



V. KRISHNAMURTHY  
CHIEF SECRETARY

9447208054

Mrs. Asha

Municipal Councillor

OFFICE: 327376  
333447  
327176  
RES: 440954  
FAX: 327176

GOVERNMENT OF KERALA  
SECRETARIAT  
THIRUVANANTHAPURAM-695001

15<sup>th</sup> March, 2001.

D.O. No. 10684/SSA2/2001/Home

Dear Shri C. Chandran,

In the Judgment dated 13.8.1997 in writ petition (crl) No.666-670 of 1992 (Visakha & Others Vs. State of Rajasthan & Others) the Supreme Court has laid down certain guidelines to prevent sexual harassment of working women at all work places and norms for due observance at all work places or other institutions. The Court has also ordered that this would be treated as the law declared by the Court under Article 141 of the Constitution.

Government in the Labour Department had forwarded a copy of the above judgment with a copy of the D.O. letter No.S.27016/1/97 (LWC-II) dated 2.11.1997 from the Union Secretary of Labour on the subject to all Secretaries to Government requesting to bring the directions of the Supreme Court to the notice of all Subordinate officers, autonomous bodies and public sector undertakings under their jurisdiction. Consequently you might have received a copy of the above judgment from the Secretary to Government concerned for necessary action.

The High Court of Kerala has directed Government to file an affidavit on the implementation of the above guidelines. At the Department level action has to be taken for the creation of a complaint mechanism in each Department. A complaint committee headed by a woman and comprising women members not less than half of its strength and also involving a third party, from either a NGO or other body who is familiar with the issue of sexual harassment, shall be constituted immediately, if not already done. The preventive steps laid down in para 3 of the guidelines

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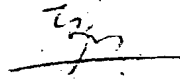
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should also be taken immediately. A report on the action taken for implementation of the guidelines in your department may be furnished to Government on or before 20.3.2001. This report shall be forwarded to Shri K.S. Vijayakumaran, Additional Secretary, Home Department, Secretariat, Thiruvananthapuram.

A copy of the guidelines extracted from the judgment of the Supreme Court in Visakha case is enclosed for reference.

Yours sincerely,



To

Shri C. Chandran,  
Commissioner of Land Revenue,  
Thiruvananthapuram.

Concern

16. In view of the above; and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly

against sexual harassment at work places, we lay down the guidelines and norms specified hereinafter for due observance at all work places or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 22 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.

The Guidelines and Norms prescribed herein are as under:-

Having Regard to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, Taking Note of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time,

It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions:

It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition:

For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:

- a) physical contact and advances;
- b) a demand or request for sexual favours;
- c) sexually coloured remarks;
- d) showing pornography;
- e) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Where any of these acts is committed in circumstances where-under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps:

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

- (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.
- (b) The Rules/Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules, regulations prohibiting sexual harassment and provide for appropriate penalties in such rules

against the offender.

(c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

#### (4) Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

#### (5) Disciplinary Action:

Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

#### 6. Complaint Mechanism:

Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

#### 7. Complaints Committee:

The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality.

The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any undue pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment.

The Complaints Committee must make an annual report to the Government department concerned of the complaints and action taken by them.

The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

#### 8. Workers' Initiative:

Employees should be allowed to raise issues of sexual harassment at workers' meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

#### 9. Awareness:

Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in a suitable manner.

#### 10. Third Party Harassment:

Where sexual harassment occurs as a result of an act or omission by any third party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.

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



**LIDA JACOB, I. A. S.**  
SECRETARY TO GOVERNMENT

PHONE { OFFICE : 2333701  
2518252  
RES : 2317495  
FAX : 2324481

E-mail: [secy@genledu.kerala.gov.in](mailto:secy@genledu.kerala.gov.in)  
GENERAL EDUCATION DEPARTMENT  
GOVERNMENT OF KERALA  
THIRUVANANTHAPURAM

16.3.2006

Dear Sir/Madam

Sub: - Sexual harassment in work places constituting and functioning of Complaint Committees based on order of Supreme Court-reg.

Based on the directions from Government, Complaints Committees to look into complaints regarding sexual harassment in work places have been formed in 52 major departments in the State. Similar Complaints Committees are to be constituted in all district and sub offices where the number of the staff is 50 and above. Further, all Public Sector undertakings, Autonomous bodies, Co-operatives etc. under the Government departments with a staff strength of 50 and above, should compulsorily have such Complaints Committees. The Complaints Committee should consist of:-

- ✓ a) Chairperson being a senior woman officer of that office
- ✓ b) A senior officer, male or female
- ✓ c) A woman elected representative of a local body or an officer of a Central Government Organization.

The Complaints Committee should meet once in two months and minutes of the meeting recorded and maintained carefully. It may be noted that the meeting should be held even if there are no complaints to be looked into.

The Hon'ble Supreme Court in its order dt.17.1.06 (extract enclosed) has directed to take action to constitute the Complaints Committees in all offices where staff strength is 50 and above. The Secretary (SWD) Government of Kerala has been nominated as the State level officer to co-ordinate the actions taken in this regard.

A format for furnishing the details to the Hon'ble Supreme Court is also appended. You are requested to take urgent action on the following:-

- 13
- a) Issue directions to constitute the Complaints Committees to look into complaints of sexual harassment in work places in all offices under that department Departmental, PSUs, Co-operatives, Autonomous bodies having staff strength of 50 and above
  - b) Ensure the functioning of the Complaints Committees as per the directions of the Supreme Court.
  - c) Forward required details in the format enclosed.
  - d) Amendments as found necessary to be made in the Standing Orders of the Public Sector undertakings/ Autonomous bodies/ Co-operatives to incorporate the constitution and functions of Complaints Committee.

Since the State- wide details have to be consolidated and sent to the Law Officer, Kerala House, New Delhi urgently you are requested to furnish the details at the earliest.

Yours faithfully,



LIDA JACOB

*Encl: Extract of Supreme Court order*

**All Principal Secretaries/Secretaries/Heads of Depts.**

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It is not known whether the Committees as suggested in Vishaka case have been constituted in all the Departments/Institutions having members of the staff 50 and above and in most of the District level offices in all the States members of the staff working in some offices would be more than 50. It is not known whether the Committees as envisaged in the Viaskha case have been constituted in all these offices. The number of complaints received and the steps taken in these complaints are also not available. We find it necessary to give some more directions in this regard.

We find that in order to co-ordinate the steps taken in this regard, there should be a State level officer, i.e., either the Secretary of the Woman and Child Welfare Department or any other suitable officer who is in charge and concerned with the welfare of women and children in each State. The Chief Secretaries of each State shall see that an officer is appointed as a nodal agent to collect the details and to give suitable directions whenever necessary.

As regards factories, shops and commercial establishments are concerned, the directions are not fully complied with. The Labour Commissioner of each State shall take steps in that direction. They shall work as nodal agency as regards shops, factories, shops and commercial establishments are concerned. They shall also collect the details regarding the complaints and also see that the required Committee is established in such institutions.

Counsel appearing for each State shall furnish the details



as to what steps have been taken in pursuance of this direction within a period of eight weeks. Details may be furnished as shown in the format furnished by the petitioners in the paperbooks. A copy of this format shall form part of the order. The above facts are required at the next date of hearing. A copy of this order be sent to the Chief Secretary and Chief Labour Commissioner of each State for taking suitable action.

Post the matters after eight weeks.

(S.K. Yadav)  
 18/11/76  
 ( Satish K. Yadav )  
 Court Master

(V. Verma)  
 18/11/76  
 ( Veera Verma )  
 Court Master

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