

CONTACT DETAILS OF ICC MEMBERS IN RESPECT OF THE DEPTT. OF AGRIL. & F.E.

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**INSTRUCTIONS TO BE FOLLOWED
WHILE DEALING WITH THE MATTER OF
SEXUAL HARASSMENT OF WOMEN AT THE WORKPLACE**

Introduction:

In view of the reports of women employees facing sexual harassment, offensive treatment or threat of detrimental treatment, hostile work environment the following instructions are hereby issued in accordance with "**The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**" (Copy enclosed). This is to ensure that women employees are protected against sexual harassment in the Department of Agriculture & Farmers' Empowerment & all the three Directorates working under the control of this Department & their sub-ordinate offices functioning at District level. This shall apply to all regular, ad-hoc/contractual employees, probationers, and even individuals engaged on a daily wage basis.

In pursuance of the guidelines of the Hon'ble Supreme Court in the case of Vishaka and Others Vrs. State of Rajasthan and other, the Orissa Government Servants' conduct Rules, 1959 have already been amended and a new rule (rule 4-A prohibition of sexual harassment of working women) has been inserted vide Notification No. 33648- Gen., dated the 8th September 2000. Any act of violation of the above provision of **rule 4- A of the Orissa Government Servant's Conduct Rules, 1959** by any Government servant shall be treated as misconduct and appropriate disciplinary action shall be initiated against the delinquent Government Servant in accordance with the provisions contained in **Orissa Civil Services (Classification, Control, and Appeal) Rules, 1962**.

I. Definition of "Sexual harassment" and "Workplace" :

"Sexual harassment" includes any one or more of the following unwelcome acts or behavior (whether directly or by implication) namely:-

- (i) physical contact and advances; or
- (ii) a 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 sexual nature;

The following circumstances, among other circumstances, if it occurs, or is present in relation to or connected with any act or behavior of sexual harassment may amount to sexual harassment: —

- (i) Implied or explicit promise of preferential treatment in her employment; or

- (ii) Implied or explicit threat of detrimental treatment in her employment; or
- (iii) Implied or explicit threat about her present or future employment status; or
- (iv) Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) Humiliating treatment likely to affect her health or safety.

"Workplace" includes -

- (i) any department, Organisation, Undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;
- (ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental Organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;
- (iii) hospitals or nursing homes;
- (iv) any sports institute, stadium, sports complex or competition or games-venue, whether residential or not used for training, sports or other activities relating thereto;
- (v) any place visited by the employee arising out of or during the course of employment including transportation by the employer for undertaking such journey;
- (vi) a dwelling place or house

2. Basic responsibilities of the Head of Office:

- i. It shall be the duty of the Head of the Office to prevent or deter the commission of acts of Sexual harassment and to provide the procedure for the resolution, settlement, or prosecution of acts of sexual harassment by taking all steps required. The penal provisions of Sexual harassment and **the order constituting the Internal Complaints Committee may be displayed at a conspicuous place in the Office.**
- ii. 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 workplaces and that enactment of such legislation will take considerable time. It is necessary and expedient for employers in workplaces as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women.

3. Aggrieved Woman:

According to the Act (Section 2a) **aggrieved woman** means

- i. In relation to a workplace, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent
- ii. In relation to a dwelling place or house, a woman of any age who is employed in such a dwelling or house.

4. Internal Complaint Committee (ICC):

Every employer of a workplace shall constitute by an order in writing, a Committee to be known as the **Internal Complaint Committee (ICC)** as per Section 4(1) of the Act.

The Internal Complaint Committee should be located at all workplaces. Where the offices or administrative units of the workplace are located at different places or at divisional or sub-divisional level, the Internal Committee shall be located at all administrative units or offices. (Section 4(1) of the Act).

4.1 Constitution of Internal Complaint Committee (ICC)

The Internal Committees shall constitute of the following members:-

- i. **Presiding Officer (One):** A woman employed at a senior level at the workplace from amongst employees.
- ii. **Members (not less than two):** from amongst employees preferably committed to the cause of women or who have experience in social work or have a legal knowledge
- iii. **Member (One):** from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment
- iv. At least one-half of the total members shall be women.

5. Local Complaints Committee (LCC)

The District Officer shall constitute a committee in a District known as the **Local Complaints Committee (LCC)** in a district (Section 6(1) of Act).

5.1 Constitution of Local Complaints Committee (LCC)

The Local Complaints Committee shall be constituted of the following members (Section 7(1) of the Act):-

- i. **Chairperson (One):** An eminent woman in the field of social work and committed to the cause of women.
- ii. **Member (One) :** To be nominated amongst the women working in the block, taluka or tehsil or ward or municipality in the district
- iii. **Members (Two) :** To be nominated from amongst non-governmental organizations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment

Criteria:

- At least one of the two members shall be women.
 - At least one of the two should have a background in law or legal knowledge
 - At least one of the two shall be a woman belonging to the SC or the ST or OBC or minority community
- iv. **Member (ex officio):** The concerned officer dealing with the social welfare or women and child development in the district

6. Procedure for Submission of Complain:

- Any aggrieved woman may make in writing a complaint of sexual harassment at the workplace to the Internal Committee/ Local Committee within 3 months from the date of the incident or the date of the last incident.
- In case the women cannot write, the Presiding officer/ any member of the Internal Committee/ Chairperson/ any member of the Local Committee shall render all reasonable assistance.

7. Action by ICC/LCC after receipt of complain:

- i. Upon receipt of the complaint, the ICC or LCC must proceed to make an inquiry in accordance with the service rules applicable to the respondent or where no such service rules exist, in accordance with rules framed under the Act (Section 11(1) of the Act).
- ii. The ICC or the LCC may forward the complaint to the Police for registering the case under Section 509 of the IPC and any other relevant provisions of the IPC within 7 days.
- iii. Where both the parties are employees, the parties during the course of the inquiry be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

8. Action to be taken by the Employer/ District Officer:

The employer or the District Officer have to act upon the recommendations within 60 days. The ICC & LCC can extend the time limit not exceeding another 3 months if it is satisfied that the circumstances were such which prevented the woman from filing the complaint within the said period.

9. Inquiry & Inferences by ICC/ LCC:

- i. Before initiating an inquiry, the ICC or LCC may at the request of the aggrieved woman, take steps to arrive at a settlement between the parties. However, no monetary settlement can be made as the basis of such conciliation (Sec. 10(1) of the Act)

Where such a settlement has been arrived at, the ICC or the LCC, record the settlement and forward the same to the employer or the District officer to take action

as specified in the recommendation (Section 10(2) of the Act). The ICC or the LCC shall provide copies of the settlement to the aggrieved woman and the respondent.

- ii. Where the ICC or LCC, as the case may be arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed.

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complaint under this section;

Provided further that the malicious intent on the part of the complainant shall be established after an inquiry in accordance with the procedure prescribed before any action is recommended.

- iii. Where the ICC or LCC, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.
- iv. On completion of inquiry the ICC or LCC will provide a report of the findings to the employer or the District Officer within 10 days from the date of completion of the inquiry and such report will be made available to the concerned parties.

10. During the pendency of the inquiry of the ICC or LCC, on a written request by the aggrieved woman, the ICC or LCC can recommend the following to the employer (Section 12(1) of the Act):

- i. Transfer the aggrieved woman or the respondent to any other workplace or
- ii. Grant leave to the aggrieved woman up to a period of 3 months or
- iii. Grant such other relief to the aggrieved woman as may be prescribed
- iv. The leave granted to the aggrieved woman under Section 12(1) is in addition to the leave that she is otherwise entitled.

11. Appeal of the aggrieved person to the Court or Tribunal:

Person aggrieved due to the following conditions may prefer an appeal to the Court or Tribunal or in such manner (Section 18(1) of the Act):

- i. If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has not been proved, it will be recommended to the employer and the District Officer that no action is required to be taken.
- ii. If the ICC or the LCC arrives at the conclusion that the allegation against the respondent has been proven, it will recommend to the employer and the District Officer, the following :

To take action for sexual harassment as a misconduct in accordance with the provisions of the service rule applicable to the respondent or where no such service rules have been made, in such manner prescribed and/or to deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs.

- iii. If the ICC or LCC arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint.

If the ICC or the LCC arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer to take action in accordance with the provisions of the service rules or in such manner as may be prescribed.

- iv. If any person contravenes the provisions of Section 16 of the Act, he shall be liable to penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be applicable.
- v. Non-implementation of recommendations

Appeal has to be done within a period of 90 days.

12. Where the Head of the Office fails to—

- (a) Constitute an Internal Committee under sub-section (1) of section 4;
- (b) Take action under sections 13, 14, and 22 of "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013"; and
- (c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made there under

he /she shall be punishable with a fine which may extend to fifty thousand rupees.

13. Any act of violation of the above provisions of the Rule 4-A of the Orissa Government Servants Conduct Rules 1959 by any government servants shall be treated as misconduct and appropriate disciplinary action should be initiated against the delinquent government servants in accordance with the provisions contained in Orissa Civil Services (CCA) Rules 1962.

14. Punishment/ Fine on the Employers:

Punishment with a fine up to Rs 50,000 (fifty thousand) can be done on the employer if there is no Internal Complaints Committee as per subsection (1) of

Section 4 or if the employer has not taken action under Sections 13, 14, and 22 of the act or if the employer has contravened or attempts to contravene or abets contravention of other provisions of this Act or any rules made under the Act.

Twice the punishment (which might have been imposed on a first conviction) is liable if any employer after having been previously convicted of an offence punishable under the Act commits and is convicted of the same offence, provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment.

There can be cancellation of license or withdrawal or no renewal or approval or cancellation of registration by the Government or the local authority if any employer after having been previously convicted of an offence punishable under the Act commits and is convicted of the same offence.

15. The Court will take cognizance of the offence on a complaint made by the aggrieved woman or any person authorized by the ICC or the LCC (Section 27(1)).

16. Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the above instructions.

The above instructions shall not be in derogation of the provisions of any other law.