

6. **THE *SEXUAL HARASSMENT OF WOMEN AT WORK PLACE*
(PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2006**

Preamble

A Bill conferring upon Women the Right to Protection against Sexual Harassment and to protect the Right to Livelihood and towards that end for the prevention and redressal of Sexual Harassment of Women.

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 ***SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2006***
 - (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
 - (b) **“Appropriate Government”** means:
 - (i) In relation to any department of the Central Government or any establishment or undertaking wholly or substantially financed by that government or such other bodies or corporations established by or under the control of the Central Government, the Central Government;
 - (ii) In relation to any department of a state government or any establishment or undertaking wholly or substantially financed by that government or any local authority or any establishment or undertaking established by or under the control of the State Government, the State Government;

- (iii) In relation to the industries specified in Section 2(a) of the Industrial Disputes Act, 1947, the term 'appropriate government' shall have the same meaning as assigned under the Act.
- (c) “**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.
- (d) “**Defendant**” means a person against whom an allegation of sexual harassment is made under this Act.
- (e) “**District officer**” means an officer appointed under section 11 of the Act
- (f) “**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 or otherwise , whether the terms of employment are express or implied, and any person employed as a temporary, casual, badli, piece-rated or contract worker, probationer, trainee, apprentice or by any other name called; and includes a domestic servant employed in a house or dwelling place

- (g) **“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 workplace under any local body/authority, the authority prescribed in this behalf, or, where no person is so prescribed, the Chief Executive Officer;
 - (iii). In any workplace not covered under (i) and (ii) hereinabove, the person who, or the authority which, whether called a Manager, Managing Director, President, Managing Agent, contractor or by any other name, is responsible for the ultimate supervision and control of the affairs of the workplace, in which the employee is employed, and in respect of a contract employee includes the Principal Employer of the workplace in which the employee is working, as well as the contractor;
 - (iv) In any other case, the person who is in a position of authority whether supervisory, evaluatory, pecuniary or fiduciary including the owner or trustee of an educational institution or *any professional body, society, trust, etc providing any services.*
- (h) **“Internal Complaints Committee”** means a committee constituted by the persons in charge of the establishments under Chapter III of this Act.
- (i) **“List of Third Parties”** means the list of persons drawn up by the district 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; representatives of peasant and agricultural organizations and journalists etc.

- (j) “**Local Complaints Committee**” means a Committee constituted under Chapter III of this Act,
- (k) “**Misconduct**” means misconduct as defined in the All India services (conduct) Rules 1968, Central Civil Services (Conduct) Rules 1964, Railway services (conduct) rules 1966, the Indian foreign services (conduct and discipline) rules 1961, 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 governing misconduct.

Provided further that sexual harassment shall amount to an offence under the Air Force Act 1950, the Army Act 1950 and other laws governing conduct and discipline in the armed and paramilitary forces which prescribe for offences

- (l) “**Proceedings**” means any proceedings carried out by any authority prescribed or persons authorized under this Act.
- (m) “**Sexual Harassment**” is such unwelcome sexually determined behavior such as physical contact, advances, sexually coloured remarks, showing pornography or making sexual demands, whether verbal, textual, graphic or electronic or by any other actions, which may contain -.

- (i) Implied or overt promise of preferential treatment in that employee's employment or
- (ii) An implied or overt threat of detrimental treatment in that employee' employment or an implied or overt threat about the present or future employment status of that employee and includes the creation of a hostile Working environment.
- (iii) The conduct interferes with an employee's work or creates an intimidating, hostile or offensive work environment or
- (iv) Such conduct can be humiliating and may constitute a health and safety problem

Explanation1: Hostile Environment: **A work environment is “hostile” when unwelcome verbal, non-verbal or physical behaviour focusing on sexuality is severe and pervasive enough to interfere with the victim’s work performance or be intimidating or offensive to a reasonable person.**

Explanation2 : 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 and that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

- (n) **“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 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 rendering of any service by a professional /professional body or under a contract of personal service;

- (o) **“Unorganized Sector”** means all private unincorporated enterprises including own account enterprises engaged in any agriculture, industry, trade and/or business and includes sectors as mentioned in **schedule II**
- (p) **‘Unorganized Sector Worker’** means a person who works for wages or income; directly or through any agency or contractor; or who works on his own or her own account or is self employed; in any place of work including his or her home, field or any public place
- (q) **“Workplace”** means
- (i) Any department / organization, establishment or undertaking wholly or substantially controlled by the Central Government or the State Government or local or other authority under the control of the central or the state government
- (ii) Any venture, business, organisation or institution or department carrying on systematic activity by co-operation for the production, supply or distribution of goods and/or services 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/or services are provided for any remuneration or not and

- (iii) Includes any place where an aggrieved woman or defendant or both is/are employed or work/s, or visits in connection with work during the course of or arising out of employment, and
- (iv) Such other statutory and/or professional bodies, contractual and other services and
- (v) Includes but is not limited to the illustrations in **Schedule I**.

CHAPTER II

PROHIBITION AGAINST SEXUAL HARASSMENT

3. **Right to work in a free environment** - 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. **Prohibition against sexual harassment** - (i) No employer or **any** person who is a part of the management or ownership, or a supervisor or a co-employee shall, sexually harass a female employee at the workplace, where she is employed or is seeking employment; whether the harassment occurs in / at the workplace, or at a place where the said person has gone in connection with the work or at any other workplace.

(ii) Sexual Harassment will amount to misconduct in employment under all relevant Conduct and Service Rules and Regulations, the service rules / regulations governing employment and workplace shall govern such misconduct and the said Rules/Regulations shall stand amended accordingly.

(iii) Sexual harassment shall amount to an offence under the Air Force Act 1950, the Army Act 1950 and other laws governing conduct and discipline in the armed and paramilitary forces which prescribe for offences.

(iv) No employer or any person who is a part of the management or ownership, a supervisor or an 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.

(v). Every employer or management of the workplace 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. Prohibition against sexual harassment in other cases – in cases where an employer-employee relationship does not exist – it shall be the duty of the head of the professional body or institution to ensure that

- No student or any person seeking admission to any such institution/professional body or a client is subjected to sexual harassment
- take all necessary and reasonable steps to prevent and ensure that no woman is subject to Sexual Harassment by any person
Where any such Sexual Harassment occurs, the said professional

body shall take all necessary steps to assist the aggrieved woman to redress the act of Sexual harassment.

6. Without prejudice to the rights and remedies available under any other law for the time being in force and in addition thereto, an aggrieved woman 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.
7. In any claim under the preceding clause, the appropriate Court or forum, upon satisfaction that the defendant has committed Sexual Harassment, shall **in addition to any order as may be deemed fit in the circumstances of the case** award appropriate just and reasonable compensation to the person aggrieved. In determining the quantum of compensation, the Court shall take 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 section 7, the aggrieved woman may submit an authorized or certified report of the Internal Complaints Committee or the Local Complaints Committee, and if that records a finding that sexual harassment did take place, and that report has become final, the Court or forum shall proceed to award compensation without requiring the person aggrieved to establish her claim of Sexual Harassment.

Provided further that the court may for reasons impose a fine of not less than RS.10, 000/- on any workplace which has failed to constitute an internal complaints committee or opted to have been governed by the local complaints committee or failed to initiate action within a reasonable time on the complaint referred to it alleging sexual harassment or failed to comply with any orders passed by the district officer under this Act

CHAPTER III

AUTHORITIES UNDER THIS ACT

- 8. Duty of the workplace to Constitute Internal Complaints Committees :-** (1) It shall be mandatory for every workplace and every employer incharge of a work place to constitute an Internal Complaints Committee as prescribed under this Act.
- (2) Notwithstanding anything in sub section(1), In cases where it is not practically feasible to constitute the Internal complaints Committees at the workplace or at each of the branch or office of the workplace , wherever they be located, the employer shall constitute such internal complaints committee either at its head office or at any of the branch offices, for dealing with cases of sexual harassment, in respect of its workplace and in cases where internal complaints committee cannot be constituted then, the provisions prescribed in Section 11,12 and 13 of this Act, i.e. local complaints committee, dealing with cases of sexual harassment , shall govern such employer and employees of the workplace.

Provided that, where, the district officer or the appropriate government, is of the opinion that any workplace should constitute an Internal Complaints Committee in that establishment, the appropriate government or the District officer as the case may be shall direct the employer incharge of that workplace to do so.

9. Constitution of Internal Complaints Committee: -

- (a) The Internal Complaints Committee shall consist of not less than three members.
- (b) The Committee shall be headed by a woman, who shall be its chairperson.
- (c) There shall be at least one person selected from the list of third parties.
- (d). Not less than half of its members shall be women. Where sufficient number of women employees are not available, then, the committee may be filled up from amongst the list of third parties.
- (e). All members of the Complaints Committee, whether internal or third parties should be neutral and unbiased.
- (f). If a member of the Complaints Committee is junior in the hierarchy of the establishment concerned to the defendant, then for that particular case, that member shall be substituted on the Committee by another person.
- (g). An Internal Complaints Committee constituted under Section 13 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, but not for more than two terms.

- (h) A member appointed to the internal complaints committee from the list of third parties , shall be paid Traveling Allowance, at such rates as may be prescribed by the concerned workplace, for each day on which he/she is required to attend to the proceedings of the committee
- 10.** In any workplace where an Internal Complaints Committee has not been set up or where no action has been taken on the complaint of the aggrieved woman, the aggrieved woman may approach the appropriate government or the concerned District officer, who may direct the employer incharge of that workplace to constitute a Internal complaints committee and take action as per the procedure prescribed under the Act
- 11. Appointment of District Officer for every District:-** (1) The appropriate Government shall nominate the District Magistrate or the Collector or the Addl. District Magistrate or Deputy Collector as the” District Officer for every district to deal with complaints arising out of provisions of this Act
- (2) The District Officer may take assistance of any officer or department of the state government, including the Assistant Labour Commissioner, to assist him in discharging the functions under the Act and may nominate any officer at the block level, to assist him in the discharge of the functions under the Act

- (3) Every district officer shall draw up or cause to be drawn a list of a Third Parties as enumerated in Section 2 (i) at each District and block level

12. Constitution of Local Complaints Committee:-

- (1). It shall be the responsibility of the District Officer under this Act, to constitute a Local Complaints Committee, at the district level. Provided further that a Local Complaints Committee may be constituted at each block level.
- (2) The Committee shall consist of at least four persons, comprising of :-
- (a) A woman who shall be its Chairperson, selected from amongst persons of ability, integrity and standing, and shall have adequate knowledge or experience of or have shown capacity in dealing with issues relating to women
- (b) One representative from any non-governmental or voluntary organization in the district working for the cause of empowerment of women to be selected from the List of Third Parties
- (c) Two other members, who are representatives selected from Employers Association operating in the Industries mentioned under Schedule I & II or an Employees' Representative, selected from a trade union or other workers organization functioning in the district concerned
- (3) A Local Complaints Committee constituted under this section 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, but not for more than two terms.

- (4). 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.

13. Jurisdiction of the Local Complaints Committee:

Subject to the other provisions of this Act, the local complaints committee shall have the jurisdiction to entertain and inquire into complaints of sexual harassment made by or on behalf of any woman in and/or against any person/defendant residing within the jurisdiction of the concerned district in -

- a. Any workplace where an internal complaints committee ought to have been established but has not been so established or 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 district Officer or the local complaints committee Or
- b. Where the district 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 moto in the matter and proceed as if a complaint regarding the same had been filed before her. or

- c. Any educational institution where internal complaints committee has not been established or
- d. Any workplace where the complainant is not covered under the employer-employee relationship.
- e. Any statutory and professional authority or body or association of professionals where services are provided to a client and where internal complaints committee has not been set up
- f. Any unorganised sector as specified in schedule II
- g. Any services or workplace not covered above
- h. 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 District Officer if she so chooses;

Provided that, where, the district officer is of the opinion that any workplace in a sector that falls under Schedule I & II of this Act, should constitute an Internal Complaints Committee in that establishment, the District officer may direct that workplace to do so.

CHAPTER IV

DUTIES OF AUTHORITIES UNDER THIS ACT

- 14. General duties of a Workplace -** (1) Every of a workplace shall:
- (a). Ensure a safe environment free from Sexual Harassment including prevention and deterrence of Sexual Harassment and as far as

practicable constitute an internal complaints or opt to be governed in accordance with the provisions of the Act

Provided further that every workplace shall –

- i) Lay down a clear policy on dealing with cases of sexual harassment and constitute a internal complaints committee or choose to be governed by the local complaints committee
 - ii) Designate as far as practicable at each branch or office an officer or any member of the committee to receive complaints
- (b). Undertake workshops and training programmes at regular intervals for sensitizing the members
 - (c) 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.
 - (d) 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.
 - (g). After a complaint under this Act has been made and pending its *prosecution* under this Act, not alter to the prejudice of the Complainant/Supporter/Witness concerned, the conditions of service of the Complainant/Supporter/Witness prevailing immediately *prior to* the

complaint being lodged as a consequence to the filling *and prosecuting* of a complaint under this Act,.

- (h). In establishments where an Internal Complaints Committee has been set up, bear the expenses of the committee members incurred in relation to a complaint such as travel allowance.
- (2). It shall be the duty of the appropriate government to ensure that the workplace under their administrative or supervisory control have taken all reasonable measures to comply with the duties cast upon the workplace under this Act.

15. Duties of the Internal Complaints Committee,:- It shall be the duty of 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 Sensitization regarding the same, and to carry out an enquiry into complaints of Sexual Harassment referred to it or brought to its notice.

16. Duties of District Officers: - (1) It shall be the duty of the district Officer to draw up a list of the List of Third Parties and constitute a Local Complaints Committee at the district level and if so considered necessary at each block level

- (2) Ensure that wide publicity is given regarding the provisions of the Act as well as to constitution/composition of the local complaints committee
- (3) Direct any workplace within his jurisdiction to constitute an internal complaints committee either at its branch or head office
- (4) 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 sensitization regarding the same, and conduct an enquiry into misconduct in workplace as per the jurisdiction conferred under this Act

CHAPTER V

PROCEDURE FOR LODGING A COMPLAINT

17. Who May File A Complaint:- (1) A complaint may be lodged before any authority or person under this Act by:

- (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/written consent on behalf of persons covered by clauses (i) (ii) and (iii) above:

- (a) A registered trade union;
- (b) A women's organization or a non-governmental organization;
- (c) A co-employee

May file the complaint on behalf of the complainant in so far it relates to initiating the action under the provisions of this Act

18. Place where a complaint may be preferred : - (1) In an workplace where an Internal Complaints Committee has been set up, a complaint

under this Act may be lodged with any member of the Committee or any person designated to receive complaints

- (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. However any enquiry or proceedings pursuant to the same shall be conducted at the workplace where the defendant is employed.
- (3) save as provided otherwise, a Complaint under this Act may be lodged with the District officer or the local complaints committee 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 workplace concerned, she may lodge the complaint with the district 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 district Officer or the local complaints committee
 - (iii). Where the district Officer has reason to believe that a number of women in an workplace 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 district Officer may act suo moto in the matter and proceed as if a complaint regarding the same had been filed before district officer

(4). The Committee so constituted shall sit within the local proximity of the Complainant's workplace.

19. Appointment of ad hoc internal complaint committee –where the defendant employed in a workplace or organization holds a senior position as head of the workplace or is the employer or is the person in charge of the workplace concerned, the appropriate Government shall appoint a **ad hoc committee** headed by a chairperson who shall be senior in rank and status to the defendant or provide the option to the complainant to lodge the complaint with the local complaint committee.

20. 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.

21. Where Sexual Harassment amounts to criminal offence:- (1) Where the conduct of Sexual Harassment amounts to a specific offence under the Indian Penal Code(45 of 1860) 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(45 of 1860) , the district Officer / Member of the Committee and the Complaints Committees shall be bound to initiate and conduct proceedings as laid out under this Act.

CHAPTER VI

PROCEDURE IN DEALING WITH COMPLAINTS OF SEXUAL HARASSMENT

- 22. Provisions relating to conducting of inquiry shall govern and prevail the procedures of existing Acts, rules governing procedures in dealing with misconduct** - Notwithstanding anything contained in any Act or Rules/regulations , for the time being in force, governing the procedure to conduct inquiry into misconduct or offence , the procedure prescribed under the provisions of this chapter , **in so far the procedure relates to conducting of an inquiry into cases of sexual harassment** , under this Act , shall govern and supercede the existing procedures under any Act or rule in force

23. Dispute Resolution prior to Enquiry:-

- (1) After a complaint of Sexual Harassment has been made, the aggrieved woman may request the Internal Complaints Committee or the Local Complaints Committee to resolve the matter by conciliating between the parties before the commencement of the enquiry proceedings referred to in Section ---. The person to carry out the Dispute Resolution Process shall be chosen from the Internal Complaints Committee or the Local Complaints Committee by the aggrieved woman.
- (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, who shall implement the terms of the settlement, to the extent required therein. 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). 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 week from the date of the receipt of the complaint.

- (6). 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 proceed to conduct the enquiry as per the procedure prescribed

24. Conducting of Enquiry (1) Where no Dispute Resolution process referred to in Section 23 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 of its receipt of the complaint or the conclusion of the dispute resolution process, proceed to conduct an enquiry into the allegation of Sexual Harassment, in accordance with the procedure prescribed under the act

25. Procedure to be followed by the internal complaints committee or the local complaints committee in conducting of enquiry - (1) where it is proposed to hold an inquiry against the defendant, the internal complaints committee or the local complaints Committee shall ***draw up on behalf of the Disciplinary or other competent Authority***, a formal charge sheet containing definite and distinct articles of charge, which shall include :-

- (i) A statement of the imputations of misconduct or misbehavior in support of each article of charge, which shall contain-

- (ii) A statement of all relevant facts including any admission or confession made by the defendant
 - (iii) A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.
- (2) The committee shall deliver or cause to be delivered to the defendant, the charge sheet and shall require the defendant to submit , within such time as may be specified , a written statement of his defence and state and if no written statement is submitted by the defendant , the committee may proceed with the inquiry
- (3) If the complainant or the defendant desires 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
- (4) The evidence of the employer / establishment and its witnesses firstly and thereafter of the complainant and her witnesses shall be recorded. After the person / witness has deposed, the complainant and defendant may give in writing to the Committee the questions he / she wishes to pose to the person / witness/ complainant and the committee shall then pose these questions to the person witness/ complainant, subject to the rules of evidence given in Section ---. After the completion of the

evidence and examinations of these persons has been completed, the evidence of the defendant and his witnesses shall be recorded and after each one deposes, the employer / complainant may give in writing to the Committee the questions she / he wishes to pose to the witness/ defendant and the committee shall then pose these questions to the witness/ defendant, subject to the rules of evidence given in Section --- Sufficient opportunities shall be given to examine all witnesses notified by both parties.

- (5) 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 in token of authenticity thereof. The refusal to endorse the same by either party shall be endorsed by the convenor. All parties involved in the process are at liberty to place on record any objections or observations As well as the Defendant, the Complainant shall be furnished with a copy of the enquiry proceedings at the end of each proceeding.
- (6) 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 conducted as per the Act
- (7) 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.
- (8) The enquiry shall be conducted in Hindi, English or the local language, whichever is requested by the defendant and / or complainant;

- (9) The Committee shall ensure that every reasonable opportunity is extended to the complainant and to the defendant, for putting forward and defending their case.
- (10) The venue of the enquiry should as far as practicable, be as per the convenience of the complainant.

26. Rules of Evidence before Complaints Committee:- (1)

Notwithstanding anything contained in this Act or rules , 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, and 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 examination by the defendant on the same, unless the alleged victim of Sexual Harassment opts to give her evidence orally;

- (v). may disallow any questions desired to be put by the defendant to the aggrieved woman which it feels are derogatory, irrelevant or slanderous to her.
- (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.

27. Power of inquiry Committee to enforce attendance of witnesses and production of documents.

- (i) Every inquiry Committee shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:-
- (ii) The summoning and enforcing the attendance of any witness and examining him on oath;
- (iii) Requiring the discovery and production of any document or other material which is producible as evidence;
- (iv) The requisitioning of any public or official record from any office.
- (v) Every process issued by inquiry Committee for the attendance of any witness or for the production of any document shall be served and executed through the District Judge within the local limits of

whose jurisdiction the witness or other person, on whom the process is to be served or executed, voluntarily resides or carries on business or personally works for gain, and, for the purpose of taking any action for the disobedience of any such process, every such process shall be deemed to be a process issued by the District Judge.

(vi) **Territorial limits in which powers specified In may be exercised.** For the purpose of exercising the powers specified above the territorial jurisdiction of every inquiry authority shall extend to the limits of the territory to which this Act extends.

28. **Power to Issue Interim Orders:-** (1) The 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 victimization and discrimination and mental or physical distress and may issue such other interim orders as may be deemed necessary to ensure the safety of the complainant/supporter/witness.

29. 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.

30. **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.

- 31. Findings and Directions:** (1) On the completion of an enquiry under 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.
 - (b) Recommend to the employer that any punishment be imposed upon the defendant, commensurate with the gravity of the offence of which he has been found guilty of and in accordance with the Act rules/standing orders applicable to the workplace
 - (c) The Committee may recommend that the defendant give a written apology to the aggrieved woman clearly indicating that such behavior will not be repeated and that no retaliatory steps will be taken by him/others on his behalf.
 - (d). Further, if a Internal or the Local Complaints Committee finds a defendant guilty of the Sexual Harassment complained of, the Complaints Committee may recommend that the defendant pay compensation to the aggrieved woman, commensurate with the gravity

of the act of Sexual Harassment and the salary/wages of the defendant. Any such compensation shall be deducted by the employer from the wages of the defendant, in such instalments as the Committee deems fit, and paid over to the aggrieved woman. Depending on the defendant's ability to pay, a lump sum payment of compensation may be ordered.

- (e) Provided that where there are no service rules/ standing orders governing discipline , misconduct and the procedures for imposing penalties, in a workplace , the committee may in addition to unconditional apology or damages as in sub clause © and (d) recommend any of the following punishments having regard to the gravity of misconduct be imposed on the defendant
- (i) Censure
 - (ii) Termination from service

32. Action to Be Taken After Enquiry: (1) The internal complaint committee or the local complaints committee shall **be deemed to be the inquiring authority** appointed by the disciplinary or other competent authority for the purpose of inquiring into the complaints and the report of the Enquiry Committee shall be deemed to be an inquiry report under the All India services (conduct) Rules 1968 , Central Civil Services (Conduct) Rules 1964 , Railway services (conduct) rules 1966, the Indian foreign services (conduct and discipline) rules 1961, The Industrial Employment (Standing Order) Act , 1946 , the Standing Orders of the establishment / Model Standing Orders under the Industrial Employment (Standing Order) Act , 1946 or any other

Act or rules enabling the conduct of an enquiry into misconduct as the case may be. However, the employer / relevant authority shall act upon the findings and recommendations in the report and implement the same. If the employer / relevant authority disagrees with or wishes to modify the same, he / she may do so by stating the reasons in writing.

- (2) The disciplinary or other competent 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) on the findings of the enquiry report, which representation shall be made within 2 weeks of their respective receipt of the copy of the report.
- (3) The disciplinary or other competent authority shall within a period of 3 months from the date of the receipt of the representation, pass a reasoned order.
- (4) In cases where the procedure in dealing with offences governing members of the Armed and paramilitary forces, the competent authority shall on receipt of the enquiry report take action as per the prescribed procedure in the relevant Act/Rules.
- (5). 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.

33. Delay in Filing the Complaint:-

A complaint relating to sexual harassment shall ordinarily be preferred within one month from the date of the alleged offence and the delay if any, in preferring such complaint may be condoned

provided that the complainant submits sufficient cause for such delay

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.

- 34. Appeals, etc** - (1). The provisions relating to appeals, revision and review as per the existing Acts, rules or regulations governing misconduct or offence as applicable to a workplace, shall mutadis mutandis apply to the provision of appeals under this chapter.
- 35. Confidentiality:-** (1). It shall be the duty of all the persons and authorities designated under this Act to ensure that all complaints lodged under this chapter shall be confidential. After the initiation of an enquiry under this Act such confidentiality shall be continued so far as is possible.
- (2). The name of the aggrieved woman or the defendant nor their identity shall be revealed by the press / media or any other persons whilst reporting any proceedings, case, order or Judgment under this Act.
- 36. 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.

37. Prohibition against Victimization

(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 Sub section (2).

- 37. 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.
- 38. Penalty for non – compliance with the provisions of the Act -** (i) save as provided, Where a person/employer incharge of workplace contravenes any of the provisions of, or fails to carry out any of its duties under this Act, then any person concerned with that workplace may directly file a case against the employer/management of the workplace, praying for relief including a direction to the employer/ in charge of workplace to comply with the provisions of the Act, in a civil court, which may pass such orders as deemed fit and as prescribed under section 7 of the Act
- (ii). Any person concerned with the workplace may also lodge a complaint in this regard against the employer incharge of a workplace with the district officer who may after serving a show-cause 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.
- (iii) The appropriate government may either suo – moto or when brought to its notice, take such action as deemed fit against the management/employer of a workplace for its failure to comply with the provisions of the Act

39 Power to make rules:- The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

40. To address the issue of Sexual Harassment the following acts as mentioned in Schedule III shall stand amended.

SCHEDULE I

ILLUSTRATIVE LIST OF WORLPLACE

- a. Bar Council” means the Bar Council of India or the State Bar Council Constituted under the Advocates Act ,1961
- b. Council of Architects “ means the Council as constituted under the Architects Act , 1972.
- c. Council of Chartered Accountants ” means the Council of the Institute of Chartered Accountants Constituted under the Chartered Accountants Act ,1949.
- d. 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.
- e. Educational Institution” means a school, college, university as by law established and includes any private coaching class, anganwadi, creche or any other institution or establishment at which education or training is provided
- f. Medical Council of India” Means the Medical Council constituted under the Medical Council of India Act, 1956.
- g. Parliament” means Parliament as defined in Article 79 of the Constitution of India
- h. state Legislature” means State Legislature as defined in Article 168 of the Constitution of India

- i. "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.
- j. 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.
- k. "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.
- l. "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.
- m. An industrial establishment;
- n. banking or financial institution;
- o. restaurant, club, hotel, resort or other hospitality establishment;
- p. hospital, nursing home;
- q. 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;

- r. Any office of elected representatives, and institutions of local Government such as Municipalities, and Municipal Corporations and Panchayats.
 - s. free trade zone or a special economic zone;
 - t. A non-governmental organization, a public or charitable trust
 - u. a religious body, trust or institutions, a co-operative housing society
 - v. An association;
 - w. Any form of transportation whether by road, sea or air;
 - x. A factory, mine, plantation or forest;
 - y. A place of sale of agricultural or other products;
 - z. A brick kiln or a construction site;
 - aa. A shop, business establishment, a corporation, or a private office;
 - bb. An office or establishments of a professional and/or consultants etc
 - cc. An establishment wherein persons are employed for exhibition
 - dd. Any Society, trust or any other organization not covered above
-

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. blacksmith

- b. goldsmith
- 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

SCHEDULE III

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

“to, in any manner whatsoever, sexually harass a female employee “

The following item shall be added as Item 18 to The Fifth Schedule, Part I, of the Industrial Disputes Act, 1947:

“To dismiss, discharge or in any way adversely alter the service conditions of a female employee, (or any fellow employee who stands as a witness in this regard), on account of her making or having made an allegation of sexual harassment, or to fail to carry out any duties cast under the Protection Against Sexual Harassment of Women Bill, 2005”.

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

“to, in any manner whatsoever, sexually harass a female employee “

The following item shall be added as Item 12 to Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971.

“To dismiss, discharge or in any way adversely alter the service conditions of a female employee, (or any fellow employee who stands as a witness in this regard), on account of her making or having made an allegation of sexual harassment, or to fail to carry out any duties cast under the Protection Against Sexual Harassment of Women Bill, 2005

3. The following Item shall be added into

Item 9 of the Schedule in The Industrial Employment (Standing Order) Act 1946

“Note: Any complaints of Sexual Harassment shall also be included as misconduct “

The Following Item shall be added (L) to Rule 14(3) of the Industrial Employment (Standing Orders) Central Rules , 1946.

“In any manner whatsoever sexually harasses a female employed in the establishment”

4. The following Item shall be added 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”

5. 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 Section 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”

6. 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 “.

7. 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”.

Provisions relating to Army ACT, Navy Act , Air force ACT AND OTHER Acts
Rules governing para military forces would require the necessary
amendments

General comments

Title: - it was decided that in stead of the title as suggested by the Lawyers collective, "THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) BILL, 2006" would be a better title. Even during **the** national conference, a suggestion was made to confine the ambit of the Bill to 'workplace'. The Ministry of Urban Development, and the Department of official language have also suggested the same.

- b) It was decided that wherever the word "establishment" occurs the same would be replaced with "**workplace**".
- c) the definition of employer should include an additional provision as suggested "In any other case, the person who is in a position of authority whether supervisory, evaluatory, pecuniary or fiduciary including the owner or trustee of an educational institution or *any professional body, society, trust, etc providing any services*" as in sec 2(g)(iv) of NCW draft.
- d) **The definition of sexual harassment as proposed by the lawyers collective was proper and it was decided that the term "hostile environment" be added as an explanation to the definition.**
- e) **Misconduct was redefined** to include within its ambit the armed and paramilitary forces.
- f) In stead of the term "establishment" an exhaustive definition of workplace has been incorporated inclusive of schedule I

- g) Besides the definition of contractual services, services has also been defined
- h) The local officer has been now referred to as the **DISTRICT OFFICER**
- i) **Section 12 of the LC Draft** prescribes for duty of establishment to constitute ICC - the above section **makes it mandatory for establishments having 50 or more employees to constitute a ICC** ,there **may be a number of establishments like call centers having less than 50 employees and mostly constituting women , who may not be covered** . Secondly having an ICC at each branch or office may also not be practically feasible. Ministry of urban development has suggested that the section be recast. Department of economic affairs has also raised the objection that there would be some confusion in cases of establishment such as Mints and presses, which have their branches in other states and whether such branches would have a ICC or be governed by LCC Therefore it is proposed to recast these sections as mentioned in section 8 of NCW DRAFT.
- j) it was felt that the powers of the court should include the power to impose fine/penalty of not less than RS.10, 000/- on any workplace which has failed to constitute an internal complaints committee or opted to have been governed by the local complaints committee or failed to initiate action within a reasonable time on the complaint referred to it alleging sexual harassment or failed to comply with any orders passed by the district officer under this Act.

k) It was agreed that as regards procedure to deal with cases of sexual harassment is concerned, there should be **one uniform simplified procedure for all workplaces**. All workplaces have separate set of rules governing misconduct and inquiry and in cases of armed and paramilitary forces who follow the procedure of court martial and prescribe for "offences" , it was felt that **a uniform prescribed procedure as proposed under this Act should , in so far the procedure relates to conducting of an inquiry into cases of sexual harassment , under this Act , govern and supercede the existing procedures under any Act or rule in force**. This suggestion was also agreed to during the conference , as it was felt that a victim under the existing rules requires to tender her evidence at various stages such as preliminary inquiry and thereafter formal enquiry , which is cumbersome and causes much discomfort to the victim/complainant .

l) As regards appeals etc the existing rules as applicable in the workplaces should apply.

m) Appointment of ad hoc internal complaint committee –where the defendant of any workplace, organization holds a senior position as head of the workplace or is the employer or is the person in charge of the workplace concerned, the appropriate Government shall appoint a **ad hoc committee** headed by a chairperson who shall be senior in rank and status to the defendant or provide the option to the complainant to lodge the complaint with the local complaint committee – this suggestion was accepted being

relevant in cases where the Head of department or a senior official is the accused