protection Units (CPUs), community based child protection systems to monitor the most vulnerable children in a systematic manner in order to ensure their safety. These CPUs work with the formal child protection mechanism at the Panchayat and District levels with schools and other departments including police, media and judiciary.

Such an education will help empower the next generation, and provide a safe space by dislodging distorted views of masculinity. Age appropriate standard modules should be created, and on the lines of the Protection of Children from Sexual Offences (POCSO) Act, 2012, the Director of Education should issue circular making it compulsory for all schools to have one session per month on prevention of sexual harassment at the workplace; especially for girls age 16 years and above, since they will be soon entering the workplace.

a) Implementation:

- Creation of a syllabus for training. This syllabus should be vetted by an independent expert body, including experts in law, human rights, and education.
- The training of all District Magistrates/ District Officers in a state must be done together for a period of three days to a week, similar to the training camp that the NSSO officials are made to go through. These weeklong workshops to include - stories of victims, information about the project, sensitisation to harassment, sensitisation to gender issues, legal education etc.
- Participants during these workshops should be addressed/lectured by stakeholders from civil society, NGOs, police personnel, counsellors, RWAs, among others.
- Thus, there need not be an entire roadmap created for the training - it can be modified by States but must be undertaken in one go in each state.
- A deadline for the separation of the LCC office from the DM office should be set, and surprise checks conducted to ensure compliance. Checks may be conducted by the apparatus of the State Human Rights Commissions.

II. LEGISLATIVE CHANGES

- i. **Change in nomenclature 'Local Committee' to 'Sexual Harassment Local Committee'** : The name of the committee should reflect the work it does and for better clarity be called 'Sexual Harassment Complaints Committee'. The nomenclature 'Local Committee' tends to confuse women, who do not know which specific committee to turn to on experiencing sexual harassment, since in every area there are a number of committees/NGOs operating. The nomenclature 'Local Complaints Committee' has been replaced with 'Local Committee' as per amendment vide Gazette notification issued on May 9, 2016, but this appears to



be mere semantics and in no way acts as a guide to women on the committee's nature, role or objectives.

- ii. **Choice to woman :** The choice of whether she wants to approach the ICC/LCC should be given to the woman. On one hand allegations of the ICC being prone to bias have been made in view of the fact that they have been constituted by the employer/senior level management. A subordinate woman on being harassed by a senior officer may be hesitant to approach such an ICC, apprehending she would not get justice, or that the ICC members may be influenced by the management, or that it is merely a puppet body. On the other hand, there is an apprehension that Members of the ICC being under the control of the organisation they are working for, may further persecute the woman or perhaps even be protective of the perpetrator of the offence. Further constituting an ICC at every administrative unit of the organization, training and replacing its members every 3 years requires immense human and financial resources, which may not be possible for every organization. Resultantly there is only a symbolic compliance of the POSH Act by organisations to avoid liability, and not on sincere prevention of sexual harassment. In addition the law requires every employer to include an external member committed to the cause of women, whereas on the ground level organizations find it difficult to identify such experts. Therefore, the woman should be given a choice to approach the committee with which she feels safe and comfortable - ICC or LCC.
- iii. **Extension of time frame :** The POSH Act provides for a time frame of 3 months to the aggrieved woman to file her complaint. The law is not clear whether it covers only a woman during the course of her employment, or a woman whose employment is terminated before she could garner courage to file a complaint. For a woman in the unorganised sector it takes time to come forward, which she does only after immense counselling by family and friends, or when the extent of harassment increases to the level that she is compelled to leave the workplace.
- iv. **Provision for Counselling :** Provision for counselling to be included, whether by LCC or service provider, even in cases where the aggrieved woman does not want to file a formal complaint. The responsibility of maintaining the service provider list should be that of the Nodal Officer.
- v. **Procedure on woman not appearing :** Provision to be included regarding the procedure to be followed by LCC in case the aggrieved woman does not appear after filing of initial complaint.
- vi. **Parallel changes in law in role of DO and penalty on default :** The role of the DO has been specified in the POSH Act, however no penalty has been imposed

in law on default. Keeping pace with the POSH Act, Alignment of Service Rules has been done,⁶¹ and for educational institutions the University Grants Commission has notified Regulations 2015. Even the Companies Rules⁶² have been amended to include mandatory disclosure of the ICC in the directors' responsibility statement, which forms a part of the company's annual report. It is time now to make the head of a District, the DO, accountable under the POSH Act and not be allowed to escape responsibility.

vii. **Suo moto cognizance** : Included should be provision for LCC to intervene suo moto, whenever necessary to promote, protect and enforce the rights of women as a class. And provision for initiating class action by third party, in view of the fact that women in remote areas, specially Odisha, go to work in groups and are vulnerable to sexual harassment at workplace, but being unempowered are unable to take up their own cause.

III. GUIDELINES

On the basis of the findings and gaps, recommendations have been developed in the form of model guidelines to be issued by NHRC to the State Human Rights Commissions for implementation, the role of whom is to review safeguards provided under the law and recommend measures for their effective implementation, among others. The recommendations in the form of goals and target have been divided into three categories: (1) for implementation by the state government, (2) responsibility of the District officer, and (3) recommendations for the effective functioning of the LCC.

GUIDELINES

The National Human Rights Commission (NHRC) an embodiment of India's concern for the promotion and protection of human rights, NHRC concerned on the non-implementation of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, with the aim to reduce vulnerability of women to sexual harassment at the workplace and improve the functioning of the regulatory mechanism i.e. Local Complaints Committees (LCCs)

⁶¹ No. 11013/2/2014 Estt (A.II) Office Memorandum, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated November 27, 2014.

⁶² Pursuant to the Ministry of Women and Child Development recommendations to the Ministry of Corporate Affairs with regard to corporate reporting requirements, notified was the Companies (Accounts) Amendment Rules, 2018 issued under Section 134 of the Companies Act, 2013 in order to ensure safe workplaces for women in the private sector, wef from July 31, 2018. Mandatory disclosure in the board's report of every company to include - "A statement that the Company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013".



leading to a safe working environment and resultantly increased participation of women in the labour force; issues the following guidelines to be followed by establishments in States for procedures in relation to both prevention and handling of complaints of sexual harassment at the workplace.

We call upon all State Governments to put sexual harassment at the top of the agenda and be committed to providing a workplace that is free from sexual harassment. Sexual harassment in the workplace is against the law and will not be tolerated. Prompt and appropriate corrective action shall be taken immediately.

A. CENTRAL GOVERNMENT RESPONSIBILITY

It shall be the responsibility of the central government to -

Goal 1. MONITOR the implementation of the POSH Act and maintain data on the number of cases filed and disposed off under the Act, and report the same annually to the NHRC.

Target 1.1 Periodic (preferably quarterly) audits be conducted in which comprehensive case-wise reports of the LCCs be provide to NHRC through the government. These audits should include questions about: women's behaviour, compliance, reluctance etc, and the procedure followed by LCC.

1.2 Imposition of penalty for delay in submission of reports furnished by the LCC/state government/central government.

Goal 2. GRANT money to the State Government for being utilised for the payment of fees or allowances referred to Section 7(4) of the POSH Act, including provision for diet money to be paid to the aggrieved woman.

Target 2.1 NHRC to ensure money/grant for payment of fees or allowances referred to Section 7(4) of the POSH Act, including provision for diet money is transferred to state Government.

Goal 3. MODIFY school curriculum and textbooks to include chapter on gender sensitisation and respect for women, in order to harmonize behaviour with constitutional guarantees to uproot the deeply embedded patriarchy.

Target 3.1 A time limit be set for the said modification of curriculum and text books, and dead line for the same to be provided to NHRC.

3.2 Central schools be encouraged to conduct monthly workshops on gender sensitisation and respect for women. Information of the contents of the workshops and schedule be shared with NHRC.

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B. STATE RESPONSIBILITY

It shall be the responsibility of each State to -

Goal 1. PROMOTE gender sensitisation and respect for women by making gender studies compulsory at primary and secondary level. Further, an annual two-three day gender module be conducted with all teachers in order to demolish preconceived notions of gender.

Target 1.1 Annual two-three day gender module be conducted for all teachers in a particular district together, so as to ensure maximum participation and compliance. These modules be organised on lines of workshops for District Magistrates, and to ensure some form of breaking down of embedded normative ideas, included should be lectures from experts on gender issues, NGOs, counsellors and strategies to deal with victim psychology.

1.2 Sessions to encompass how to deal with complaints made by children about their mother/sibling/other experiencing sexual harassment at the workplace. Since teachers are often seen as figures of authority with whom students feel safe confiding in.

Goal 2. NOTIFY a District Officer to discharge functions under the Act.

Target 2.1 The Officer notified to be accessible and approachable to the LCC CP/Members and be in a position to devote time to the issue.

2.2 The officer notified to be given a two day training on role and responsibility as District Officer.

Goal 3. FORMULATE orientation and training programmes for the Chairperson and members of the LCC.

Target 3.1 A seven day training be conducted annually. The first two days training can be common for both District Officer and LCC Chairperson/Members. The next five days to be exclusively devoted to role and functioning of the LCC and the procedure to be followed.

Goal 4. TRANSFER the grants made by the Central Government under Section 7(4) of the POSH Act to the District Officer, for payment of fees or allowances of the LCC CP/Members, and diet money to the aggrieved woman. In addition sufficient funds be made available to the District officer for providing the LCC adequate office infrastructure, facilities and staff.

Target 4.1 Information to be provided by the state government to the SHRC on quarterly basis regarding transfer of such funds under separate head district wise.



4.2 The information provided in sub paragraph 4.1 to include summary report about the funds received - whether they were adequate, and how exactly they were used.

Goal 5. ALLOCATE separate budget to publicise the POSH Act, so as to advance the understanding of the public as to what constitutes sexual harassment at the workplace which includes, whether directly or by implication, namely:

- (i) physical contact and advances, or
- (ii) demand or request for sexual favours, or
- (iii) making sexually coloured remarks, or
- (iv) showing pornography, or
- (v) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
- (vi) Unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 - a. An employment decision affecting the woman is made because she submitted to or rejected the unwelcome conduct, including behaviour, such as awards, training, conditional promotions, or other job benefits.
 - b. The unwelcome conduct unreasonably interferes with a woman's work or creates an intimidating, offensive or hostile work environment including but not limited to:-
 - Touching or groping of a sexual nature;
 - Repeatedly standing too close or brushing against her;
 - Repeatedly asking a woman to meet up/socialize during off-duty hours when she has indicated she is not interested;
 - Harassing with unwanted telephone calls;
 - Placed prominently in the work area calendars or pictures of scantily clad women in suggestive poses;
 - Giving gifts in lieu of sexual favours;
 - Sexual pranks, or repeated sexual teasing, jokes, or innuendo, in person or via social media.
 - c. Any humiliating treatment in relation to sexual harassment at the workplace which is likely to affect her health or safety.

Target 5.1 Concerted all round effort to be made through outdoor, print and electronic media, to raise public awareness district-wise on what constitutes sexual harassment at the workplace. The role of advocacy, public education and communication is all about changing mind sets at all levels, and gradually brings about social transformation.

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- 5.2 Names, contact numbers and office address of the LCC to be prominently displayed at Gram Panchayat, DM/DC/Labour/WCD offices, RWA Office, metro stations among others. In addition, details be posted on the web sites of the State Govt./District/WCD Departments. Links of the same be provided to SHRC/NHRC and State Women's Commissions/NCW/MWCD to post on their web site.
- 5.3 One of the best ways of publicising details of the POSH Act is to conduct 'sunvahis' or hearings on a quarterly basis in each district/different parts of the district. Specifically those districts/areas be targeted where there is a concentration of women workforce (for example in construction or mining activity); and presence of SHRC/state govt officer be ensured at each of these public hearings.
- 5.4 Funds to be allocated district-wise for conducting these hearings in a comfortable gender friendly environment, including budgeting for light snacks and water etc. so as to create an incentive for women workers to attend.
- 5.5 Furthermore, to encourage dialogue between various stakeholders, govt. institutions such as schools, colleges, and vocational institutions also to be involved. This can be done at various levels: by RWAs, Gram Panchayat associations, NGOs, academics etc.
- 5.6 The publicising of the POSH Act to be monitored by SHRC and penalty be imposed by SHRC on the state govt. in case of non-compliance of sub paragraphs 5.1-5.6.

C. RESPONSIBILITY OF DISTRICT OFFICER

It shall be the responsibility of the District Officer to -

- Goal 1. **CONSTITUTE** LCC in District to receive complaints of sexual harassment from establishments having less than ten workers or if the complaint is against the employer; and if required more than one LCC in view of the density of population and geographical vastness of the District.
- The Chairperson shall be an eminent woman in the field of social work, one woman member to be nominated from block, taluka, tehsil or ward or municipality in the district; and minimum two more members.
 - Atleast one nominee shall have a background in law and one woman belong to the SC/ST/OBC or minority community.
- Target 1.1 The DO/concerned department shall issue advertisement inviting applications for post of LCC CP/Members, specifying the conditions of



eligibility. The advertisement to be published in at least two local vernacular newspapers, and website of the State govt/WCD department.

1.2 The LCC preferably be constituted with an odd number of members, so that in case of a divided opinion, they arrive at a decision based on majority view.

1.3 Members to be selected based on evaluation of various factors including whether they are accessible, approachable, committed, sensitive and understanding. Interview should be held to assess if they are sensitive to issues pertaining to gender-based violence.

1.4 Members shall not have criminal record and have good credibility and technical competency to handle grievance procedures.

1.5 It should be the responsibility of the District Officer to conduct background enquiry check before making an appointment.

1.6 The notification of the LCC should specifically mention the category of the member against name – GEN/SC/ST/OBC/Minority- and specific mention be made of member having legal background.

1.7 Information regarding composition of the LCC to be provided annually by state government to the SHRC, and in case of any change in composition, within 60 days of the change.

1.8 The information mentioned in sub paragraph 1.7 to include attendance sheet of LCC alongwith honorarium/payment made. This attendance record should preferably be electronic. (An example is the biometric system in the NHRC office itself).

Goal 2. Provide **SEPARATE OFFICE SPACE** to LCC for conducting meetings, including office facilities, infrastructure etc, and timely payment of fees to LCC CP/Members, in addition to diet money to the aggrieved woman, if required.

Target 2.1 The District officer to provide the LCC, which is the fulcrum of the POSH Act, a separate designated office with all facilities and infrastructure.

2.2 A full time multi-task assistant to be made available in the LCC office, who in the absence of Members may attend to women approaching the LCC.

2.3 District Officer to hold periodic discussions with the LCC, preferably bi-monthly. A summary report of these bi-monthly discussions - something even as simple as minutes of the meeting - be created and a record be maintained.

2.4 A deadline to be set by State govt. for creation of separate designated LCC office by the District officer. Proof of sub paragraph 2.1-2.3

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be submitted the state government to the SHRC alongwith photographic evidence of the room, name plate, board, infrastructure, staff etc.

2.5 Payment of fees to be made to LCC CP/Members within 60 days of each meeting.

2.6 Payment of diet money, if required, be made to aggrieved woman within 7 days. Preferably the money to be transferred directly into her bank account, however in view of the fact that a large number of women in the workforce are daily wagers, the aggrieved woman may be paid cash and submit a receipt containing UID number. This receipt itself should preferably be a unique identity form of verification, ie a fingerprint stamp or biometric scan.

2.7 SHRC may recommend to state govt. imposing light penalty on District officer in case of non-compliance of sub paragraph 2.1-2.6.

Goal 3. CONDUCT ORIENTATION and training of LCC members, focusing on their role, functioning and procedures.

Target 3.1 The dates and venue of the training and orientation programmes be posted on the notice board of Gram Panchayat/RWA and other venues for general awareness.

3.2 The training sessions be video-recorded, alongwith feed back of LCC members, if any.

3.3 The training to include approaches to supporting the aggrieved woman and providing her a gender friendly environment.

Goal 4. MONITOR the timely submission, of reports furnished by the LCC. The annual report shall contain the following:-

i. Number of complaints of sexual harassment received by LCC in one year, sectorwise- organised/unorganised;

ii. Number of complaints disposed off during the year;

iii. Number of complaints pending inquiry for more than ninety days;

iv. Number of workshops/awareness programmes conducted on prevention of sexual harassment at the workplace by LCC and DO separately.

v. Number of places display boards have been installed publicising details of LCC.

Target 4.1 A record of each annual report be maintained and scrutinised.

4.2 In case of non-compliance, state govt. may impose light penalty on District officer.



Goal 5. DESIGNATE one nodal officer or more depending on the density of the population and geographical vastness, in every, block, taluka and tehsil to receive complaints and forward the same to the LCC within seven days.

Target 5.1 The Nodal officer nominated to preferably be the village Sarpanch or Tehsildar, and number of Nodal Officers to depend on the female workforce, density of the population and geographical vastness of the District.

5.2 In order to ensure a safe environment for women, the Nodal officer, besides filing complaints, must also analyse the problem areas, ie where most complaints are coming from. Based on this analysis, the Nodal officer shall conduct periodic visits to work sites, and use this as an opportunity to spread awareness of the LCC among women workers who may be unaware of the LCC. This will result in greater visibility of the nodal officer, as well as the LCC; in addition to their being more approachable and accessible.

5.3 Details of Nodal officers appointed and their specific activities be provided by the state government to the SHRC for information.

Goal 6. ENGAGE with service providers and NGOs for creation of awareness on sexual harassment and the rights of the women, and provide assistance to the LCC in counselling of women who may not want to file a formal report.

Target 6.1 The District Officer to engage with service providers with the assistance of the Nodal Officers, who should be responsible for maintaining a list of service providers and NGOs in their designated area.

6.2 The Nodal Officers to be made in-charge of coordinating with NGOs regarding content of gender sensitisation workshops and presentations and names of their members be recommended as external consultants to be engaged by schools, colleges, and other local institutions, to create awareness outside of the state apparatus.

6.3 The District officer to coordinate with NGOs involved in the *sunvohis* conducted by the state government through the Nodal officer.

Goal 7. DO HIS DUTY, for which the District officer shall be accountable.

Target 7.1 In case of the District Officer not submitting the report, or doing duty diligently, a penalty may be imposed and disciplinary action taken under the applicable service rules.

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D. RESPONSIBILITY OF LOCAL COMPLAINTS COMMITTEE

It shall be the responsibility of the Local Complaints Committee acting as a redressal mechanism to -

Goal 1. TAKE IMMEDIATE ACTION on receiving an allegation of sexual harassment at the workplace and ensure that the matter is promptly inquired into and addressed. The LCC is committed to take action if it learns of possible sexual harassment, even if the woman does not wish to file a formal complaint or only wants counselling.

Target 1.1 Action to be taken within a stipulated time period of maximum 7 days.

1.2 A complainant who approaches the LCC to be treated with utmost consideration, compassion, and respect.

Goal 2. FACILITATE COUNSELLING of the aggrieved woman, if required, through a service provider, close to her place of work/residence.

Target 2.1 The LCC to facilitate counselling of the aggrieved woman through a service provider, close to her place of work/residence, from the list maintained by the Nodal officer.

2.2 The LCC to follow up on the condition of the woman, and take action against the service provider or nodal officer in case they did not assist her in a time bound manner.

2.3 The service provider or nodal officer to have a regular and open channel of communication with the LCC, so that the woman not only has access to counselling but also feels she is getting redressal.

2.4 The efforts of the LCC/Nodal Officer/Service provider in sub paragraphs 2.1-2.3 be recorded and entered in an electronic sheet that is updated each time fresh action is taken in the case.

Goal 3. PROVIDE ASSISTANCE to the woman, including guiding her on the procedure and assisting her to make complaint in writing, alongwith list of witnesses.

Target 3.1 The LCC in each case to record that it has explained the process to the woman in simple language so that a poor uneducated woman can understand her rights and is encouraged and feels empowered to report sexual harassment at workplace, even if orally. The same may be entered in the electronic sheet mentioned in sub paragraph 2.4.

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or "it was just a joke", and in case of such treatment the woman should have recourse to an external authority, preferable the SHRC.

3.3 The members of the LCC shall NOT blame the woman for encouraging the harasser for his misconduct. By blaming the woman or ignoring the situation, the message is sent out that the harasser has the right to continue such action, which is unacceptable. In case of such treatment the woman should have recourse to an external authority, preferable the SHRC.

3.4 It shall be the duty of the LCC to make copies of the complaint and provide the same to the respondent for his reply within a period of 10 days.

Goal 4. SUMMONS TO RESPONDENT to file his reply within ten days of receipt of the complaint, alongwith list of witnesses.

Target 4.1 Assistance of police may be taken in serving summons to respondent.

4.2 Imposition of a penalty, perhaps a monetary fine, in case of non compliance.

4.3 In case of non-appearance of respondent posting of summons in local newspaper and on website of LCC to be considered sufficient for service.

Goal 5. PROVIDE OPPORTUNITY OF CROSS EXAMINATION

Target 5.1 The LCC to call both the aggrieved woman and respondent and give them an opportunity to cross examine each other and the witnesses.

5.2 To whatever extent possible a record of the cross examination be maintained electronically.

5.3 CCTV camera and security staff to be made available in the LCC office to avoid unruly, disgruntled and upset parties indulging in violence; and so that verbal confrontations do not escalate into physical violence. Specially, in view of the fact that the parties, whether aggrieved woman or respondent are vulnerable to exhibiting inappropriate behaviour and language which may build up vicious behaviour on either side.

5.4 The presence of security staff be recorded and subject to random review so as to ensure proper implementation.

Goal 6. SUBMIT FINAL REPORT

Target 6.1 The LCC on completion of inquiry shall within ten days provide to the District Officer report of it's findings alongwith recommendation of penal action against the respondent, as appropriate to the circumstances, ranging from a written apology, warning, letter of reprimand through censure, withholding of promotion or increment, termination from service or undergoing a counselling session.

6.2 The report be made available to both parties, the aggrieved woman and respondent.

6.3 In case of default, of LCC not submitting the report within the specified period of ten days, then the position of the members stand subject to review. A verbal progress report should be given within the first seven days, to ensure that the LCC is on track with its recommendations and report.

6.4 The District Officer to act upon the recommendation of the LCC within sixty days of receipt of report.

Goal 7. PROVIDE PROTECTION of aggrieved woman against harassment pending inquiry/completion of inquiry and confidentiality of both parties ie aggrieved woman and respondent.

Target 7.1 The LCC to take necessary steps to protect women/employees from retaliation who in good faith report incidents of sexual harassment at the workplace. *For this purpose, the creation of a separate office and meeting room for the LCC is crucial.*

7.2 To the extent possible the aggrieved woman be allowed to enter the meeting room through an entrance separate from that used by the respondent.

7.3 The staff involved in recording of LCC meetings be made to sign a non-disclosure agreement, specifying that they will not discuss the details of inquiry with anyone.

7.4 Files to be kept under lock and key, accessible only to authorised personnel.

7.5 The LCC should make all efforts to protect the identities of the aggrieved woman and the respondent.

7.6 SHRC to review steps taken by LCC to protect the identities of the aggrieved, respondent and witnesses. In case the identity of the woman is revealed, she be allowed legal recourse for action against the LCC or persons involved in disclosure through the SHRC.

Goal 8. CLARITY ON DEFINITION OF SEXUAL HARASSMENT under the law. Views as to what behaviour constitutes sexual harassment, vary according to sex and age. Often due to miscommunication the perpetrator could be unaware of the offence caused by his behaviour. It should be clarified that in law a particular behaviour is sexual harassment, irrespective of intention of the perpetrator. It is what the woman feels which is important. If she feels the behaviour is unwelcome and offensive, the LCC should consider it as sexual harassment.

