



PARLIAMENT OF INDIA RAJYA SABHA

239

DEPARTMENT-RELATED PARLIAMENTARY STANDING
COMMITTEE ON HUMAN RESOURCE DEVELOPMENT

TWO HUNDRED THIRTY-NINTH REPORT

ON

THE PROTECTION OF WOMEN AGAINST SEXUAL
HARASSMENT AT WORKPLACE BILL, 2010

(PRESENTED TO THE RAJYA SABHA ON 8TH DECEMBER, 2011)
(LAID ON THE TABLE OF LOK SABHA ON 8TH DECEMBER, 2011)

RAJYA SABHA SECRETARIAT
NEW DELHI

DECEMBER, 2011/ AGRAHAYANA, 1933 (SAKA)

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**COMPOSITION OF THE COMMITTEE ON HRD
(2010-11)**

1. Shri Oscar Fernandes — *Chairman*

RAJYA SABHA

2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi
9. Dr. Janardhan Waghmare
10. Shri N. Balaganga

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11. Shri Kirti Azad
12. Shri P.K. Biju
13. Shri Jeetendra Singh Bundela
14. Shri Suresh Chanabasappa Angadi
15. Shrimati J. Helen Davidson
16. Shri P.C. Gaddigoudar
17. Shri Rahul Gandhi
18. Shri Deepender Singh Hooda
19. Shri Prataprao Ganpatrao Jadhav
20. Shri Suresh Kalmadi
21. Shri P. Kumar
22. Shri Prasanta Kumar Majumdar
23. Capt. Jai Narain Prasad Nishad
24. Shri Sheesh Ram Ola
25. Shri Tapas Paul
26. Shri Brijbhushan Sharan Singh
27. Shri Ashok Tanwar
28. Shri Joseph Toppo
29. Dr. Vinay Kumar Pandey 'Vinnu'
30. Shri P. Viswanathan
31. Shri Madhu Goud Yaskhi

Constituted w.e.f 31st August, 2010

**COMPOSITION OF THE COMMITTEE ON HRD
(2011-12)**

1. Shri Oscar Fernandes — *Chairman*

RAJYA SABHA

2. Shrimati Mohsina Kidwai
3. Dr. K. Keshava Rao
4. Shri Prakash Javadekar
5. Shri M. Rama Jois
6. Shri Pramod Kureel
7. Shri N.K. Singh
8. Shrimati Kanimozhi
9. Dr. Janardhan Waghmare
10. Shri N. Balaganga

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11. Shri E.T. Mohammed Basheer
12. Shri Kuvarjibhai Mohanbhai Bavalia
13. Shri Mirza Mehboob Beg
14. Shri Sameer Bhujbal
15. Shri P.K. Biju
16. Shri Jeetendra Singh Bundela
17. Shri Suresh Channabasappa Angadi
18. Shri P.C. Gaddigoudar
19. Shri Rahul Gandhi
20. Shri Kapil Muni Karwariya
21. Capt. Jai Narayan Prasad Nishad
22. Shri Sheesh Ram Ola
23. Km. Saroj Pandey
24. Shri Prasanna Kumar Patasani
25. Shri Balakrishna Khanderao Shukla
26. Shri Ashok Tanwar
27. Shri Joseph Toppo
28. Dr. Vinay Kumar Pandey 'Vinnu'
29. Shri P. Viswanathan
30. Shri Madhu Goud Yaskhi
31. *Shri Rathod Ramesh

Constituted w.e.f. 31st August, 2011

**Nominated w.e.f. 25.11.2011*

SECRETARIAT

Smt. Vandana Garg, Additional Secretary
Shri N.S. Walia, Director
Shri Arun Sharma, Joint Director
Shri Sanjay Singh, Assistant Director
Smt. Himanshi Arya, Assistant Director
Smt. Harshita Shankar, Committee Officer

PREFACE

I, the Chairman of the Department-related Parliamentary Standing Committee on Human Resource Development, having been authorized by the Committee, present this Two Hundred and Thirty-ninth Report of the Committee on the Protection of Women against Sexual Harassment at Workplace Bill, 2010*.

2. The Protection of Women against Sexual Harassment at Workplace Bill, 2010 was introduced in the Lok Sabha on 7 December, 2010. In pursuance of Rule 270 relating to Department-related Parliamentary Standing Committees, the Chairman, Rajya Sabha in consultation with Speaker, Lok Sabha referred** the Bill to the Committee on 30 December, 2010 for examination and report.

3. The Committee started its deliberations by issuing a Press Release on 10 January, 2011 for inviting views and suggestions of the general public as well as the stakeholders on the proposed Bill. The Committee received a tremendous response to the Press Release. Views of the Stakeholders were circulated amongst the members of the Committee and were taken note of while formulating the observations and recommendations of the Committee. The Committee heard the views of the Secretary, Ministry of Women and Child Development in its meeting held on 20 April, 2011 and 2 November, 2011. The Committee also held extensive deliberations with many stakeholders apart from consulting the Ministry of Women and Child Development. The Committee heard the views of the National Commission for Women, NGOs like Saheli, Sewa, PRIA, Lawyers Collective, Human Rights Law Network, Centre of Indian Trade Unions, National Coalition for Men, All India Men's Welfare Association, All India Women Conference, National Domestic Workers Movement, INSAAF, YWCA and other organizations like Indian Banks Association, NASSCOM, CII, SCOPE and Office of Chief Labour Commissioner.

4. The Committee considered the Bill in its 8 sittings held on 20 April, 5 May, 18 August, 29 September, 13 October, 2 November, 11 November, and 30 November, 2011.

5. The Committee, while drafting the Report, relied on the following:-

- (i) Background Note on the Bill and Note on the clauses of the Bill received from the Ministry of Women and Child Development
- (ii) Presentation made and clarifications given by the Secretary, Ministry of Women and Child Development
- (iii) Feedback received from the Ministry on the questionnaires and the memoranda of the stakeholders along with the issues raised by the Members during the course of the oral evidence of the Secretary; and
- (iv) Replies to the questionnaire and feedback received from the stakeholders heard by the Committee.

6. The Committee considered the Draft Report on the Bill and adopted the same in its meeting held on 30 November, 2011.

7. For facility of reference, observations and recommendations of the Committee have been printed in bold letters at the end of the Report.

NEW DELHI;
November 30, 2011
Agrahayana 9, 1933 (Saka)

OSCAR FERNANDES
Chairman,
Department-related Parliamentary
Standing Committee on Human Resource Development

(iii)

* Published in Gazette of India Extraordinary Part II Section 2 dated the 7th December, 2010

** Rajya Sabha Parliamentary Bulletin Part II No.48026 dated the 30th December, 2010

REPORT

I. INTRODUCTION

1.1 The Protection of Women against Sexual Harassment at Workplace Bill, 2010 was referred to the Department-related Parliamentary Standing Committee on Human Resource Development by the Chairman, Rajya Sabha, in consultation with the Speaker, Lok Sabha on 30 December, 2010 for examination and report.

1.2 The proposed Bill seeks to provide every woman, irrespective of her age or employment status, a safe and secure environment, free from sexual harassment. It is envisaged as a comprehensive legislation which covers every workplace, whether in the organized or unorganized sector and lays down a complaints and redressal mechanism.

1.3 The Statement of Objects and Reasons to the Bill reads as follows:-

"Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.

The Constitution of India embodies the concept of equality under articles 14 and 15 and prohibits discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article 19(1)(g) gives the fundamental right to all citizens to practise any profession, or to carry on any occupation, trade or business. This right pre-supposes the availability of an enabling environment for women, which is equitable, safe and secure in every aspect. Article 21, which relates to the right to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that they must be treated with due respect, decency and dignity at the workplace.

Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its General Recommendation No. 19 (1992), the United Nations Committee on CEDAW further clarified that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. India's commitment to protection and promotion of women's constitutional rights as well as respect for its obligations under various international treaties is unequivocal.

With more and more women joining the workforce, both in organised and unorganised sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. The proposed legislation contains provisions to protect every woman from any act of sexual harassment irrespective of whether such woman is employed or not.

The Supreme Court of India in the case of Vishaka & Ors. v. State of Rajasthan

& Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

It is, thus, proposed to enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status (other than domestic worker working at home), free from all forms of sexual harassment by fixing the responsibility on the employer as well as the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector of every District in the State as a District Officer and laying down a statutory redressal mechanism".

1.4 The Secretary, Ministry of Women and Child Development in his deposition before the Committee on 20 April, 2011 gave an overview of the background highlighting the circumstances and commitments necessitating the proposed legislation. He made a mention about our country's obligations under the Convention on All Forms of Elimination of Discrimination against Women as well as the provisions of the Constitution for preventing discrimination on the basis of gender and for providing a safe and secure working environment at the workplace for women. He also drew the attention of the Committee to the guidelines and norms laid down in the case of Vishaka & Ors. vs State of Rajasthan & Ors. by the Supreme Court in 1997. Taking into consideration the hazards which the working women could be exposed and the depravity to which sexual harassment could degenerate, the Supreme Court was compelled to lay down guidelines and norms for prevention of sexual harassment at workplace as there was no legislative provision at that time. Since then, these guidelines, have been the law in the country binding on all organizations, be they in public or private sector. Elaborating on the significant benefits for working women arising out of the Supreme Court guidelines, like 'sexual harassment' getting defined for the first time, duties and responsibilities of employer as well as grievance redressal mechanism of Internal Complaints Committee, the Secretary pointed out that Supreme Court directions were binding and enforceable in law until suitable legislation was enacted. It was, however, admitted that although both the Central and State Governments as well as public sector were following these guidelines, no authentic information about their implementation status in the private sector was available. The Secretary submitted that it was against such a background that this legislation was being brought forward with Supreme Court directives being the guiding spirit. It was emphasized that such guidelines, no matter how detailed they were, could not be a

substitute for a legislation approved and passed by Parliament. A law passed by the supreme law-making body of the country goes through extensive consultations with all the stakeholders, thereby not only having their endorsement but also representing the shared vision of all concerned.

1.5 The Secretary then dwelt upon the prolonged exercise undertaken for formulating the proposed legislation. Pursuant to the Supreme Court directions given in 1997, the National Commission for Women undertook the exercise of preparing a draft Bill, which went through an extensive process of consultations with various stakeholders including State Governments, lawyers and civil society organizations. NCW prepared a series of draft Bills but they could submit the agreed draft Bill to the Ministry only in January, 2010. It was only after further inter-Ministerial discussions held at the Ministry level, that the proposed Bill was presented to the Cabinet for its consideration in October, 2010 which was approved in November, 2010. Finally, the proposed legislation was introduced in the Parliament in December, 2010.

1.6 The Committee was given to understand that the proposed legislation before it was primarily based on the draft prepared by the National Commission for Women with suitable modifications as per the inter-Ministerial consultations. It was clarified that with fairly exhaustive definition of terms like 'workplace', 'employee' and 'employer', the Bill had gone beyond what was envisaged in the Supreme Court guidelines. Internal Complaints Committee had been proposed as institutional mechanism for all organizations employing more than ten persons which was not mandated by the Apex Court. For other workplaces, Local Complaints Committee would be there at the district level and even at the sub-district level, if required. Both these committees had been given the powers of civil courts for enforcing attendances and examination. It was also mentioned that for securing better compliance, power of issuing warrants may also be required to be given to these Committees. Also, employer would be duty-bound to implement the recommendations of these committees and liable to be penalized in case of non-compliance. Although not incorporated in the Bill, the inquiry report would be deemed as inquiry report under the Service Rules of the organization, thus removing the need for having any further inquiry, and imposing the penalty as recommended. The Committee was informed that these provisions would be included in the Rules to be framed under the proposed legislation.

1.7 The Secretary also informed that the draft Bill had the support of almost all concerned including majority of the State Governments. The Ministry had received comments from twenty State Governments on the draft Bill. However, there were certain aspects of the Bill which had been commented upon at different fora like the Bill not being gender neutral, exclusion of domestic workers in the Bill, penalty for false or malicious complaint, no visible role of National/State Commissions for Women, and reporting of cases of sexual harassment and its monitoring and implementation etc.

1.8 The Committee observes that all workplaces including Central and State Government institutions are required to follow Supreme Court guidelines on sexual harassment laid down in the Vishaka case in 1997. It was a path-breaking directive given by the Apex Court of the country meant to create an enabling and safe environment at the workplace for the rapidly increasing women workforce. A specific query about setting up of an appropriate complaint redressal mechanism of internal committee as mandated under the guidelines has, however, revealed a very discouraging scenario. In the absence of any laid down central mechanism, no centralized database on the number of complaints filed, their disposal and punishment given is available with the Ministry. The only feedback indicated to the Committee is that in the Government sector, be it in the Central Ministries/Departments, Public Sector establishments or States/UTs, Supreme Court guidelines are being complied with. The Committee notes that out of 68 Central Ministries/Departments from whom information was sought about the number of cases reported during the period 2007-10, that too in response to a Parliament Question, response was received from only 49 Ministries/Departments, out of which 33 Ministries/Departments reporting no case of sexual harassment. So far as setting up of Complaints Committees in States is concerned, out of 20 States/UTs providing information, only 2 States/UTs were reported to have received complaints of sexual harassment. What is more disturbing is the admission of complete helplessness in the context of private sector expressed by the Ministry. Its simple statement that with no prescribed monitoring and data collection mechanism, implementation of Supreme Court guidelines in the private sector could not be ascertained and in the absence of any penal provisions, compliance by the employer in the private sector may have been lax, clearly

establishes the fact that so far Supreme Court guidelines have virtually remained on paper in majority of workplaces.

1.9 It has taken more than a decade to formulate the legislation and during this period, Supreme Court guidelines, although envisaged to provide a safe and secure environment to women at workplace women have failed to reach all the victims and provide relief. The Committee, therefore, while welcoming the proposed legislation, believes that the proposed legislation needs to be implemented with immediate effect so that the Vishaka guidelines can be translated into a strong legislation for protection, prevention and redressal of grievances of sexual harassment of women at workplace. The Committee also appreciates the initiative taken by the Ministry for drafting the proposed Bill as it is high time that such a law sees the light of the day. The Committee believes that women workforce should have the right to work with dignity in a safe and secure environment and prevention, protection and redressal of cases of sexual harassment is a must.

II. CONSULTATION PROCESS

2.1 The Committee was informed that the National Commission for Women undertook the exercise of preparing a draft Bill on Protection of Women against Sexual Harassment which went through an extensive process of consultations with various stakeholders including State Governments, lawyers and civil society organizations. A draft Bill on Sexual Harassment at Workplace was sent by the Commission to the Ministry on 2 August, 2004. Subsequently, a discussion with Labour Commissioners of some representative States like Maharashtra, Rajasthan, West Bengal, Madhya Pradesh and Tamil Nadu and select NGOs working on the issue of sexual harassment was held on 20 August, 2004. The discussions centered around two broad aspects of the draft Bill of 2004, namely, its coverage and the scheme of the law with regard to accessibility to justice. Based on the deliberations, it was highlighted that :- the coverage of the Bill should be extended to include students and research scholars; the proposed provision for amicable settlement of the complaint should be deleted in order to ensure that the complainant is not pressurized to arrive at a compromise; provision enabling the Government to appoint appropriate officers as District Special Officer where officers lower than Assistant Labour Commissioners were posted in smaller districts; no penal action against the complainant/witness/supporter if the complaint is dismissed etc.

2.2 This was followed by a National Consultation on the draft 'Prohibition of Sexual Harassment at Workplace Bill' organized by the National Commission for Women (NCW) on 6 - 7 October, 2005. The consultation was attended by representatives of various Ministries/Departments, women's groups, lawyers, activists and civil society organizations working on women's issues. The deliberations of the Consultation took place in five Working Groups, which examined the provisions of the proposed law and gave their recommendations. Specific issues which were extensively deliberated upon by the Working Groups broadly focused on coverage of the Bill, complaints and redressal mechanism, conciliation and false and malicious complaints.

2.3 The draft 'Protection of Women against Sexual Harassment at Workplace Bill, 2010' based on extensive discussions involving various stakeholders then was placed before women Members of Parliament in a meeting specially convened for the purpose on 7 August, 2009. Views of the Members of Parliament were invited specifically on the inclusion of the provision/clause prescribing penalties for false or malicious complaint. After detailed deliberations on this issue, there was a consensus that a provision to punish false complaints filed by women should be a part of the proposed law.

2.4 Final draft legislation titled the Prevention of Sexual Harassment against Women at the Workplace Bill, 2010 was brought before the Inter-Ministerial Group on 7 January, 2010 which included representatives from Ministries of Health and Family Welfare and Women and Child Development, Departments of Legal Affairs, Personnel & Training and Legislative Department and the National Commission for Women. Detailed discussions took place on various provisions of the draft Bill resulting in consensus on the definition of "aggrieved woman" and "workplace", consequences of failure to constitute Internal Complaints Committee in the context of private sector, necessity for retention of the provision relating to false or malicious complaints, details relating to penalties and enforcement of the provisions in the Act itself.

2.5 The Committee observes that very extensive consultation exercise spread over almost 6-7 years held at different fora with a very large number of stakeholders has given final shape to the draft legislation under its consideration. Both the Ministry of Women and Child Development and the National Commission for Women have played a major role in this process, complimenting

the initiatives and efforts of each other. The Committee, however, finds that there are a few areas where suggestions made by the Commission although very strongly put forth have not been considered to be acceptable by the Ministry due to one reason or the other. The Committee has made an attempt to analyse such provisions at the relevant place in the Report and incorporated the same, if considered justifiable.

2.6 The Committee, is however, constrained to observe that these extensive consultations with NGOs, women groups, various Departments/Ministries etc and the National Commission for Women indicate certain very visible gaps. Firstly, views of stakeholders representing men's cause were not called for by the Ministry. The Committee has been given to understand that the Ministry's Bill is based on the NCW's drafts of 2006 and 2010. However, it is rather surprising that at the finalization stage of the present draft, NCW was not included in the consultation process. Since this legislation has been brought forward with the objective of protecting women from sexual harassment at workplace and providing not just a complaints redressal mechanism but also cast a duty on the employer to provide a safe and secure environment to its women employees, employers, both from private and Government Sector representing varied women work force right from a Government establishment to a shop/small worksite also need to be considered a major stakeholder. The Committee strongly believes that views of all affected parties or stakeholders should be taken into consideration in order to have wide consultations and a balanced view on the subject under consideration.

2.7 Against this backdrop, the Committee made a sincere attempt to give opportunity to all concerned to come forward with their views on this very crucial piece of social legislation. The Committee issued a Press Release on 10 January, 2011 for inviting views and suggestions of the general public as well as the stakeholders on the proposed Bill. The Committee received a tremendous response to the Press Release. In all, 366 memoranda were received. The Committee started its deliberations with a preliminary discussion on the Bill with the Secretary, Ministry of Women and Child Development on 20 April, 2010. The Committee, then, heard the views of the National Commission for Women in its meeting held on 18 August, 2011. The Committee held meetings with several stakeholders like Saheli, National Domestic Workers Movement,

Lawyers Collective, Human Rights Law Network, Centre of Indian Trade Union, All India Women's Conference, SEWA, YWCA, PRIA, National Coalition for Men, Indian Social Awareness and Activism Forum, All India Men's Welfare Association, SCOPE, Office of Chief Labour Commissioner, Indian Banks Association, NASSCOM and CII. The Committee has also been greatly benefitted by the written memoranda received from individuals and organizations like PRS Legislative Research, Rakshk Foundation, Domestic Workers Forum, Gender Human Rights Society, Mother and Sister Initiative, Family India Life Line, Industrial Management Academy etc.

2.8 The Committee had a detailed interaction with Member-Secretary of NCW on the proposed legislation on 18 August, 2011. The Member-Secretary informed the Committee that NCW had been working on the subject of sexual harassment for some time. The first draft Bill on Sexual Harassment at Workplace was sent to the Ministry on 2 August, 2004 by the Commission. The second draft based on consultations with the Government Sector, NGOs and representatives from the unorganized sector was sent to the Ministry on 6 February, 2006. Finally, the draft Bill, the Prohibition of Sexual Harassment of Women at Workplace Bill, 2010 was forwarded to the Ministry on 12 February, 2010. The Member-Secretary, however, pointed out that NCW was not involved or consulted by the Ministry before submitting the final draft Bill for the Cabinet's approval.

2.9 Member-Secretary, NCW pointed out that there were changes in the final draft introduced in the Parliament when compared with its draft bills, 2006 and 2010 which needed to be looked into:-

- The aspect of prohibition and prevention has been diluted as indicated in the title of 2006 Bill, i.e. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2006 and the Protection of Women against Sexual Harassment at Workplace bill, 2010.
- A domestic worker was included under the definition of employee. Similarly, the definition of workplace included the house or dwelling place. In the proposed Bill, domestic workers have been specifically excluded from the Bill.
- Another issue raised by the Member-Secretary, NCW was the budgetary provision. Their experience with the Domestic Violence Act had been that budget was not provided by the State Governments for putting in place the infrastructure for the implementation of the Act. It was suggested that budgetary provisions should be built into the Act itself.
- The role envisaged for the NCW and State Women Commission in hearing the complaints was included in the earlier draft Bills of NCW. The same was

missing in the proposed Bill. Giving the National and State Women Commission a responsibility of not just monitoring but ensuring compliance of the provisions of the Act under the Act would make it a firm mandate for these bodies.

- Another aspect highlighted by NCW was the provision for conciliation. As expressed by many women groups, this provision could lead to pressurizing the women to reconcile the matter, subjecting her to further harassment and should not be there. Deletion of the said provision was suggested and the complaint once registered be simply acted upon.
- The other problem area pointed out was related to compensation and the manner of its realization. The proposed Bill did not provide for penalty, if the direction of the Complaints Committee was not complied with or if provisions were not made in the Service and Conduct Rules for punishment of an employee for sexual harassment. The aggrieved woman would not have any mechanism for redressal of her grievances in such a case.

2.10 The Committee appreciates the initiative and efforts of NCW in drafting the proposed legislation. The Committee has taken note of the observations and suggestions of the Commission and have incorporated some suggestions at appropriate places in the proposed Bill.

2.11 Committee's interaction with bodies/organizations representing employers representing varied workforce gave an insight to the Committee to understand the proposed legislation from their viewpoint. Quite a few inputs highlighting the practicality and viability of provisions incorporated in the Bill were put forth before the Committee. It would not be wrong to conclude that in the absence of such a thought-provoking interaction with a very crucial segment of stakeholders, examination of the Bill by the Committee would have remained incomplete.

2.12 The Committee had a final meeting with the Secretary, Ministry of Women and Child Development for clarifications with respect to some very pertinent issues and concerns raised by many stakeholders before it. The Committee took note of the views of all stakeholders with respect to problem areas in the Bill, apprehensions, suggestions etc. Detailed questionnaires were forwarded to all these stakeholders for their comments, apart from forwarding two questionnaires to the Ministry of Women and Child Development as well as written memoranda for their comments. Feedback received from the Ministry and the stakeholders has proved to be of immense help to the Committee in formulating its views on the various provisions of the Bill.

III. IMPORTANT ISSUES/CONCERNS RAISED

3.1 The Committee has observed that there were a number of issues/concerns raised by many stakeholders not only in their written memoranda submitted by them but also highlighted during their interaction with the Committee. **The Committee is of the view that these issues are very pertinent and have adequate relevance so far as efficacy of the proposed legislation is concerned and accordingly need to be reflected either in the proposed legislation itself or in the rules/guidelines to be framed thereunder.**

Issue of Gender-Neutrality

3.2 In order to have a balanced view on the proposed Bill, the Committee heard the views of various men's organizations and groups who presented before the Committee their strong reservations against the proposed legislation. They alleged that the proposed Bill not being gender-neutral was biased and only addressed the plight of aggrieved women force, ignoring the sexually harassed men force which is an increasing number as of now. They expressed dismay for not being consulted by the Ministry on the proposed Bill. Following were the major concerns expressed on the gender-specific nature of the Bill:-

- It is incorrect to presume that only women can be victims of sexual harassment. Percentage of women workforce is gradually increasing and not all are at subordinate levels.
- Gender should not get any more precedence over human rights.
- Employers are under a duty to provide a safe working environment to all employees.
- The Ministry has no data to claim that sexual harassment is faced only by women and that harassment of men cannot be put on the same footing character-wise or incidence-wise.
- Sexual harassment laws in most countries like Denmark, UK, Italy, Ireland, Finland, France, Germany, Portugal, Spain, Netherlands etc. are gender-neutral.

3.3 On this issue being taken up with the Ministry, it was admitted that data on sexual harassment at the workplace in India was not available. While there may be incidents of men facing sexual harassment at workplace, nobody can deny the fact that given the traditional power equation in our society, it is women who face the disproportionately larger brunt of this scourge. This could be easily corroborated by using molestation and eve-teasing as proxy indicators with NCRB data showing an average more than 50,000 incidents of molestation and eve-teasing annually over the

last four years. Attention was also drawn to the reaffirmation made by the Supreme Court in Vishaka Case that sexual harassment at workplace was a form of discrimination against women which violated the Constitutional Right to Equality. Not only this, gender-specific legislation on sexual harassment at workplace needs to be considered as an affirmative action under Article 15 of the Constitution. Committee was also informed that two pre-dominant approaches had been adopted by countries across the world. One was the formulation of separate legislations prohibiting sexual harassment at the workplace which may be either gender-specific (Pakistan) or gender-neutral (Phillippines) while the other was inclusion of provisions as part of existing anti-sex determination or equal opportunities frameworks (Australia).

3.4 The Committee takes note of strong reservations and angst regarding this gender-specific Bill allegedly tilted towards women. At the same time, the Committee would like to point out that it is a sad reality that women have been at a disadvantaged position and have been discriminated, abused and harassed. With the increase in the number of working women both in the organized and unorganized sector, the situation at ground level continues to be disturbing. What is more worrisome is that Supreme Court guidelines given way back in 1997 continue to remain ineffective as borne out by the feedback given by the Ministry. In such a scenario, it is imperative that a legislation adequately providing for specific protection of women from sexual harassment at workplace is enacted. The Committee would also like to point out that a balanced and well-structured mechanism giving equal opportunity to both the aggrieved woman and respondent with adequate safeguards and checks is unlikely to give any biased protection to women workforce.

3.5 The Committee also believes that with regard to cases of sexual harassment of men and women at workplace, survey/studies need to be conducted by the Ministry at regular interval. This will not only allay the apprehensions of the proposed legislation being biased against men but would also facilitate any remedial steps, if so required. The Committee, keeping in mind the interests of all concerned, feels that the viability of having a provision of enabling nature where circumstances of sexual harassment cases of men at workplace can be tackled may be explored. Alternatively, an employer/establishment can be mandated to report

cases/instances of male sexual harassment also in their Annual Report. This may help to understand the real picture of sexual harassment of both men and women.

Issue of inclusion of domestic workers within the ambit of the Bill

3.6 The proposed Bill categorically excludes domestic workers from its purview. It was clarified by the Ministry that domestic workers had consciously been kept out of the ambit of the proposed law as there would be practical difficulties in applying the law within the household, especially as no code of conduct could be laid down within the household. Moreover, there was no policy for domestic workers yet which laid down their terms and conditions of service and security of work. Domestic work being a poorly regulated sector, there was a real concern that domestic workers taking recourse to this law may increase their vulnerability.

3.7 On a specific query about any demand received by the Ministry for the inclusion of domestic workers in the Bill, the Committee was informed that Domestic Workers Associations and Trusts from across the country had approached the Ministry through a postcard campaign with more than 5000 postcards being received so far. The campaign had advocated that as 'Domestic work is work and domestic workers are workers', they should be included in the Bill. A signature campaign in the form of representations signed by many individuals highlighting the vulnerability of domestic workers had also been received. A specific representation had also been received from the Bihar Domestic Workers' Welfare Trust requesting the inclusion of domestic workers within the ambit of the Bill. Also, the North-east Regional Domestic Workers' Movement reiterated the need for such inclusion in view of the fact that the crux of the Bill was to provide constitutional safeguards with statutory provisions to all working women.

3.8 Committee was informed that this issue was also raised by the Department of Industrial Promotion & Policy which had pointed out that practical difficulty in implementation should not be used as a plea to deprive domestic workers of their legal entitlement. The Department of School Education & Literacy had pointed out that inclusion of residential domestic workers in the proposed Bill would help fill the gap in the existing legal framework. It was also suggested that there was a need for putting in place a friendly and accessible mechanism of recourse with the help of RWAs and civil society organizations. The State Governments of Punjab and Gujarat had

communicated their support for inclusion of domestic workers within the Bill. Opinion of the Punjab Government was that exclusion of domestic workers from the ambit of the proposed Bill would make it discriminatory in nature especially when the provisions were being extended to the unorganized sector and local committees were to be constituted. The State Government of Gujarat had suggested that the definition of “employee” should include domestic workers, especially because the PWDVA, 2005 did not entitle them to lodge complaints.

3.9 The National Advisory Council (NAC) had also emphasized on the need to include domestic workers within the purview of the Bill. This issue was also raised in a Consultation organized jointly by the UNDP and UN Solutions Exchange, on 14 February, 2011. During the discussion, the need to include “domestic workers” within the ambit of the Bill was articulated. While responding to the Ministry’s concern of how to gather evidence in view of the nature of an allegation of sexual harassment within the privacy of the home, it was pointed out that this brought up the much larger issue about the role of the State in the context of the public-private divide.

3.10 Apart from organizations representing domestic workers, inclusion of domestic workers under the Bill was strongly advocated by other stakeholders also. Following factors were highlighted in support of this view-point:-

- According to the Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector by the National Commission for Enterprises in the unorganized sector (August, 2007), there are 4 million women domestic workers in India. Gross under estimation of the work done by domestic workers and leaving out a large chunk of women working in the unorganized sector would amount to gross injustice.
- There are numerous statistics to show that domestic workers are most vulnerable to sexual harassment. Their exclusion would mean denial of their protection from abuse.
- Expecting such a vulnerable group to have recourse to IPC in a sexual harassment case cannot be considered viable.
- The Minimum Wages Act 1948 has applicability on domestic workers. Further, clause 2 (n) of the Unorganized Workers' Social Security Act, 2008 defines one of the section of unorganized workers like "wage worker" which means "a person employed for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be".

- The argument that it may be difficult to enforce the provisions of the Bill within the privacy of homes is unfounded. The enactment of the Protection of Women from Domestic Violence Act, 2005 has broken this myth allowing legal scrutiny and extending protection to the confines of the home, the private domain.
- Need for recognizing house as a site of labour. Government of India has voted in favour of the ILO Convention 189 for Decent Work for Domestic Workers and it has endorsed house as a workplace.

3.11 The Committee observes that support for inclusion of domestic workers came from almost all the stakeholders appearing before the Committee. Domestic workers comprise about 30 per cent of female workforce in the unorganized sector. This section is most vulnerable to sexual harassment. Attention of the Committee has also been drawn to the fact that the Government of India had voted in favour of ILO Convention 189 for Decent Work for Domestic Workers, thereby endorsing home as a workplace. The Committee is not convinced by the Ministry's contention about practical difficulties envisaged in the absence of any code of conduct laid down within the household.

3.12 NCW submitted before the Committee that difficulty in enforcing the provisions of the Bill within the privacy of home was unfounded as the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA) had broken this myth allowing legal scrutiny and extending protection to the confines of the home i.e. the private domain. Even though domestic workers were employed in homes, they were not covered by PWDVA as the said legislation was restricted by the definition of domestic relationship in its application. Presently, home is not recognized as a site of labour and thus a significant segment of vulnerable women remained unprotected both under the PWDVA and the proposed legislation. Another argument given by NCW was that the Rashtriya Swasthya Bima Yojana, a medical insurance scheme approved by Cabinet on 23 June, 2011 which provided smart card-based cashless health insurance cover available for about 47.50 lakh domestic workers who were to be registered. Funds were being allocated under the National Social Security Fund for unorganized workers. The fact that a registration system was already in place went against the argument that legal provisions would be difficult to make applicable within the privacy of homes.

3.13 The Committee is in full agreement for inclusion of domestic workers within the ambit of the proposed Bill. Expecting such a vulnerable group to take recourse to IPC in a sexual harassment case cannot be considered viable. The Committee believes that privacy of a household cannot be an excuse to shield

uncalled for acts against this category of women workforce. The Committee is of the view that innovative thinking is required for making the inclusion of domestic workers possible. Also, the experience gained in the implementation of the Protection of Women from Domestic Violence Act, 2005 can be utilized in the cases of sexual harassment. Redressing cases of sexual harassment of domestic workers within the confines of a home could be worked out. The Committee would like to emphasize here on the involvement of and pro-active role to be played by the NGOs, Police Stations, RWAs and Panchayats in helping the aggrieved domestic worker to get justice through this legislation. The Committee would like to impress upon the fact that even domestic workers who are women have equal rights like the other working women to have a safe and secure workplace and right to work with dignity. The Committee, accordingly, is of the view that necessary changes in the Bill especially with respect to the definitions of employee, employer and workplace are required so as to ensure that the domestic workers are brought within the ambit of this Bill thereby upholding their right to work with dignity.

3.14 Attention of the Committee has been drawn to the fact that the policy for domestic workers being formulated by Ministry of Labour and recommendations of the Working Group on Domestic Workers Issues set up by the National Advisory Council, as and when given, would give useful inputs which can be incorporated in the Rules and if necessary, in the Act itself. Further, the Committee has been given to understand that NCW has drafted a Domestic Workers Welfare and Social Security Bill, 2010 which has been submitted to the Ministry in September, 2010. While going through the Bill, the Committee finds it to be a comprehensive legislation covering all aspects of working conditions of domestic workers and measures for their welfare. **The Committee feels that inputs can also be taken from this draft especially in defining a domestic worker, employee, employer and a workplace. The Committee will be giving its suggestions in the relevant provisions of the Bill for bringing the women domestic workers within its ambit.**

Role of NGOs in the implementation of the legislation

3.15 The Committee observes that quite an important role has been assigned to NGOs and other civil society members in the implementation of the legislation. They are mandated to be the members of Internal Complaints Committee as well as Local

Complaints Committee. NGOs are also to play a pivotal role in creating awareness about sexual harassment and rights of women. However, commitment to the cause of women is the only qualification considered necessary for making a member of NGO eligible. It was pointed out that specific criteria like the registration status of NGO was required to be specified either in the Bill or in the Rules to be framed thereunder. Mere commitment to the cause of women was not considered sufficient enough. Keeping in view the mandate of both the committees, legal knowledge was also considered necessary. Another pertinent issue raised was viability of having such a large number of members of NGO whose service would be required as members of both the Committees.

3.16 On a specific query about the justification for having the qualification 'committed to the cause of women', it was informed that these would be people/organizations who had done outstanding work for women and were sensitive to the concerns of women.

3.17 The Committee finds that all the above issues merit consideration and need to be looked into. If need be, required modifications be made in the relevant provisions. The Committee has been given to understand that a better understanding of the expertise available in the field would emerge as the law is implemented. Based on the experience, a view would be taken on prescribing more specific qualifications for selection of NGOs as Chairperson/members of the Complaints Committees in the Rules. The Committee also strongly feels that this path-breaking legislation would need to be publicized to make the benefits accessible to the aggrieved women in the real sense. Here the NGOs can play a very effective role. The Ministry in co-ordination with the National Commission for Women and State Commissions will have to take the initiative in involving NGOs in creating awareness about the legislation amongst all concerned.

Training of members of Complaints Committees

3.18 The Committee observes that mere setting up of Complaints Committees will not serve the purpose. In view of the experience gained so far as the effectiveness of the institutional mechanism set up under the Supreme Court guidelines given in 1997 is concerned, the Committee strongly feels that viability of the two Complaints Committees envisaged to be set up under the proposed

legislation needs to be ensured from the very beginning. During the interactions with women organizations, this fact was emphasized again and again that members of Complaints Committees wherever established were not sensitized enough and showed a general lack of awareness about their duties and role. The Committee would appreciate if awareness camps are conducted with the support of State Legal Aid Forum, trade unions etc. Besides that, officers of workplaces including the employers will also have to be made aware about their role as envisaged under the legislation. Here again, the Ministry in co-ordination with National and State Commissions for Women can play a pro-active role with the support, guidance and experience gained by members of existing institutional mechanisms set up under the Supreme Court guidelines. Mere assigning the responsibility of creating awareness on the issue of sexual harassment and sensitizing those concerned about the provisions of the law will not be effective. What is required is orientation of the members of both the Committees about their role and mandate which can be specified through a well laid-out training programme through the Rules.

Role of National and State Commissions for Women

3.19 The Women Commissions, both at the State and national level can play a pivotal role in creating awareness and in monitoring the implementation of the proposed legislation. The Committee observes that in the draft Bill, 2010 prepared by the National Commission for Women, both National Commission and the State Commissions had been envisaged to have the power to examine and review implementation of the Act. Not only this, both the Commissions could be approached for filing a complaint by the aggrieved woman, especially where the complaint was against the employer or where circumstances warranted so and the inquiry could be conducted by the Commission directly.

3.20 On a specific query in this regard, the Committee was informed that specific role as envisaged for the National/State Commission for Women in the NCW draft Bill, was not considered viable by the Ministry as it would lead to two parallel bodies working for the same purpose.

3.21 The Committee is of the opinion that the National and State Women Commissions could be assigned a statutory oversight role. This could be easily

made possible with involvement/engagement of NGOs/bodies like Employer Associations, Trade unions etc. on a continuous basis. The Committee feels that this would gradually lead to every workplace putting certain monitoring and evaluation mechanisms in place and giving these processes sufficient publicity to ensure that rights of working women guaranteed under the Act are upheld. The Committee also takes note of the assurance given by the Secretary for making a provision in the rules which would enable the National/State Commissions for Women to receive complaints and forward the same to the concerned Committee and also to ask for details of the outcome of inquiry/action recommended. The Committee is of the firm view that both the Commissions need to be given a specific role which should be specified in the Act itself. Leaving it to the rule-framing stage is simply a manner of diluting the real objective of a justified suggestion. The Committee will be making its recommendation in this regard in the relevant clauses.

IV. Issues which have remained uncovered

4.1 During the course of its interactions with various stakeholders and also in the memoranda received on the Bill, quite a few issues, directly or indirectly connected with the proposed legislation and implementation thereof were raised. Some of the pertinent issues raised are indicated below:-

- 'no retaliation' clause needs to be included in the Bill to protect people who raise bona fide issues.
- Details of the meeting like quorum required, time and venue of such meetings are not specified. Also no time-limit prescribed for filling in the vacancy in case of removal of a member of the Committee.
- No provision is there to address anonymous complaints, women employees may sometimes prefer to do so on no-name basis. Also, aggrieved woman may request for her identity not being disclosed.
- The Bill does not cover harassment outside workplace like SMS and phone calls to home.
- Complaint has to be made in writing. Other mediums like e-mails, drop box, personal approach and secured telephone lines to file a complaint are not included.
- Bill is silent on the steps to be taken by the employer for the protection of complainant and witnesses.

- There is no clear direction for the action to be taken in the event of management failing to take any action against the accused, if found guilty. Accused is thus encouraged to go to the court and get stay orders.
- Specific guidelines relating to the manner for conducting an inquiry and procedure for recording evidence, manner of examination, nature of questions that are not to be allowed.

The Committee finds all the above issues very crucial and relevant for the proper implementation of the proposed legislation. The Committee is of the view that all these aspects need to be incorporated in the legislation itself to the extent possible and in the Rules to be framed thereunder.

V. The Committee makes the following observations/recommendations on some of the provisions of the Bill

CLAUSE 1; SHORT TITLE, EXTENT AND COMMENCEMENT

5.1 Sub Clause (1) dealing with short title of the Act reads as follows:-

"This Act may be called the Protection of Women against Sexual Harassment at Workplace Act, 2010".

5.2 It has been pointed out by some NGOs and the National Commission for Women that the Bill focussed more on protection after the instance of sexual harassment had occurred. The word 'protection' in the title emphasized the victim status of women rather than as equal citizens entitled to a safe workplace. It was also felt that the title of the Bill carried with it connotations of a patriarchal society where women were in need of protection. With changing dynamics of employment and the workforce and more women joining the workforce, the underlying principle of equality being followed mattered. It was, accordingly, suggested that the title of the Bill should be "The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill" as originally recommended by NCW to emphasize the 'preventive aspect' in the proper spirit of the Vishaka Guidelines.

5.3 Justifying the short title, the Ministry clarified that the intent of the Bill was protection which included prevention and redressal of complaints of sexual harassment. The Bill has provisions relating to prevention (19 and 20) which lay down duties on the part of the employer and the district officers to take steps to create a safe working environment as well as create awareness on the issue. Clauses 9-13 seek to provide the

redressal mechanism available to a woman at the time of filing a complaint of sexual harassment.

5.4 The Committee has been given to understand that the objective of the Bill is three-fold:- protection against sexual harassment of women at workplace; prevention of sexual harassment; and redressal of complaints. **The Committee observes that preventive aspect has been reflected only in clauses 19 and 20 which lay down duties of employer and district officers. As per Clause 19, employer is duty-bound to provide a safe working environment and undertake workshops/training programmes for sensitizing the employees about the Act. Similarly, under clause 20, district officer has to engage NGOs for creation of awareness in women employees.** The Committee feels that preventive aspect as reflected in the above two provisions fails to cover all the areas. This is borne out by the preventive steps as enumerated in the Supreme Court guidelines which made not only the employer but also other responsible persons in workplace duty-bound to prevent or deter the commission of acts of sexual harassment. Not only this, appropriate steps were to be taken by employers to prevent sexual harassment like express prohibition of sexual harassment at the workplace by notifying, publishing and circulating the same in appropriate ways. Also, rules/regulations of Government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for penalties in such rules against the offender. As regards private employers, steps had to be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. Lastly, appropriate work conditions were to be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

5.5 **The Committee is of the firm view that the preventive aspect reflected in the proposed Bill has to be strictly in line with the Vishaka guidelines. The Committee would also like to point out that no specific penalty has been provided for violation of duties relating to preventive aspect assigned to the employer. Not only this, rule-making provision is also silent on this aspect. The Committee, therefore, suggests that the preventive aspect in the Bill, as mandated in the**

Supreme Court guidelines has to be reflected in the Bill by incorporating the same in the relevant provisions. Accordingly, the title of the Bill should also be modified to read as 'the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill '.

VI. CLAUSE 2: DEFINITIONS

Clause 2 of the Bill deals with definitions.

6.1 The term 'aggrieved woman' has been defined as follows:-

"aggrieved woman" in relation to a workplace means a woman, of any age, who alleges to have been subjected to any act of sexual harassment by the respondent and includes a woman whether employed or not"

6.2 It was clarified by the Ministry that sexual harassment is a concern not only for women who were employed but also of those who entered the workplace as clients, customers, apprentices, daily wage workers or in ad-hoc capacity. Sexual harassment could also occur in the case of students and research scholars in colleges/universities and patients in hospitals. It was in recognition of these concerns that clause 2(a) provides for an inclusive definition of 'aggrieved woman'.

6.3 Definition of 'aggrieved woman' broadly speaking, was found acceptable with the exception of some apprehensions and one or two suggestions. Attention of the Committee was drawn by many organizations to the fact that it was not clear whether the definition of 'aggrieved woman' included student, research scholar, patient, physically and mentally challenged women etc. The Ministry submitted that the proposed Bill covered cases of sexual harassment at the workplace, including third party harassment. All the cases referred to were covered on the basis of a combined reading of the definitions of 'aggrieved woman' and 'workplace' depending on the relationship between the perpetrator and the aggrieved woman. Further, a reading of the definition of 'aggrieved woman' read with inclusion of educational institutions within the ambit of 'workplace' made it clear that research scholars were covered under the Bill. Also, a combined reading of the definitions of "aggrieved person" "employee" and "workplace" covered students, trainers and apprentices. Similarly, a combined reading of definitions of 'aggrieved woman' and 'workplace' clearly showed that even patients at clinics or hospitals were also covered within the ambit of the Bill. **The Committee is of the view**

that the clarification given by the Ministry would allay the apprehensions of the stakeholders in the light of the inclusive definition of 'aggrieved woman'.

6.4 Another suggestion which came up before the Committee was for expanding of the definition of 'aggrieved woman' as in the following manner:- *"aggrieved woman' in relation to a workplace means a woman of any age or a group of persons acting on behalf of such a woman or a trade union, who alleges that she has been subjected to sexual harassment and/or victimization in relation to acts of sexual harassment by any person and includes a woman whether employed or not"*. Response of the Ministry was that it was a well-accepted legal principle that the complaint should only be filed by the person who had been aggrieved by any act/omission. Further, in situations where the person due to physical/mental infirmity was unable to do so, the law provided for the legal heir of the person to carry out the same action.

6.5 Agreeing with the contention of the Ministry, the Committee observes that contingencies like physical or mental incapacity or death are already covered under clause 9 which authorizes the legal heir or any other person so authorized to file a complaint. The Committee would also like to point out that instances may occur when legal heir or person so authorized may not come forward or the aggrieved woman herself is not willing to file a complaint. The Committee feels that in such circumstances, where sexual harassment of a very serious nature has occurred, the Complaints Committee may be authorized to take suo moto cognizance of such happening and initiate inquiry.

6.6 Committee's attention was drawn to the concept of victimization which was very well-known in labour law and many of the labour statutes included this concept. In the event of an employee raising a dispute about any issue, there may be a tendency of employers to either dismiss that person on some ground or another. Accordingly, a guarantee against victimization was essential in the legislation itself. The definition of 'aggrieved woman' should, therefore, include not only a sexually harassed woman but also a woman who has been victimized. **The Committee understands the precarious situation in which an aggrieved woman may find herself. In no case, victim or even a witness should be victimized or discriminated against. To prevent such situations which may arise even before filing of a formal complaint, the concept of victimization needs to be included in the definition of 'aggrieved woman'. The**

Committee, accordingly, recommends the modification of the definition of the term 'aggrieved woman' as indicated above.

6.7 Inclusion of domestic worker within this Bill has been widely supported by many stakeholders. The Committee would like to point out that since it supported the inclusion of domestic worker within the proposed legislation, the definition of aggrieved woman will have to be somewhat modified in the context of domestic worker and home as the workplace. Whereas definition of 'aggrieved woman' would include employed as well as not employed women in normal establishments, the same may not hold good so far as a home as the workplace is concerned. In the event of any untoward incident happening with a friend/acquaintance of a domestic worker, that person may seek judicial intervention. Accordingly, the following proviso may be added to the definition of 'aggrieved woman'.

"Provided that in case of domestic workers, the aggrieved woman would only mean the person who is employed in a dwelling place"

The Committee recommends to the Ministry to make necessary changes in the definition of the term 'aggrieved woman'.

6.8 Clause 2(e) of the Bill defining the term 'employee' reads as follows:-

"employee" means a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name, but does not include domestic worker working at home".

6.9 It was pointed out to the Committee by the stakeholders during its deliberations that the definition of employee was restrictive and needed to be broad-based. The definition should include domestic workers, agricultural workers, defense personnel, and paramedical, small factory and mill workers etc. It should cover every woman who steps out of her house to earn her living/or to gain professional qualifications either as full time employee/trainee/student/apprentice/casual/temporary/part time worker. The Ministry reasoned domestic workers have been consciously kept out of the ambit of the proposed Bill as there would be practical difficulties in applying the law within a household in the absence of any code of conduct for these workers. They would continue to take recourse to any of the provisions of the IPC. As stated earlier, wide

support from all quarters came for the inclusion of domestic workers within the purview of the Bill.

6.10 The Committee fully supports the inclusion of domestic workers within this Bill and recommends to the Ministry to delete the words "but does not include domestic workers working at the home" from the definition of the term 'employee'. To facilitate such inclusion, necessary changes need to be made in the definition of 'employee'. Since the nature of work of domestic workers is different as it is within the confines of a dwelling place, a separate definition of 'domestic worker' can be added under clause 2. The Committee, while going through the draft prepared by NCW for domestic workers i.e Domestic Workers Welfare and Social Security Bill, 2010 found the definition of 'domestic worker' quite appropriate. 'Domestic worker' has been defined therein as given below:-

"Domestic worker means a person who is employed for remuneration whether in cash or kind, in any household 'or similar Establishments' through any agency or directly, either on a temporary or contract basis or permanent, part time or full time to do the household or allied work and includes a "Replacement worker" who is working as a replacement for the main worker for a short and specific period of time as agreed with the main worker"

Explanation: household and allied work includes but is not limited to activities such as cooking or a part of it, washing clothes or utensils, cleaning or dusting of the house, driving, caring/nursing of the children/sick/old/mentally challenged or disabled persons.

The Committee is of the view that the above definition of 'domestic worker' may be included under the definition clause with a slight modification by replacing the work 'person' with the word 'woman'.

6.11 Committee's attention has been drawn to the fact that in the event of third party encounter in course of work, employees have to deal with contractors, suppliers, outsourcing women officers. Therefore, it has been suggested that the words 'or any third party encountered in the course of work' need to be added at the end of the definition of 'employee', because in the informal sector, there is no specific employer-employee relationship.

6.12 The Ministry submitted that the Bill regulated sexual harassment at workplace in two principal situations: one, where the parties were employed in the same workplace or

have an employer-employee relationship; and second, in case of third party harassment. Hence, in cases where the parties were employed in two different workplaces, depending on the workplace where the incident of sexual harassment took place, the ICC of that workplace would have jurisdiction over the matter. Since this would constitute third party harassment, as per Clause 19(h) of the Bill, the employer of the aggrieved woman could initiate action under the IPC and seek assistance of the police. Alternatively, for enforcement of findings, possibility of making a provision enabling the employer/ICC of the workplace where the incident took place to transfer its recommendations to the employer of the place where perpetrator was employed may be considered at the time of framing the Rules. Since the employees engaged on a contractual basis would be part of the workplace of the principal employer, the ICC of that workplace would have jurisdiction over such employees. However, as the terms of contract of such employees were ordinarily regulated by the contractor, with the principal employer not engaged in any direct control over the contractual employee, any action recommended by the Committee would be enforced by the contractor and not by the principal employer.

6.13 The Committee is not fully convinced by the justification given by the Ministry for coverage of contract employees working at different workplaces who normally would be under the control of another employer. It is a well-established fact that daily wage workers, that too women workers are the most vulnerable segment of unorganized workforce. To expect that employer of such a casual worker who may be a contractor and not directly responsible would take a suo-moto action of filing a case under IPC is far away from the ground realities. The Committee is of the view that the definition of 'employee' can be made more explicit by adding the words 'for any third party encountered in the course of work' at the end of the definition of the term 'employee' so as to ensure coverage of all categories of women employees.

6.14 Clause 2(f) defines the term 'employer' as follows:-

(i) 'employer' means' in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace."

The Ministry has justified this definition by saying that the Bill sought to identify a particular person at each workplace, who would be responsible for its implementation so that the protection afforded under the Bill is enforced in an effective manner.

6.15 It was pointed out that more clarity was required so far as the definition of 'employer' was concerned in the context of employer of contract labour employed at the workplace belonging to the principal employer. Contractors have their own Standing Orders under the Industrial Employment (Standing Orders) Act. Disciplinary action can be taken by the contractor if the accused employee is also a contract labour otherwise, action will have to be taken by the employer of the accused employee who may be in the employment of another contractor or in the employment of the principal employer. Not only this, contract employees work for a short duration and may be out of the reach of the principal employer by the time action is taken.

6.16 Ministry's response to the above concerns was that since the employees engaged on a contractual basis would be part of the workplace of the principal employer, ICC of that workplace would have jurisdiction over such employees. However, as the terms of contract of such employees are ordinarily regulated by the contractor, with the principal employer not engaged in any direct control over the contractual employee, any action recommended by the Committee would be enforced by the contractor and not the principal employer. It has, accordingly, been proposed that any person responsible for the management, supervision and control of workplaces would fall under the definition of 'employer'. In cases where the parties are employed in two different workplaces depending on the workplace where the incident of sexual harassment took place, ICC of that workplace would have jurisdiction over the matter. Since this would constitute third party harassment as per clause 19(h), employer of the aggrieved woman can initiate action under IPC and seek assistance of the police. Alternatively, for enforcement of findings, possibility of making a provision enabling the employer/ICC of the workplace where the incident took place to transfer its recommendations to the employer of the place where perpetrator is employed may be considered at the time of framing the Rules.

6.17 The Committee understands the justification of the Ministry but in order to make things more clear, an explanatory clause about contractors should be included especially in view of the fact that action has to be taken by the contractor against the perpetrator. The Committee finds that ambiguity is also there about the action to be taken against contractor in the event of his being the perpetrator or contract labour woman being the victim of the principal employer. It is not clear whether they can approach the ICC set up by the principal employer or action has to be taken by contractor.

6.18 The Committee notes that the definition of 'employer' as envisaged would cover all categories of workplaces falling under Government and private sector. The Committee would like to point out that one distinct issue which needs consideration is whereas heads of all Government (Central/State/Local) workplaces or any other officer so authorized by the appropriate Government have been specified, there is no mention of the head of the organization in the private sector. This clearly indicates that in the private establishments e.g companies/hospitals/universities etc, no liability would fall on the Head. The Committee is of the view that similar provision needs to be there for both Government and private sector. The Committee, therefore, recommends to the Ministry to modify the provision accordingly.

6.19 A suggestion has been put before the Committee that this clause should include house owners and landlords also. The Ministry has specifically stated that house owners and landlords are not covered in the Bill since there was no associated workplace. The Committee would like to point out that with the inclusion of domestic worker under the Bill, definition of 'employer' will need to be expanded by adding house owners under it. The Committee, accordingly, recommends that the definition of 'employer' may, accordingly, be modified.

6.20 Clause 2(m) defines the term 'sexual harassment' as follows:-
"sexual harassment" includes such unwelcome sexually determined behaviour (whether directly or by implication) as—

- (i) physical contact and advances; or*
- (ii) a demand or request for sexual favours; or*
- (iii) sexually coloured remarks; or*
- (iv) showing pornography; or*
- (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature"*

6.21 The Ministry has explained that the present Bill has a very specific purpose, to prevent sexual harassment at the workplace. As such, it is essential that "harassment" is qualified to be of a sexual nature. Unless "sexual harassment" is so defined, it would fall within the realm of "harassment" per se, which is already addressed under the IPC.

6.22 It was suggested to replace the words "sexual nature" in Sub-clause (v) with "sexual indignity" because the words 'sexual nature' seemed ambiguous and the word 'dignity' had a well-defined meaning in law. **The Committee observes that the present definition of 'sexual harassment' is based on the definition given by the Supreme Court in Vishaka case. The Committee feels that this definition would serve the desired purpose.**

6.23 Another view which was put forth before the Committee was that the definition of 'sexual harassment' should commence with the words, 'sexual harassment shall mean and include but not confined to-----'. The Ministry was of the view that the definition provided detailed illustrations, which were intended to provide guidance to the Committee, courts as well as aggrieved women in understanding the scope of the law. As such, there was no need to add further explanations to elaborate on the definition.

6.24 The Committee believes that the present definition of 'sexual harassment' would suffice and serve its purpose as it is based on the definition given by the Supreme Court. However, keeping in view various developments in technology and harassment through these mediums, the following words as given in the definition of 'sexual harassment' in the NCW draft Bill, 2010 can be added at the end of Sub-clause (v):-

"whether verbal, textual, physical, graphic or electronic or by any other actions".

Sexual harassment will thus include any other unwelcome physical, verbal or non-verbal conduct of sexual nature whether verbal, textual, physical, graphic or electronic or by any other actions.

6.25 The term 'workplace' has been defined as follows:-

"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 place visited either by air, land, rail or sea by the employee arising out of, or during and in the course of employment;

6.26 It was informed that keeping in view the fact that more than 90 per cent of the workforce is engaged in the unorganized sector, the proposed Bill covers both organized as well as unorganized sector under the definition of 'workplace.' Further, recognizing that a woman employee may face harassment even outside the physical boundaries of workplace, in course of her employment, the definition of "workplace" also includes "any place visited either by air, land, rail or sea by the employee arising out of, or during and in the course of, employment.

6.27 Many suggestions have been made by stakeholders for broadening the definition of 'workplace' as indicated below:-

- Bill restricts itself to the employer-employee relationship and does not include a student-teacher relationship as being addressed in Medha Kotwal case.
- Teacher Student relationship needs to be brought within the ambit of the Bill
- definition of workplace to include travel to and from the workplace as well as travel in connection with work as specified under Vishaka guidelines
- educational institutions and charitable institutions to be included
- establishments such as courts, legislative assemblies, panchayats, municipal council, Houses of Parliament to be included
- workplaces to include natural markets of the vendors, vending spaces, markets, public places where any activity for a livelihood is undertaken.
- workplaces to include farms, factories, small industries etc.
- house or dwelling place may also be included

The Committee finds that the Ministry has specifically excluded religious and charitable institutions and a house dwelling from the purview of the Bill. However, educational institutions are included in the present definition.

6.28 The Committee observes that definition of the term 'workplace' covers all categories of workplaces falling under Government and private sector and also

includes any place visited by air/land/sea/rail. On being asked about the viability of including an incident of sexual harassment occurring at a place visited by an employee, the Committee has been informed that women employees may face harassment not only within the physical boundaries of the workplace but even outside it, which may be during or in course of her employment. This may include harassment from a co-worker or from an employee of the workplace visited by her in course of her employment or by a third party at such place. While agreeing with the clarification given by the Ministry, the Committee would like to point out that a very crucial area which strictly speaking cannot be considered a workplace has remained out of the ambit of the Bill thereby leaving the aggrieved woman in situations which may cause harm to her. Very frequent incidents of women employees being sexually harassed during their journey from home to workplace and vice-versa are being reported. The Committee, therefore, feels that vehicles being provided by the employer should also be covered under the definition of 'workplace'. Accordingly, the words 'any vehicle provided by the employer' may be added at the end in sub-clause (iv).

6.29 The Committee would also like to point out since it has recommended for inclusion of domestic workers within the ambit of the Bill, a house or dwelling place should be added in the definition of workplace. This may be included in the definition of a workplace as given in the NCW draft of 2006 which reads as follows:-

"includes any place where an aggrieved woman or defendant or both is/are employed or works, or visit in connection with work during the course of or arising out of employment."

6.30 Clause 2(o) defines 'unorganized sector' as follows:-

"unorganised sector" in relation to a workplace means an enterprise owned by individuals or self employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten".

6.31 Some stakeholders deposing before the Committee pointed out that about 95 per cent of the female work force was engaged in the unorganized sector and their working conditions were different from those in the organized sector. The present Bill focused more on the formal sector and employer-employee relationship. In the informal sector, specific employer-employee relationship did not exist. It was suggested that a separate

chapter that takes into account the specific work conditions of this large labour force in the unorganized sector should be included in the Bill.

6.32 When this issue was taken up with the Ministry, it was clarified that the present definition of 'unorganized sector' was broad enough to include all categories of establishments that form part of this sector and there was a specific complaints redressal mechanism for this sector in the form of Local Complaints Committee. It was also emphasized that a separate chapter on the unorganized sector would have the effect of limiting its scope and applicability. Although NCW Bill, 2006 had a schedule with a list of establishments in 19 categories that might fall within this sector, it was pointed out that no such listing of unorganized sector establishments could be made as this could be quite exhaustive. Committee's attention was also drawn to the fact that the Legislative Department whose opinion was sought in the matter in 2008 was of the view that as there was no ambiguity about the unorganized sector falling within the ambit of the legislation, there was no need to have a separate chapter for this sector.

6.33 The Committee is of the view that the justification given by the Ministry for not having a separate chapter on unorganized sector is quite convincing. The Legislative Department has also approved the stand of the Ministry in this regard. However, it is equally true that in the unorganized sector, employer-employee relationship as prevailing in the formal sector does not exist. The Committee would like to mention that provision of a Local Complaints Committee alone for the unorganized sector will not serve the purpose. Secondly, in the formal sector, employer will be directly supervising the working of Internal Complaints Committee. For the Local Complaints Committee, District Officer has simply the role of setting up of these Committees at the district level or at the Sub-district level, wherever required. Although the employer is supposed to assist the LCC also, it may not happen when the inquiry is to be conducted against him. No liability is fixed on the District Officer for not setting up of Local Complaints Committee as in the case of employer for Internal Complaints Committee. The Committee is of the firm opinion that more pro-active role needs to be assigned to the District Officer so far as the functioning of LCC is concerned. The Committee, accordingly, recommends that specific duties as indicated in NCW Draft Bill, 2010 should be included in the present Bill also. Only then, the LCCs will be in a

position to protect the most vulnerable segment of women workforce in the unorganized sector. The Committee will be making recommendations in the relevant provisions.

VII. Clause 3 : Prevention of Sexual Harassment

7.1 Clause 3 relating to prevention of sexual harassment reads as follows:-

"No woman shall be subjected to sexual harassment at any workplace which may include, but is not limited to—

- (i) implied or overt promise of preferential treatment in her employment; or*
- (ii) implied or overt threat of detrimental treatment in her employment; or*
- (iii) implied or overt threat about her present or future employment status; or*
- (iv) conduct of any person which interferes with her work or creates an intimidating or offensive or hostile work environment for her; or*
- (v) humiliating conduct constituting health and safety problems for her*

7.2 This clause makes provision for prevention of sexual harassment. It provides that no woman shall be subjected to sexual harassment at any workplace. While the Bill has a general definition of 'sexual harassment at the workplace', clause 3 is more specific and addresses indirect harassment including intimidation and creation of a hostile work environment. The Committee was also informed that the Supreme Court in the Vishaka case, while defining sexual harassment had also gone beyond the specific acts of sexual harassment to include such acts as covered under clause 3.

7.3 Committee's attention was drawn to the fact that there was no link between the definition of sexual harassment under Clause 2(m) and circumstances listed under clause 3. Provision under this clause needed to be linked to having made a complaint about sexual harassment. It was also suggested that express prohibition of sexual harassment at the workplace must be laid down. This provision should also provide that sexual harassment constituted misconduct. Reason being that unless it was a misconduct under the existing labour statutes, disciplinary action could not be taken. The Committee takes note of the modified clause 3 to read as follows:-

- "3. Prohibition of sexual harassment: (1) No woman shall be subjected to sexual harassment at the workplace.*
- (2) Sexual harassment and victimization in relation to any act of sexual harassment shall constitute a misconduct.*

The Committee also takes note of a specific clause 3A on victimization as reproduced below:

"Prohibition of victimization- (1) (a) No woman shall be victimized for doing a protected act or for having made a complaint of sexual harassment as defined under this Act.

(b) Victimization in relation to an act of sexual harassment shall be considered to include the following circumstances:

- (i) implied or overt promise of preferential treatment in her employment; or
- (ii) implied or overt threat of detrimental treatment in her employment; or
- (iii) implied or overt threat about her present or future employment status; or
- (iv) conduct of any person which interferes with her work or creates an intimidating or offensive or hostile work environment for her; or
- (v) humiliating conduct constituting health and safety problems for her.

(2) (a) No aggrieved woman or any other person shall be victimized for doing any protected act under this Act.

(b) Each of the following shall be considered to be a protected act under this Act-

- (i) conducting inquiry under this Act;
- (ii) giving evidence or information in connection with inquiry under this Act;
- (iii) doing any other thing for the purposes of or in connection with this Act;
- (iv) making an allegation (whether express or not) that A or another person has contravened this Act.

*Explanation 1-*A person (A) victimizes another person (B) if A subjects B to a detriment because-

- (i) B does a protected act; or
- A believes that B has done, or may do, a protected act".

7.4 The Committee is of the view that clauses 3 and 3A as reproduced above would take care of all eventualities which a victim of sexual harassment may face and provide necessary safeguard to her. Not only this, express provision of sexual harassment being considered a misconduct would enable the employer to take action as recommended under the service rules. Another positive outcome of such an elaborate provision would be that it would act as an effective safeguard to the witnesses and all those involved in the inquiry proceedings from any victimization.

7.5 The Committee would also like to emphasize that what constitutes misconduct in the context of sexual harassment and what penalties it would attract should be provided in service rules so far as Government and Public Sector bodies are concerned. With regard to private employers, steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. The Committee would appreciate if the Ministry takes a pro-active role in the matter and make an assessment about the service

rules applicable to all categories of employees and ensure that misconduct relating to sexual harassment is incorporated therein.

7.6 Another view point which was placed before the Committee was that the different forms of sexual harassment should be graded and the nature and range of punishment for each kind of harassment be specified; from minimum to maximum and defined for the different kinds of harassment, commensurate with the degree of gravity of the offence. The Ministry submitted in this regard that keeping in mind the nature of harassment, the subjectivity in the issue and the extent it may affect a woman, it may not be possible to lay down forms of sexual harassment in a graded manner and list the nature of punishments.

7.7 The Committee also opines that grading of different forms of sexual harassment and punishment level specified accordingly would not be feasible as it would limit the scope of the definition of sexual harassment. Moreover, the Committee believes that ICC/LCC will be making inquiry and based on their findings, they would recommend action to the Employer or the District Officer.

7.8 Another point highlighted by the stakeholders was the questioning or challenging the moral character of the complainant after a complaint of sexual harassment has been filed. In such a case, the respondent needed to be punished. **The Committee would like to point out that this was a well accepted legal principle that in cases of sexual abuse, character of the woman would not be taken into account and if discussed would not have any impact on the decisions taken. In view of this, the issue of challenging a complainant's moral character would not arise.**

7.9 Clause 3(iv) makes a mention of a 'hostile work environment.' Attention was also drawn to the definition of hostile work environment in the Protection against Sexual Harassment of Women Bill, 2006. It was, accordingly, suggested that the following definition of 'Hostile work environment' may be added:-

"Hostile work environment' is said to be created when any act of sexual harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment".

The Ministry was of the view that all the elements suggested so as to constitute a 'hostile work environment' were already included in Clause 3(iv) and a separate definition was not required. **The Committee believes that a specific definition of a**

'hostile work environment' as suggested above need to be included because the intention is only to protect the woman or victim from any additional suffering apart from being sexually harassed. Sensitivity to the plight of a victim is essential as it would be very difficult for her to continue working if her work environment becomes hostile, offensive or intimidating in any way.

VIII. Clause 4 : Constitution of Internal Complaints Committee

8.1 Clause 4(1) relating to 'Constitution of Internal Complaints Committee' reads as follows:-

"(i) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices".

8.2 Objections were raised by some of the stakeholders for having a permanent set up of ICC. It was suggested that such committees should be set up only upon receiving a complaint and should be disbanded after the inquiry proceedings were over and inquiry report submitted. On this issue being raised with the Ministry, it was clarified that this provision had been specifically included as confidence-building measure as well as to ensure impartiality in the inquiry proceedings. Such Standing Committees would also provide easy and timely access to victims and there would be no delay due to procedural requirements.

8.3 The Committee would like to emphasize on the fact that a victim of sexual harassment needs support and assistance in filing a complaint and going through the inquiry process for the redressal of her complaint. A mechanism already in place would definitely help her to seek justice at the earliest. The Committee agrees with the Ministry that for timely and easy access to victims, these Complaints Committees should be permanent so as to avoid any delay due to procedural requirements of formally constituting such Committees every time a complaint is received.

8.4 Committee's attention was drawn to another practical problem relating to constitution of ICC in every office/unit/branch of a company which may be a challenge to the employers. It may pose administrative issues and inconsistent decision-making. It might also happen that administrative units/offices may not have a female employee

or only one female employee. It was suggested that ICC should be constituted company-wise and vested with the power of planning and decision-making at a particular given location of the employer and further commissioning of junior level authorities at each branch/unit to carry on the proceedings under the supervision of ICC. Such junior level authorities would be employees of the employer and formed at the good judgement of the employer. This would help in arriving at a timely decision, through all the locations of the employer, making the process firm and ensuring the implementation of the objective of the Bill.

8.5 On a specific query in this regard, it was clarified by the Ministry that in case of organization having more than one office at one or more locations and facing difficulty in constituting ICC at its branch offices/units, ICCs may be constituted at the headquarters which may cover the other units also by co-opting local members from that branch/unit from where the complaint may arise. It was also indicated that this being a matter of modality could be elaborated upon in the Rules.

8.6 The Committee believes that this provision should be in the Act itself specifying the circumstances where companies can be exempted from such a provision. The Committee would like draw attention to the following proviso to the clause relating to constitution of ICC in the NCW Bill, 2010:-

"provided that where the offices or administrative units of the workplace are located at different places, the Committee shall as far as practicable be constituted at all administrative units of offices."

However, this provision needs to be made more specific in the context of practicality and viability of constituting a ICC in every workplace. The Committee is in agreement with the suggestion for having viable and workable institutional mechanism for handling sexual harassment cases occurring in small administrative units of company scattered over different areas. The Committee is happy to note the alternative mechanism suggested by the Ministry. The Committee would, however, like to point out that the such a provision should be incorporated in the Bill itself so as to ensure removal of any ambiguity.

8.7 Clause 4(2) deals with the composition of the ICC which provides for four members. This has been pointed out by some stakeholders to be problematic in the event that the bench is evenly divided over a case. **The Committee is in agreement with this and recommends to the Ministry for increasing the number of members**

to at least five or an odd number so that there is no deadlock over a case and taking of decisions is facilitated.

8.8 Clause 4(2)(a) emphasizes that the Presiding Officer of the ICC should be a woman employed at a senior level. The Ministry submitted that this sub-section was specifically included as a confidence-building measure for women who approach the Internal Committee with a complaint under the Bill. The basic premise of the provision was that given the nature of such complaints, women may be more comfortable approaching a woman at the senior level. It was neither the premise nor the understanding that only women were capable of arbitrating complaints of sexual harassment.

8.9 It was pointed out that the Presiding Officer of the ICC must also have a commitment to women's issues. Further, in case the other offices or administrative units of the workplace which do not have a senior level woman employee, the District Officer notified under Section 5 should nominate a 'woman member' of the LCC instead of any member of the LCC. Clause 4(2)(a) and its second proviso should accordingly be amended as follows:-

*"a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees and has shown commitment to the cause of women." Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the district officer notified under section 5 may nominate a **woman** member of the Local Complaints Committee in that area to act as Presiding Officer".*

Another suggestion regarding the Presiding Officer was that in case a senior level woman was not present to be a part of the ICC, the Presiding Officer should be an employee of the employer or part of the ombudsman network appointed by the company.

8.10 The Committee is of the considered view that in case senior level woman employee is not available, it would not be a viable option to always approach the District Officer of the LCC for nominating such a member as the Presiding Officer. The Committee, instead, believes that it would be better or more workable to have a senior woman officer from sister organization or other Departments or other Banks or other organisations. In this way, the employer would have more flexibility rather than simply approaching the LCC and waiting for the District Officer to nominate the Presiding Officer.

8.11 Sub-clause (2)(b) provides for not less than two members from amongst employees preferably 'committed to the cause of women' or who have had experience in social work or have legal knowledge to be nominated by the employer. It was pointed out by some stakeholders that the eligibility criteria for members of the Internal Committee required the two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge. Background in law or legal knowledge was not considered a mandatory provision in spite of giving this Committee the powers of a civil court under the Code of Civil Procedure for summoning, requiring the discovery and production of documents etc. This seemed to be in contrast to the composition of LCC where at least one member was supposed to have a background in law or have legal knowledge.

8.12 The Ministry had submitted that it was not advisable to keep a rigid provision regarding a member having legal knowledge as all organizations may not have employees with legal background. This, according to the Ministry, was meant to be a guideline provided to the employer while constituting the ICC.

8.13 The Committee is convinced by the explanation of the Ministry as rigid provisions cannot be made for constituting ICCs at all workplaces which may be of different nature altogether. A certain amount of flexibility is required for the constitution of ICC. The Committee, however, would like to emphasize that training of the members of the ICC should be made an essential component so as to ensure that the members are well-aware of legal provisions required for handling the sexual harassment cases. Only then, ICC can be termed as a viable institutional mechanism for carrying out the mandate assigned to it.

8.14 Sub-clause (2)(c) entails that one member from amongst the non-governmental organizations or associations committed to the cause of women should be nominated as a member in ICC. Reservations have been expressed by some stakeholders regarding the inclusion of external members specially from NGOs related to women rights. According to them, such a specification clearly indicates the inherent bias and prejudice intended to be introduced in the system. It was suggested that ICC of any organization should be formed with only employees from within the organization. NCW, on the other hand, suggested the inclusion of representative of trade unions/employees

association as a member of the Committee which would be in the interest of the employees.

8.15 Ministry's stand on the reservations expressed above is that the external member of NGO representative was specifically included to bring an outside perspective to the proceedings, thereby ensuring objectivity in the deliberations and findings of the Committee. Further, the Ministry found no reasonable or justified basis for believing that women's organizations have an inherent bias against men.

8.16 The Committee would like to reiterate the pro-active role to be played by NGOs in the implementation of the legislation. The Committee finds no flaw in having a member from the NGOs in the ICC. It is, in fact, in consonance with the direction of the Supreme Court in Vishaka Case. The Supreme Court suggested the inclusion of a third party-either NGO or other body familiar with the issue of sexual harassment for preventing any pressure from senior level. Accordingly, a member of NGO would be a welcome inclusion in the ICC for it to function in an objective manner.

8.17 Sub-clause (3) specifies the terms of the Presiding Officer and every Member of the Council to be three years from the date of nomination. **The Committee observes that no provision for reconstitution of the ICC has been made. The Committee takes note of the specific provision in this regard proposed in the NCW draft Bill, 2006. The Committee is of the view that a similar provision clearly laying down reconstitution of an ICC on completion of three year term with the condition that the previous Committee or individual members of the previous Committee may be re-appointed but not for more than two terms needs to be included in the present Bill.**

8.18 Sub-clause (4) provides that the Presiding Officer and Members of ICC shall be paid such fees or allowances for holding the proceedings as prescribed by the employer. Objections were raised to this provision as it was felt that as the Presiding Officer and members would be employees of the organization, this matter may be left to the discretion of the employer. The Committee finds some merit in the argument. The Committee would, however, like to point out that the one member from amongst the NGOs or associations committed to the cause of women not being employee of the organization, needs to be compensated for

rendering his services as a member of ICC. The Committee, therefore, recommends that this issue needs to be reviewed in the right perspective and the provision modified accordingly.

8.19 Sub-clause (5) lays down the conditions which would render the Presiding Officer or a member of ICC disqualified. It was pointed out that some of the conditions could not be considered relevant in the present day situation. For example, disqualification like insolvency was taken from pre-existing laws which could not be considered relevant in today's context. Normally, companies go in for insolvency and not individuals. Similarly, disqualification regarding 'being of unsound mind and stands so declared by a competent court' needs to be modified as such terms are no longer referred to in statutes. Lastly, the condition of 'engaging during his term of office in any paid employment outside the duties of his office' goes against NGOs who may be gainfully employed elsewhere.

8.20 In the light of the above, the Committee recommends the following sub-clause be included in place of sub-clause (5):

Where the Presiding Officer or any Member of the Internal Committee,-

- (a) contravenes the provisions of section 16; or*
- (b) an inquiry into an offence under any law for the time being in force is pending against him or her or he or she has been convicted for such offence; or*
- (c) he or she has, in any manner, exhibited bias against any employee, by acts or in writing or otherwise; or*
- (d) if subject to any disciplinary control, whether a public servant or otherwise, a disciplinary proceeding is pending against him or her, or he or she has been found guilty in any such proceeding; or,*
- (e) is convicted and sentenced to imprisonment for an offence which involves moral turpitude; or*
- (f) has so abused his or her position as to render his or her continuance in office prejudicial to the interest of the complainant;*

Such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any causal vacancy shall be filled by fresh nomination in accordance with the provisions of this section".

8.21 Another very pertinent issue to which Committee's attention was drawn was that there was no public data on either the number of workplaces where ICC would have to be set up or the number of NGO personnel committed to the cause of women available in the country. There could be difficulties in bringing into effect the basic

structure envisaged under the proposed legislation if sufficient number of such NGO personnel would not be available. **The Committee foresees operational difficulties in the functioning of ICC in case of non-availability of NGO member. The Committee is of the view that viability of this mandatory condition of member of NGO to be nominated as a member of ICC may be looked into. Supreme Court guidelines of having a member of either an NGO or other body familiar with the issue of sexual harassment can be a viable option.**

8.22 The Committee observes that every organization whether in the private or Government Sector has an association representing its employees. Similarly, educational institutions have teacher and student bodies. Not only this, every organization has a designated officer for taking care of welfare related activities of its employees. The Committee recommends to the Ministry for exploring the possibility of including representatives from trade union/employee association/student union/welfare officers. Besides that, the eligibility criteria for selection of member from NGOs or association should also be specified along with work experience in conducting inquiry and dispensing justice in the Rules to be framed under the proposed legislation.

8.23 Committee's attention has also been drawn to the fact that institutional mechanism of Complaints Committee already exists in some organizations. For example, universities have already passed statutes whereunder local committees are appointed by inviting participation from teachers and students through election mode. The Committee is of the view that an enabling provision needs to be included which would provide that if there is already an existing Complaints Committee under any law for the time being in force then that Committee will continue as ICC. The Committee, accordingly, recommends that this aspect may be examined and relevant provision added so as to avoid any conflict with the existing institutional mechanism carrying out its mandate as envisaged under the relevant law.

IX. Clause 6 : Constitution and jurisdiction of Local Complaints Committee

9.1 Clause 6 deals with the constitution and jurisdiction of Local Complaints Committee and reads as follows:-

- (1) Every District Officer shall constitute in the district concerned, a Committee to be known as the "Local Complaints Committee".
- (2) Where constitution of the Internal Committee at a workplace is not feasible on account of less than ten persons being employed at such work place or where the complaint is against the employer himself, the District Officer shall, constitute at every concerned block, taluka or tehsil in rural or tribal area and ward or municipality in urban area, additional Local Committee which shall also be known as the "Local Complaints Committee" for that area concerned.
- (3) The jurisdiction of the Local Committee shall extend to the area within the district, or block, taluka or tehsil or ward or municipality level where it is constituted.

9.2 Apart from providing the constitution of LCC at district level, it has also been stipulated that where constitution of the Internal Committee at a workplace is not feasible on account of less than ten persons being employed at such work place or where the complaint is against the employer himself, the District Officer shall, constitute at every concerned block, taluka or tehsil in rural or tribal area and ward or municipality in urban area, additional Local Committee which shall also be known as the "Local Complaints Committee" for that area concerned. It also provides that the jurisdiction of the Local Committee shall extend to the area within the district, or block, taluka or tehsil or ward or municipality level where it is constituted.

9.3 During the course of interactions with stakeholders, a number of issues/doubts were raised about the viability of the proposed LCCs as indicated below:-

- the composition of the LCC was problematic as the District Officer is an officer with a number of responsibilities and therefore, Local Complaints Committee would not be a priority for him.
- The functions of the district level and the block/taluka level Committee are not delineated clearly leading to ambiguity. It was not clear whether the block level Committee would be a temporary ad-hoc Committee or permanent Committee.

9.4 Committee finds the problem areas highlighted in the setting up of LCCs to be quite genuine. The feasibility of having such a LCC in every block/taluka/tehsil in rural and tribal area and ward/municipality in urban area needs to be looked into, especially in the case of big districts. The Committee believes that practical

aspects like setting up an office for such LCC also require careful examination. The Committee is of the view that a beginning can perhaps be made by having district level committees on a permanent basis. So far as setting up of such Committees at block, taluka or tehsil in rural or tribal area and ward or municipality in urban area is concerned, in case of non-feasibility of an ICC at a workplace having less than ten employees, the Committee is of the view that District level LCCs can handle such cases. To make their task easier, a local member from the taluka/ward etc. may be co-opted as a member wherever any incident of sexual harassment case had occurred.

9.5 Committee takes note of a very pertinent issue highlighted by NCW that where the perpetrator might be the concerned Head of the establishment or Head of a large private company/Government establishment. Block, taluka or tehsil level Local Committee or even district level Local Committee would not be in a position to provide adequate redressal in such cases. It was suggested that a provision for a High Power Committee constituted under the Ministry may be considered to address such situations and the punishment in case of employers may be made more stringent. On this matter being taken up with the Ministry, it was pointed out that setting up of a high-power Committee may not be feasible.

9.6 The Committee understands the predicament of local level Committee in providing redressal to victims against highly placed officials of a Government or private company. The Committee would like to point out that categorical non-acceptance by the Ministry would not solve the problem. An alternate mechanism has to be identified. The Committee is of the view that State Commissions for Women need to be involved in handling of cases against employers. A workable mechanism which can be the district level LCC with representative from the State Commission for Women can be the best option.

X. Clause 7 : Composition, tenure and other terms and Conditions of Local Complaints Committee

10.1 Clause 7 deals with the composition, tenure and other terms and conditions of LCC. It provides that the members of Local Complaints Committee shall be nominated by the District Officer which shall consist of :-

- (a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

- (b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;
- (c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women, which may be prescribed provided that one of the nominees should, preferably, have background in law or legal knowledge; and
- (d) the Protection Officer appointed under sub-section (1) of section 8 of the Protection of Women from Domestic Violence Act, 2005 in the District, in which block, taluka or tehsil in rural or tribal area or ward or municipality in urban area, the Local Committee is constituted. At least one-half of the total Members so nominated shall be women.

10.2 It further provides that the Chairperson and every Member of the Local Committee shall hold office for such period as may be specified by rules which shall not exceed three years from the date of their appointment. It also provides that the Chairperson or any Member of the Local Committee shall be removed from the Local Committee if he contravenes the provisions of clause 16 relating to prohibition of publication or making known contents of complaint and enquiry proceedings and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this clause. The Chairperson and Members of the Local Committee shall be entitled to such fees or allowances for holding the proceeding of the Local Committee as may be prescribed by rules.

10.3 Reservations have been expressed by many stakeholders regarding the criteria "committed to the cause of women" for Chairperson and Member of LCC. It was stated that the Vishaka guidelines nowhere mentioned such a pre qualification for being member of the Complaints Committee. It was also emphasized that appointment/nomination of most of the members including Chairperson of the LCC purely based on one gender would be devoid of judicial mindset. Under such circumstances, possibility of biased and injudicious decision cannot be ruled out where many cases would be heard on the basis of circumstantial evidence which required proper mindset of judicial knowledge. In Indian judicial practice, no evidence of precedence was found where only women judges were eligible for trial of cases, involving heinous crimes including rape, murder etc against women. Therefore, it was suggested that the appointment of the Committee Chairperson and members should be on the basis of their integrity and judicious approach.

10.4 The Ministry has justified the inclusion of criteria of 'committed to the cause of women' by stating that this qualification was included keeping in mind that the Chair/Members should be sensitive to the concerns of women and to permit broad based selection. These members would be persons who have done outstanding work for women. Qualifications of members can subsequently be elaborated through the Rules.

10.5 The Committee is convinced by the justification of the Ministry because utmost sensitivity and care should be shown towards a victim of sexual harassment by the members of Local Complaints Committee. The Committee would also like to draw attention to the criteria laid down by the Supreme Court for members of the Complaints Committees which stipulate that such Committees should be headed by a woman and not less than half of its members should be women. To prevent the possibility of any undue pressure or influence from senior levels, a third party which could be either an NGO or other body familiar with the issue of sexual harassment. The Committee observes that broadly speaking, the composition of LCC is envisaged as per the Supreme Court guidelines. The Committee also takes note of the assurance given by the Ministry that qualifications of members of LCC would be elaborated in the Rules.

10.6 The Committee observes that majority of women working in the unorganized sectors especially working as domestic workers were women from the oppressed sections like the Scheduled Castes and Schedule Tribes, OBCs and minorities. It was impressed upon the Committee that adequate representation needed to be given to such women in the composition of the Local Complaints Committee so as to safeguard their interests. **The Committee, therefore, would like the Ministry to include a provision for giving representation to women from Scheduled Castes, Scheduled Tribes, OBCs and Minorities in the Local Complaints Committee, depending upon local conditions for fair dispensation of justice from a body which represented all sections of the society.**

10.7 The Committee would, however, like to draw attention to a very important suggestion given by some stakeholders regarding the inclusion of a representative of trade union/ employees association as a member of the Committee which would be in the interest of the employees. It was asserted that composition of LCC should embrace both a women rights perspective as well as a workers' rights

perspective. The Committee supports the inclusion of representative of trade union or employee association and recommends to the Ministry to incorporate this category of members in the LCC in order to have a broad-based membership protecting the interests of the victim as a woman as well as an employee. The Committee recommends that the following addition may be made in clause 7:-

"one member to be nominated from amongst the registered trade unions or workers associations functioning in that block or district"

10.8 It was also pointed out before the Committee that any stipulation with respect to number of women in the composition of the Committee was unnecessary and made a prejudiced assumptions that only women members are capable of arbitrating complaints. **The Committee would like to point out that more number of women in the Committee would be more comforting for a victim of sexual harassment as she would feel free to speak out. This has to be perceived from the viewpoint of a victim. The Committee takes the opportunity to point out here that out of the five members of the LCC, three members are mandated to be women. The proviso that at least half of the total members shall be women, therefore, becomes redundant. The Committee, accordingly, recommends to the Ministry to delete the said proviso.**

10.9 Role and functioning of Protection Officers to be nominated to LCC was highlighted by many stakeholders. Clause 7(i)(d) specifies nomination of Protection Officers appointed under the Protection of Women from Domestic Violence Act, 2005 in the District, in which block, taluka or tehsil in rural or tribal area or ward or municipality in urban area the Local Committee is constituted. The constitution of sub-district level LCCs is envisaged only where it is deemed feasible, keeping in view the size and population of enterprises covered under the Bill. In case, there were no Protection Officers appointed at the sub-district level, it may not be feasible for a single officer to serve on both the Committees. It was clarified by the Ministry that in such cases, District Officer would be required to nominate any other person at sub-district level to attend the meetings. This was to be specifically provided through the Rules.

10.10 The Committee has been given to understand that LCCs would be benefitted by nomination of Protection Officers on account of their having requisite knowledge and

orientation as well as sensitivity gained from working with victims of domestic violence and procedural knowledge gained in assisting court cases.

10.11 It was pointed out that engagement of Protection Officer under this legislation seemed to be problematic and unpractical also. It was problematic because these officers were understaffed and had no resources to implement the DV Act. Burdening them with additional responsibility would not be correct. Secondly, the role of these officers under this legislation was not clear. It was also not clear whether they would be required to serve only on the District level Complaints Committee or each block/taluk level Committee in the district. If the officer was required to serve at the latter level, it would be highly improbable for a single officer in each district to fulfill his/her roles mandated under this legislation as well as the DV Act, 2005.

10.12 Taking into consideration the problem areas cited above, the Committee would like the Ministry to review the viability of having Protection Officer as a member of LCC. Protection Officers already have a well-defined mandate under the DV Act, 2005. The Committee also has been given to understand that there is also a proposal to appoint them as Dowry Prohibition Officer. Additional responsibility for these officers under the proposed legislation would not be advisable for its effective implementation. The Committee, therefore, is of the view that in addition to the specific nomination of Protection Officer, an alternative proposition will also have to be categorically mentioned in the composition clause. Suggestion of the Ministry to provide for alternative provision in the Rules cannot be considered viable from any point of view and is therefore, not acceptable. The Committee takes note of the alternative to Protection Officers, as given in the NCW Draft Bill, 2010, i.e 'any other officer such as inspectors or additional inspectors under the Shops and Establishments Acts of the respective States, additional Inspectors under the Factories Act, 1948 or any other public servant at the district level appointed under any law for the time being in force'. The Committee considers the option given in the draft NCW Bill, 2010 viable and more conducive for the functioning of LCC. The Committee, accordingly, recommends incorporation of the same in clause 7(1)(d).

10.13 Clause 7(2) entails that the Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of

their appointment as may be prescribed. It has been pointed out by stakeholders that stipulating tenure without any stipulation of terms of service amounts to allowing the members to work without any conditions attached to the job. The Ministry assured that provisions may be added which would specify the conditions under which the appointment of a person as Chairperson/Member would be prohibited as in the case of ICC. **The Committee feels that the three year tenure of LCC should be specified in the similar manner as suggested in the case of ICC.**

10.14 Reservations were expressed by stakeholders regarding the payment of fees or allowances to Chairperson and members of LCC for holding its proceedings as indicated in clause 7(4). The Committee observes that similar reservations have also been expressed in respect of ICC also. It was strongly recommended that no remuneration or allowances should be made payable to any of the Committee members or Chairperson as it would encourage frivolous and malicious cases to justify such payments.

10.15 The Committee would like to point out that composition of Internal Complaints Committee and Local Complaints Committee is significantly different. Whereas out of the four member ICC, Presiding Officer and two members will be employees of the Establishment, the five member LCC will be primarily composed of NGO representatives, social activists, only exception being Protection Officer and woman working in block/taluka/tehsil/ward/municipality. The Committee is of the view that proposed entitlement of fees or allowances for LCC Chairperson and members is justified and needs to be retained.

10.16 The Committee fails to understand the rationale of prescribing only one condition for disqualification i.e. contravening the provisions of section 16 for the Chairperson and members of LCC as compared to seven conditions of disqualification enumerated in clause 4(5) for the Presiding Officer and members of ICC. The Committee finds no justification for different approach in respect of the two Committees having the same mandate. The Committee, accordingly, recommends, similar modification in clause 7(3) as suggested in clause 4(5).

XI. Grants and audit

11.1 Clause 8 relates to Grants and Audit. It provides that the Central Government may, after due appropriation made by Parliament by law in this behalf, make to the

State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances of the Chairperson and Members of the Local Committee. It also empowers the State Government to set up an agency and transfer the grants made under sub-clause (1) to that agency and the agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances of the Chairperson and Members of the Local Committee.

11.2 The Committee observes that as per the Financial Memorandum, Central Government will meet the entire expenditure on fees/allowances payable to Chairperson/Members of LCC till 2012, i.e. the end of the 11th Plan period. Thereafter, it would be shared between Centre and State Government on a ratio to be specified by the Central Government. The Committee has been given to understand that this provision of sharing of expenditure between Centre and States after 2012 is acceptable to the State Governments. It was suggested by NCW that the provision for budgetary allocation may be mandated to all State Governments and Central Government by substituting the word 'may' by 'shall'. **The Committee is of the view that budgetary provision is a crucial component for effective implementation of any law and the Central Government has to take a pro-active role in this matter. Ratio for division of expenditure between Centre and State needs to be fixed in consultation with the State Governments keeping in view their financial position. Only then, it can be ensured to achieve the objective of providing relief to the most vulnerable section of our women workforce.**

XII Clause 9: Complaint of sexual harassment

12.1 Clause 9 relating to complaint of sexual harassment reads as follows:-

(1) “ Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted:

Provided that where such complaint cannot be made in writing the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section”.

12.2 This clause provides for making of complaint of sexual harassment and lays down the procedure for making a complaint to the concerned Complaints Committee.

The complaint has to be made by the aggrieved woman in writing. However, in case of physical or mental incapacity or death of aggrieved woman, her legal heir or any other person as prescribed has the right to file the complaint on her behalf. Presiding Officer/Chairperson/Members are mandated to render all assistance to her in filing a complaint, if required.

12.3 Reservations were expressed by many stakeholders before the Committee that the clause was completely silent on the time frame within which the complainant should file the complaint related to sexual harassment. They emphasized that a time limit within which the complaint needed to be filed from the time of alleged incident is of crucial significance in settling sexual harassment disputes. Complainant should lodge the complaint instantaneously without any loss of time. In the interest of justice and to ensure that no evidence got damaged, destroyed or rendered useless or escaped memory, it was important that time within which complaint should be filed should be stipulated clearly and in unambiguous terms in the proposed Act. Further, any delay in filing the complaint should be explained in writing to the satisfaction of the Inquiry Committee. The stakeholders suggested that a time limit of thirty days or four weeks should be specified within which a complaint of sexual harassment should be filed.

12.4 On the attention of the Ministry being drawn to this visibly reasonable reservation and suggestion given, Committee was given to understand that non-specification of any time-limit was a well-thought action on the part of the Ministry. Nobody can deny that a woman would require a lot of courage and determination to make up her mind and file a complaint of sexual harassment. Fear of reprisal at the workplace, social stigma attached as well as the lack of evidence, particularly where the perpetrator was a superior were often the reasons for women hesitating to file complaint. To ensure that she was not denied access to justice due to her vulnerability, no time line for filing complaints had been provided as it was advisable to do so.

12.5 The Committee agrees with the contention of the stakeholders regarding having a time limit for filing a complaint of sexual harassment. At the same time, the Committee also understands the intention of the Ministry for recognizing the fact that the aggrieved woman may take considerable time to muster enough courage to come forward and file a complaint. However, clarification of the Ministry for not having any time-limit for filing of complaint is not very

convincing. The Committee believes that without any time limit, this would become an endless process and may not lead to a logical conclusion. In the final interaction with the Committee, the Secretary, agreed that having an open-ended provision without specifying any time limit for filing a complaint of sexual harassment would not be desirable as it would not be possible for a Complaints Committee to conduct an inquiry in a justifiable manner. The Committee, accordingly, recommends to the Ministry to work out a reasonable time limit which is neither too short so as to deny justice to the aggrieved woman who would be needing considerable courage and will-power to file a complaint nor too long so as to dilute the real objective.

12.6 The Committee takes note of the fact that in the draft NCW Bill, 2010, aggrieved woman has the option to approach the State Women Commission when the complaint is against the employer. The Committee feels that such an option seems to be justified and needs to be included as it would make the aggrieved woman more comfortable and secure. With the kind of experience and expertise available with any State Women Commission, it can be considered the most appropriate alternate forum for filing of a complaint by the aggrieved woman, especially in case when the complaint is against the employer himself. The Committee, accordingly, recommends that the following proviso may be added to clause 9(1).

"Provided further that an aggrieved woman may file a complaint to the Commission where the complaint is against the employer".

XIII Clause 10: Conciliation

13.1 Clause 10 relates to conciliation which reads as follows:—

(1) "The Internal Committee or, as the case may be, the Local Committee, may, before initiating inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation.

(2) Where a settlement has been arrived at under sub-section (i), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (i), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be”.

13.2 This provision has been specifically incorporated as a woman's sense of justice may be met through various ways and settlement through conciliation which would include instances such as tendering of an apology or admission of guilt by the perpetrator. Before initiating enquiry and at the request of the aggrieved woman, the Internal Committee/ Local Committee may take steps to settle the matter between her and the respondent through conciliation and where a settlement has been arrived, the Committee shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as recommended. Copies of the recorded settlement to the aggrieved woman and the respondent shall be provided by the Committee. No further enquiry shall be conducted by the Committee thereafter.

13.3 Apprehensions were expressed by many stakeholders about undue pressure on the aggrieved woman for going for conciliation. It was pointed out that in case a complainant wanted the case to be mediated and conciliated instead of there being an inquiry conducted, she was free to do so. But by including this mode of resolving the issue in the law itself, it was most likely that employees would insist on case being ‘settled and conciliated’ instead of an inquiry being held, no matter how heinous the act of sexual harassment was. Serious concern was, therefore expressed as it was likely to be misinterpreted or misused by employers to coerce complainants into some kind of settlement and withdrawal of complaint without offering any justice. It was suggested that adequate steps must be taken to ensure that the complainant was not under any threat or pressure to pursue this route. It was emphasized that if process of conciliation was undertaken by the aggrieved woman, it should also result in some corrective action and the Complaints Committee should be vested with powers to decide the corrective action to be taken. A serious attempt should be made by the employers to ensure correction in deviant behavior of the respondent.

13.4 The Ministry justified this clause by submitting that recognizing that an aggrieved woman may be in an unequal power relationship vis-à-vis the perpetrator and may thus be subjected to undue pressure during conciliation, the Bill specifically puts in place a safeguard that any conciliation proceeding can be initiated only at her instance. Not only this, an inquiry can be initiated even after a settlement was arrived if

conciliation has not been complied with. There are thus sufficient safeguards to protect an aggrieved woman from undue pressure or harassment.

13.5 Reservations have been expressed by many stakeholders that by legally providing a mechanism to bargain punishment with settlement, the Act might become a tool for 'legal extortion'. Monetary payments would only render the proposed statute open for abuse. It was emphasized that a complaint of sexual harassment was a serious complaint and under no circumstances should the conciliation include any monetary settlements. It was an outrage to the sensibilities of all self-respecting men and women that money could be considered as adequate redressal for their loss of dignity. Another issue raised was that as a complaint of sexual harassment was a serious complaint, reconciliation should not be limited to monetary settlements as no amount of money could wipe out the ignominies suffered by a victim of sexual harassment.

13.6 The Committee finds that there are two issues in this clause i.e. apprehensions regarding undue pressure on aggrieved woman for conciliation and monetary settlement likely to be subject to misuse and also outraging the sensibilities of the aggrieved woman. The Committee would like to point out that safeguards against imposing undue pressure on the victim can be seen in this very clause itself as the conciliation would only be initiated at the instance of the victim herself. Also, proviso to clause 11(1) entitles the victim to approach ICC/LCC in the event of any term or condition of the settlement not being complied with. Secondly, the Committee does not find the mention of any 'monetary settlement in the Bill. Even the clarification given by the Ministry makes a mention of tendering of apology or admission of guilt by the perpetrator. The Committee strongly recommends that there should not be any 'monetary settlement' for it would trivialize a grave act of sexual harassment.

13.7 Attention of the Committee has also been drawn to the fact that if an aggrieved woman opts for conciliation, the accused would be let off simply by tendering his apology or admission of guilt. The Committee suggests that a distinction should be made between a minor offence and a major one. Tendering apology or admission of guilt would be fine in the case of a minor offence but the same should not be applicable to major offences. This can encourage the accused indirectly and he can indulge in similar undesirable activities in future.

Punishment should be the only way of rendering justice to the aggrieved woman in such cases. The Committee, accordingly, recommends to the Ministry for making provision of conditional conciliation for minor offences relating to sexual harassment. For other major offences, stern punishment should be the only way out without any scope for the conciliation.

XIV. Clause 11:— Inquiry into Complaint

14.1 Clause 11 which deals with inquiry into complaint reads as follows:-

“Subject to the provisions of section 10 and section 16, the Internal Committee or the Local Committee, as the case may be, shall proceed to make inquiry into the complaint in such manner as may be prescribed:

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case, may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint.

(2) For the purpose of making inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) requiring the discovery and production of documents; and*
 - (c) any other matter which may be prescribed.*
- (3) The inquiry under sub-section (1) shall be completed within a period of ninety days”.*

14.2 This clause enumerates the circumstances whereunder Complaints Committee can initiate inquiry. It also specifies the special powers vested in Complaints Committees.

14.3 Strong objections were raised by many stakeholders regarding ICC or LCC being vested with the quasi-judicial powers of a Civil Court for the purpose of making inquiry. Apprehension were voiced on the words in sub-clause (2) (c) of clause 11:- *“any other matter which may be prescribed”*. This kind of discretionary power, it was alleged, would lend itself to very wide interpretations and wide-spread misuse. It was suggested that this sub-clause needed to be deleted as it was ambiguous and open to various interpretations. Other reservations/suggestions of the stakeholders are as follows:-

— only one member is to have a legal background, that too preferably

- very vague powers regarding any other matter have been given
- duties of ICC/LCC need to be spelt out
- model policies and guidelines need to be laid down to facilitate their functioning
- feasibility of having a legal counsel as and when required into be included in the Rules
- manner of holding an inquiry to be prescribed in the Rules.
- time-period for producing of documents, oral evidence and for judgement should be specified in the Act itself.

14.4 The Committee has been given to understand by the Ministry that the inquiry process under the Bill was proposed as a quasi-judicial proceeding, which was informal in nature. As such, representation of legal counsel, for both parties, was ordinarily not envisaged. However, at the time of formulating the Rules, the feasibility of including a provision allowing legal counsel depending upon the circumstances might be considered. Further, clauses 11 to 13 of the proposed Bill adequately provided for the powers and process of enquiry to be undertaken by the Internal or Local Committee. There were certain specific aspects such as other powers of the Committees under Clause 11(2)(c), which were to be prescribed through the Rules to allow for some flexibility.

14.5 The Committee is of the view that very pertinent aspects relating to conduct of inquiry have been left out to be included in the Rules which leaves a lot of scope for ambiguity and mis-interpretation. The Committee would like to draw attention to the following provision included in NCW Draft Bill, 2010:-.

“where conciliation under sub-section (1) of section 10 is not arrived at, the Committee or the Local Committee as the case may be, shall, subject to the provisions of section 15, proceed to make enquiry into the complaint in accordance with its service and conduct rules/standing orders/ policies and where no such rules exist then in such a manner as may be prescribed”.

This provision in a way makes it clear that the inquiry has to be made in accordance with service and conduct rules, standing orders or policies. The Committee, therefore, recommends that clause 11(1) may be modified accordingly.

14.6 Clause 11 (3) provides that the inquiry under sub-section (1) should be completed within a period of ninety days. The Committee would like to point out that in the event of inquiry not being completed within the stipulated period i.e. ninety days, no liability has been fixed on the employer. NCW also suggested that culpability of employers be specified for delay of inquiry beyond ninety days. Committee’s attention

has been drawn to a similar provision of NCW Draft Bill, 2010 which reads as following:

“where the Committee or the Local Committee, as the case may be, fails to complete the enquiry within the period specified under sub-section (3), the employer or the District Officer, as the case may be, may take such action as may be prescribed .

The Committee suggests that either a similar clause as in the NCW Draft Bill, 2010 be included in the present Bill or a liability be fixed on the employer which can be included under clause 25 dealing with penalty.

XV. Clause 12:— Action during pendency of inquiry

15.1 Clause 12 deals with action during pendency of inquiry and reads as follows:—
“During the pendency of inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

- (a) transfer the aggrieved woman or the respondent to any other workplace; or*
- (b) grant leave to the aggrieved woman; or*
- (c) grant such other relief to the aggrieved woman as may be prescribed”.*

15.2 Ministry’s objective was to provide discretion to the Committee to recommend any interim relief to the aggrieved woman during pendency of the inquiry. The reliefs envisaged under this provision were transfer, leave or such other relief, in case the aggrieved woman apprehended or was facing reprisals or hostile work environment or apprehending intimidation of witnesses as a result of filing of a complaint. The Bill envisaged such action as temporary measures only.

15.3 Some stakeholders voiced their objection about the transfer of respondent at the request of aggrieved woman. Transfer of respondent would spell trouble for his family and could also lead to financial hardship thereby affecting the welfare of the children of the respondent. It was also pointed out that any action which caused detriment to the accused was prohibited in Indian Judicial System. Therefore, it was suggested that transfer of the respondent should only be done with his consent and he should be equally entitled to request for grant of leave until the pendency of inquiry.

15.4 The Committee has been given to understand that adequate safeguards were available to ensure that the perpetrator was not put to a disadvantage as a result of any recommendation of temporary relief to the aggrieved woman. Complaints Committee would make a recommendation in this regard only after having considered the facts and

circumstances of the case. This provision was meant to provide interim relief where the complainant so requested on apprehension of imminent danger or harm or need.

15.5 The Committee is convinced by the justification given by the Ministry. The Committee feels that the focus should be more on the victim who goes through a lot of mental trauma and these interim reliefs were meant to make her comfortable during the inquiry process. The Committee would also like to emphasize that provision should also be made for safety and security of not only the victim but also the witnesses including prevention of their victimization during and after the inquiry proceedings. The victim/witnesses should not be suspended, given memos, inquiry conducted against them for acts which would be considered as harassment as a fallout of the complaint. The Committee, accordingly, recommends the Ministry to make necessary provisions in this regard so that the victim and the witnesses are protected from all sorts of pressure and hostility.

15.6 Sub-clause 2 of Clause 12 provides for leave to be given to the aggrieved woman if the case is proved. It was pointed out that in reality, the complainant would also have to bear a financial burden of taking unpaid leave due to the stress caused as a result of making the complaint. Also, the provision does not stipulate the number of days of leave. Therefore, it was suggested that the words, 'if the case is proved' be deleted.

15.7 The Ministry explained that the number of days of leave to be granted may vary from case to case and could be decided by the members of the Committee. **The Committee, however, is of the view that a specification of leave period needs to be included in the interest of the aggrieved woman. Further, the Committee finds some merit in the argument for the deletion of the words 'if the cases is proved' as it would not always be easy for an aggrieved woman to prove a case of sexual harassment which would not have any witnesses. The Committee recommends to the Ministry to delete the words as suggested above. The aggrieved woman should not be hassled for leave issues etc. as the trauma of being sexually harassed would be too much for her. This would just facilitate an aggrieved woman to file a complaint of sexual harassment and not to deter her from doing so making her think about the consequences if her case is not proved.**

XVI. Clause 13:— Inquiry Report

16.1 Clause 13 which deals with Inquiry Report reads as follows:—

“ On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be—

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum of compensation to be paid to the aggrieved women or to legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such compensation to the aggrieved women”.

4. The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

This clause specifies the recommendations to be made by the Complaints Committee based on the findings of inquiry conducted by it both where allegation against the respondent has been proved or not. It also enumerates the kind of recommendations to be made where the allegation stands proved. It also makes it mandatory for the employer or the District Officer to act upon the findings of the Inquiry Report within sixty days.

16.2 Committee's attention was drawn to the existing process of conducting such inquiry being not very conducive due to its taking unduly long time which resulted in many women complainants, unable to bear the hostile atmosphere at the workplace. Since no interim relief was forthcoming, they were often forced to drop the complaint or compromise, or even quit their job. Even after establishment of guilt of the perpetrator, the management often failed to take action in any time-bound manner/implement the recommendation of the Complaints Committee, causing further trauma to the

complainant. Apprehensions were voiced that the position might remain unchanged even after the proposed law coming into force.

16.3 The Committee finds the concern expressed above to be quite genuine. It would like to point out that under clause 11 (3), process of inquiry has to be completed with ninety days and the employer or the District Officer has to act upon the recommendation within sixty days of Inquiry Report being received. Not only this, failure to do so will invite penal action under clause 25. The Committee would like to point out that chances of such an instance happening would be very little, keeping in view the composition of these Committees and their mandate. The Committee observes that as indicated in clause 20, the District Officer shall be duly-bound to monitor the timely submission of reports furnished by the Internal Committee or the Local Committee. The Committee is of the view that this duty should be cast on the employer also so far as Internal Committee is concerned. The Committee, accordingly, recommends that this duty should also be included in clause 19 relating to the duties of employer.

16.4 The Committee feels that these provisions are stringent enough and the Inquiry process and follow-up action on the findings thereof have to be completed within a specified time-limit. Only limited area of concern could be a situation when the Complaints Committee itself unduly delays the submission of the Report.

16.5 It was also impressed upon the Committee that specific guidelines relating to the manner in which an inquiry should be conducted and the procedure for recording of evidence needed to be laid out which may include but not limited to:

- *Participation of the complainant*
- *Manner of examination of the witnesses*
- *Nature of questions that are not to be allowed*
- *Non-permissibility of evidence/examination based on aggrieved woman's character, personal/sexual life and history, etc.*

The Committee is of the view that the procedural details for conducting the inquiry need to be enumerated and, accordingly, recommends that the same may be specified in the Rules to be framed under clause 28.

16.6 Doubts were raised that it was not clear if the employer was bound by the recommendation of the Committee. **The Committee would like to point out that the employer is bound by the recommendation of the Committee as specified in clause**

25 (1) (b) whereunder on the employer failing to comply with any recommendation made under clause 13, he is liable to be penalized. Further, the terms of settlement arrived at during conciliation under clause 10 are required to be recorded and forwarded by the ICC/LCC as its recommendation. By virtue of this, the settlement terms would take the character of a recommendation under clause 13. The Committee is of the view that with these provisions, the employer is duty-bound to ensure every single complaint of sexual harassment reaching the Complaints Committee being handled and disposed of and recommendation of Inquiry Report acted upon. Chances of his acting otherwise would be very rare.

16.7 Another aspect highlighted was that the Complaints Committee should not be empowered to give monetary compensation. They should only conduct the inquiry and submit their report. It was suggested that monetary compensation must be decided by the legal authority. On this issue being taken up with the Ministry, it was clarified that ICC/LCC was a quasi-judicial, statutory authority and as such its recommendation would have the force of law. Since compensation for the physical and mental injury is an integral part of the relief, empowering only a court of law to grant such a relief may defeat the very purpose of the proposed law.

16.8 The Committee is convinced with the justification given by the Ministry as the Complaints Committee would be fully empowered to grant relief to the aggrieved woman. Decision of the compensation etc. by a court of law would mean an agonizing wait for justice for the aggrieved woman as it may take considerable time to come to a decision and unnecessarily extend her mental trauma. This would in a way defeat the very purpose of doing justice to her without any uncalled for publicity. The Committee would like to mention that complaint mechanism as mandated in the Supreme Court guidelines is to be created in the employer's organization for redressal of the complaint made by the victim.

16.9 Clause 13 (3) of the Bill deals with action to be taken by the employer or the District Officer once it has been concluded that the allegation against the respondent is proved. This may include taking action in accordance with the provisions of the service rules/conduct rules or policies governing disciplinary matters applicable to the respondent and deducting from the salary or wages of the respondent such sum of

compensation to be paid to the aggrieved woman. This may also include dismissal of the perpetrator from service, where the Service Rules so provide or as may be prescribed by Rules to the Act.

16.10 Various reservations were expressed by stakeholders on different aspects of sub-clause 3 of clause 13. They are as follows:—

- norms/criteria for deciding the quantum of compensation need to be specified
- monetary compensation was not considered viable. If at all there was such compensation, it should be the responsibility of the employer to make the required compensation to the complainant.
- action to be taken in accordance with service rules or in absence of service rules, 'in such manner as prescribed', needed to be re-drafted so as to bring clarity on punitive action. Specific penalties should be mentioned in case no such mention is there in service rules.
- in case where the respondent was not necessarily an employee, manner of recovery of compensation from him was not clear.
- instances where sexual harassment occurred as a result of an act of omission by any third party/outsider was not covered.
- chances of conflict with existing laws.
- no clarity in the Inquiry procedure.

It was also pointed out that the Bill was silent on the rights of the accused. There was no mention of appeal in the process. No accused should be denied free and fair trial of charges against him. Right to appeal and revision of judgments would make it possible to have a chance of fair trial.

16.11 Taking into cognizance the above mentioned concerns, the Committee finds that a lot needs to be specified so as to make the present clause clear in terms of various aspects relating to follow-up action on the findings of the Inquiry. Any element of ambiguity or lack of clarity may create uncalled for or unjustified action from the aggrieved woman's point of view as well as that of the respondent. The Committee would also like to point out that the NCW Bill, 2006 and 2010 had provided a procedure for penalizing the accused by the District Officer in cases where no service and disciplinary rules existed. The present Bill leaves it open ended with the phrase 'as may be prescribed'.

16.12 The Committee is of the view that first of all, sexual harassment should be clearly laid down as an offence in the service rules of all Government employees and in the contracts of all employees in the private sector. This is in consonance

with the directive of the Supreme Court that Rules/Regulations of Government/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. For the private employers, steps should be taken to include the aforesaid prohibition in the Standing Orders under the Industrial Employment (Standing Orders) Act, 1946. Secondly, to bring clarity in the phrase 'as may be prescribed', the Rules should clearly state the kind of penal action such an offence would attract. Laying down specific penalties for sexual harassment would certainly clear the air. As for the prescribed procedure to be followed by the employer after the Complaints Committee gives its report, the Committee notes that same is to be provided in the Rules to be framed under clause 28.

16.13 With regard to the use of the term 'sum of compensation' in sub-clause 3 (ii), it was suggested that the same may be reframed as 'damages' which would be against mental, physical, personal and professional trauma borne by the complainant. In articulating the granting of remedial damages to the complainant as 'compensation', the Bill failed to recognize that it took much more than money to compensate for the trauma caused by various forms of sexual harassment at the workplace. **The Committee agrees with the suggestion for use of the term 'damages' in place of 'compensation' as 'damages' for any amount of compensation cannot ever compensate for mental and physical trauma a victim of sexual harassment goes through. Further, the word 'damages' is much more dignified and appropriate compared to the word 'compensation'. The Committee, accordingly, recommends modification in sub-clause (3) (ii).**

16.14 Some stakeholders had argued in favour of compensation being paid by the employer/organization because it was the responsibility of the employer to discipline his own employees and ensure that they followed service rules. It was suggested that this practice prevalent in the western countries should be applied in this Bill too. The Ministry submitted that given the diverse nature of workplaces across the country, including small and unorganized sector enterprises, it would not be practical to make the employer liable for payment of compensation. At the same time, recognizing the primary responsibility of the employer to ensure a safe and secure environment at the

workplace, detailed duties of employer had been provided in clause 19. Also, clause 25 lays down penalties on the employer for non-compliance with provisions of the law.

16.15 The Committee finds merit in the justification given by the Ministry and believes that apart from the responsibility of the employer, it is also a personal responsibility of every individual under the service rules or terms of contract that he would not engage in any act of sexual harassment. Sexual harassment should be specified as a grave misconduct in the service rules or terms of contract to emphasize upon personal responsibility of an individual also. The Committee, therefore, is of the view that compensation should be paid by the accused only and not by the employer.

16.16 The Committee was given to understand that several local laws and special laws had already been amended to set up Complaints Committees to deal with cases of sexual harassment. **The Committee would appreciate if the assessment of existing institutional mechanism for handling of sexual harassment cases which might be in place in different categories of workplaces in the light of Supreme Court guidelines is undertaken by the Ministry and viable components were made a part of the inquiry procedure to be prescribed through rules under the proposed law.**

16.17 A very important and pertinent issue which had been raised by many stakeholders relates to the rights of the accused. As mentioned earlier, the Bill is silent on this aspect. It was suggested that the accused should not be denied free and fair trial. **The Committee is of the firm view that every accused person needs to have a free and fair trial as this is the very basis of the principle of natural justice. The Committee observes that clause 3 (i) simply mentions that copy of the inquiry report is to be made available to the concerned parties. The Committee believes that there should be a proper procedure for giving a chance to the accused and also to the aggrieved woman, if not satisfied to place their side of the story before the Complaints Committee. Not just this, before forwarding its recommendations, the Complaints Committee should give a final chance to the accused to convey his position. The Committee, therefore, recommends to the Ministry to include an appropriate provision in the Bill or specify in the Rules to ensure a fair and free inquiry proceedings from the point of view of the accused.**

XVII. Clause 14: Punishment for false or malicious complaint and false evidence

17.1 Clause 14 which deals with punishment for false or malicious complaints and false evidence reads as follows:—

"(i) Where the Internal Committee or the Local Committee, as the case may be arrives at a conclusion that the allegation against the respondent is false or malicious 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 under sub-section (1) or sub-section (2) of section 9, 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 or falsehood on part of the complaint shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, 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.

17.2 The Committee was given to understand that the objective of having such a provision in the proposed legislation was that there was a section of society which held the view that woman-friendly legislation was prone to misuse. Their concern had been addressed by empowering the Complaints Committee to recommend action against those making false or malicious complaint. Further, mere inability to substantiate the complaint or provide adequate proof, however, would not make a person liable for punishment. The malicious intent was required to be proved before initiating action under this provision.

17.3 Strong reservations have been expressed against this provision from majority of stakeholders which are as follows:-

- this provision would discourage those women who required protection from sexual harassment at the workplace and needed to use the law.
- it added to the obstacle faced by women in their unequal labour relationship and their gendered relationship with their employer.
- intent of complaint may not be false but the lack of evidence or objectivity stating the issue could be regarded as false.
- distinction to be made between false and malicious.

- instead of punishing the women who has made a false allegation, she should be given a chance to explain and withdraw her complaint.
- present provision under the IPC could be invoked to deal with forged evidence and false or malicious complaints.

17.4 The Committee has been given be to understand that a provision for punishment for false or malicious complaint and false evidence in the proposed legislation would significantly deter women from filing a case of sexual harassment. Most instances of sexual harassment took place in private or behind closed doors which in most cases might not have any documentary evidence or any witnesses. In such a situation, a subordinate had to muster up courage to make a complaint who might also face social approbation from others in her workplace. Hence, wide opposition to inclusion of penal provision for false and malicious complaint was expressed as it was likely to defeat the real purpose of the proposed law.

17.5 Also, a distinction had to be made between false and malicious complaints. The provision penalized even false complaints which may not be malicious. The clarification given by the Ministry was that a specific safeguard under the proviso to clause 14 (1) to ensure that any complaint merely by virtue of it not being proved was not penalized as false complaint was already there. Another viewpoint which was placed before the Committee was that there was a need to provide safeguards against malicious complaints.

17.6 The Committee understands the complex position of an aggrieved woman who has to muster great courage to come forward to file a complaint of sexual harassment. Also, given the unequal nature of relations with the employer, it would not be easy for the aggrieved woman to prove her case. The Committee realizes that acts of sexual harassment take place behind closed doors and it is a tough task to prove the authenticity of a complaint. Also, such instances occur where witnesses are not readily available. If at all a witness gathers courage to come forward, such a provision may act as a deterrent. The Supreme Court in Vishaka Guidelines had stated clearly that it had to be ensured that victims or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The Committee believes that a distinction needs to be made between false and malicious complaints. For any false complaint, no punishment may be prescribed. However, if it is proved that a complaint has been

filed with malicious intent, only then action against the aggrieved woman may be considered as it affects the character and credibility of the accused. The punishment for filing complaints with malicious intent should be provided in the Rules.

17.7 The Committee understands the apprehensions of some stakeholders regarding the misuse of the proposed legislation and takes note of their suggestion to change the word 'may recommend' to 'shall recommend' so as to make it mandatory for the Complaint Committee to take action against complainants filing false and malicious complaints. The Committee would like to point out that the focus of the proposed legislation is to provide redressal to aggrieved woman who may have faced sexual harassment and not on the misuse of the law by some. The Committee takes note of the fact that any provision should not be there which may deter an already aggrieved woman to file a genuine case of sexual harassment. The Committee observes that malicious intent or falsehood on the part of the complainant will have to be established after an inquiry to be conducted in accordance with the prescribed procedure. Such a provision will ensure that this provision will be resorted to only in genuine cases and disposed of after a proper inquiry.

XVIII. Clause 15: Determination of Compensation

18.1 Clause 15 which deals with determination of compensation reads as follows:—

“For the purpose of determining the compensation to be paid to the aggrieved woman under clause (ii) of sub-section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to —

- (a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman*
- (b) the loss in the career opportunity due to the incident of sexual harassment;*
- (c) medical expenses incurred by the victim for physical or psychiatric treatment;*
- (d) the income and financial status of the respondent;*
- (e) feasibility of such payment in lump sum or in installments”.*

18.2 This clause providing for determination of compensation by ICC or LCC should take into consideration the following aspects like mental trauma, pain, suffering, emotional distress caused to the aggrieved woman; loss in the career opportunity; medical expenses for physical or psychiatric treatment; income and financial status of the respondent and the feasibility of such payment in lump sum or in installments.

18.3 Majority of the stakeholders have supported this provision and have given their own suggestions for its improvement like: —

- loss of earnings to be taken into consideration while determining compensation.
- apart from compensation, a heavy fine should be there to act as a deterrent .
- procedure for realization of compensation and recovery needed to be spelt out.
- determination of compensation to be seen and computed as damages.
- money compensation should be limited to the actual money loss suffered like paid leave, salary loss or medical loss.

18.4 The Committee was given to understand that Ministry's purpose of specifically including monetary compensation under any law was to compensate the victim for the physical as well as the mental injury/harm suffered. Keeping this in view, the provision for monetary compensation under clause 13 (3) read with clause 15 included the mental trauma suffered by the aggrieved woman, in addition to the actual money loss incurred. The Bill aimed to create a safe environment for women at the workplace through preventive means as well as deterrent action. It was expected that a liability to pay compensation would add to the deterrent effect of punitive clauses.

18.5 The Committee agrees with the intent of the Ministry for determining compensation based on several factors relating to various forms of suffering and loss of the aggrieved women. It also takes into consideration the suggestions of the stakeholders and is of the view that the elaborate procedure for realization of compensation and recovery needs to be spelt out so that the aggrieved woman is given compensation as determined by ICC or LCC. The Committee would like to reiterate the stance of the Ministry that compensation does not go against the spirit of the Bill and is not intended to be an alternative to punishment for an act of sexual harassment.

XIX. Clause 16 Prohibition of publication or making known contents of complaint and inquiry proceedings and Clause 17 Penalty for publication or making known contents and inquiry proceedings.

19.1 Clause 16 entails prohibition of publication or making known contents of complaint and inquiry proceedings. Clause 17 provides penalty for publication or making known contents of complaint and inquiry proceedings.

19.2 Clause 16 specifically excludes any publication or communication regarding the complaint, the parties and proceeding from the purview of the RTI. The Committee

was informed that this was done with the specific objective of ensuring that the identity of the complainant was protected so that she was not further victimized or reprimanded. It further clarified that information regarding justice secured by any victim may be disseminated as it was a matter of public interest without disclosing the identity of the victim.

19.3 Clause 17 provides for penalty for publication or making known contents of complaints and inquiry proceedings. It provides that where any person entrusted with the duty to handle or deal with the complaint, enquiry or any recommendations or action to be taken under the provisions of the proposed legislation contravenes the provision of clause 16 relating to prohibition of publication or making known contents of complaint and enquiry proceedings, he shall be liable for 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 prescribed by rules.

19.4 Reservations have been expressed by many stakeholders with respect to these two clauses on the following grounds:—

- there was no need for a special provision in the Bill whereunder the RTI Act could not be used to unearth cases of false allegation and misuse of the legislation
- blockage on the use of RTI Act was undemocratic and unconstitutional and obstructed transparency.
- when either the complainant or the respondent wishes to approach any court of law for justice, they should have a right to the details and proceedings of the inquiry given in the report to provide details of the case to the court.
- clause 17 included to systemically oppress the whistle – blowers if they choose to bring out the truth to the public.

19.5 Ministry's justification for having these two clauses was to protect the confidentiality of complaint regardless of what was contained in the RTI Act. The idea was to give the complainant confidence to take recourse to the mechanism provided without fear and stigma.

19.6 The Committee would like to emphasize upon the sensitivity of a case of sexual harassment and the essentiality of maintaining confidentiality of the complainant so that she does not regret filing a complaint of sexual harassment. The justification given by the Ministry seems to be very convincing. The

Committee would like to point out that justice secured by any victim can be accessed as it is a matter of public interest. Only the identity of the victim is not to be disclosed. There is no question of highlighting only genuine cases and hiding the false ones as under clause 22 the employer is required to include the information regarding cases filed and their disposal in the Annual Report of the organization. The Committee agrees with the stand of Ministry that in no way the RTI Act is being subverted. Notwithstanding the provisions of section 22 of the RTI Act, a legislation enacted subsequently can be outside its purview in case specific exception to this effect has been made in that subsequent law. In fact, clause 16 is in conformity with section 8 (j) of the RTI Act and there is no inconsistency between the two.

19.7 As for clause 17, the Committee is of the view that it should be read with clause 16. It is meant to safeguard the aggrieved woman against any mischievous intention/deliberate act so as to put her in awkward position by disclosing the details of case filed by her. Hence, the Committee finds no problem in clauses 16 and 17 as the intention of provisions is to protect the aggrieved woman from further harassment of any kind or public ridicule.

XX. Clause 18 : Appeal

20.1 Clause 18 provides that any person aggrieved by the recommendations made by the Complaints Committee or non-implementation of such recommendations or by imposition of penalty under clause 17 may prefer an appeal to the court or tribunal in accordance with the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed by rules.

20.2 Strong reservations were voiced by some of the stakeholders on court or tribunal being designated as the appellate forum on the following grounds:

- the case shall no more remain confidential.
- the victim shall not be in a position to bear the expenses.
- the process for getting justice would be too long.
- the victim shall be hesitant to appear connected in the court.

20.3 Another issue which was raised was that the Inquiry Report of Complaints Committee should be considered final, with no further disciplinary inquiry being

undertaken. Any further inquiry shall only be repetitive and delay the process and also put both the victim and witnesses in an awkward position who may not have the courage to come forward again. In this regard, attention of the Committee was drawn to the following directions given by the Supreme Court in the case of Dr. Medha Kotwal Lele & others V. Union of India:

"The investigation and the report of the Complaints Committee are to be treated as final work in sexual harassment case and the process is not to be repeated by any other in-house Inquiry Committee".

On the issue of appellate forum of court or tribunal, it was clarified by the Ministry that wherever Service Rules prescribed the Court of Law as an appellate forum, an appeal would be preferred before that court. Even in cases where Service Rules do not exist, a Court of Law may be prescribed as the appellate forum through the Rules.

20.4 The Committee while appreciating the concerns about likelihood of aggrieved woman as well as witnesses being made to face further harassment and uncalled for exposure in case of appeal being made in the Court or Tribunal would like to point out that principle of natural justice has to be adhered to in every case. Sexual harassment cases cannot be made an exception. The Committee would like to point out that with required steps and extra precaution taken by making the conduct of appeal proceedings in camera, chances of victims/witnesses facing undue harassment will not be there. It would also be better if onus of proving the case should be on the employer.

20.5 So far as Supreme Court directives in Dr. Medha Kotwal case is concerned, the Committee observes that the proposed legislation envisages no further inquiry after the Report of the Complaints Committee has been given which would be mandatorily implemented by the employer. However, the right to appeal both to the aggrieved woman and the respondent stays in consonance with principles of natural justice.

XXI. Clause 19: Duties of Employer

21.1 Clause 19 entails the duties of an employer. It provides that every employer shall — (a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace; (b) display the order constituting the Internal Committee at any conspicuous place in the workplace; (c)

undertake workshops and training programmes at regular intervals for sensitizing the employees regarding the provisions of the proposed legislation; (d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting enquiry; (e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be; (f) make available such information to the Internal Committee or the Local Committee as it may require having regard to the complaint; (g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; and (h) initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator after the conclusion of the enquiry, or without waiting for the enquiry, where the perpetrator is not an employee in the workplace at which the incident of sexual harassment took place.

21.2 All the stakeholders supported the provision relating to duties of the employer with some additions in the duties already mentioned. They are as follows:—

- punishment should be prescribed for employers/administrative heads who do not form the redressal mechanism at the workplace.
- responsibility to take necessary action to maintain an atmosphere free from prejudice in the workplace during the pendency of inquiry.
- it should be stated that the employer would not alter to the prejudice of the complainant/supporter/service of their conditions of service prevailing immediately prior to the complaint being lodged as a consequence to the filing and prosecuting of a complaint under this Act.
- preventive measures to be adopted by the employer like a Sexual Harassment Policy, undertaking training for attitudinal change, gender sensitization and awareness regarding women's rights as citizens etc.
- strict action against use of unparliamentary, derogatory and foul language within the premises which would affect the discipline and decorum of the work place.
- the quality of assistance to be provided by the employer must be spelt out clearly.

21.3 The Committee observes that recognizing the primary responsibility of the employer to ensure a safe and secure environment at the workplace, the Ministry has emphasized upon this provision which provides for detailed duties of the employer.

21.4 The Committee finds that a similar set of duties of the employers are included in the Vishaka Guidelines. The Committee, however, observes that duties

covering preventive action on the part of employer as substantiated in these guidelines have not found a place in clause 19. The Committee would like to draw attention of the Ministry of the following duties mentioned in Supreme Court guidelines.

- (a) **Express prohibition of sexual harassment at the workplace 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 workplace and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.**

The Committee is of the view that the duties of employers as mentioned above should be incorporated in this provision along with the existing ones.

21.5 Committee's attention was drawn to few valid objections to duty indicated in sub-clauses (h) as mentioned below:-

- employer holds no right to take criminal action against a perpetrator who is not his employee. This would be a crime against that person.
- locating such a person will be beyond the control of the employer and impose uncalled hardship for him.
- matter of taking action against a non-employee before the conclusion of inquiry also needs consideration.

21.6 The Committee is of the opinion that sub-clause (h) seems to be problematic as the employer cannot in any way take action against non-employee or even make an effort to locate him. Certain practical difficulties would not make it possible for the employer to rope in non-employee within the ambit of the Bill. The only way out for the employer, the Committee feels, would be to assist and give full co-operation to its female employee who has been sexually harassed in filing a case under the IPC.

XXII. Clause 20 Duties and power of District Officer

22.1 This clause lays down duties and power of District Officer. It provides that the District Officer shall monitor the timely submission of reports furnished by the Internal Committee or the Local Committee and take such measures as may be necessary for engaging NGOs for creation of awareness on sexual harassment and the rights of women.

22.2 The Committee observes that on a comparative analysis of this provision with clause 22 relating to Duties of District Officer as given in the NCW Draft Bill, 2010, role of District Officer as envisaged under the proposed law seems to be somewhat diluted. This is further borne out by the fact that a number of duties of employer as indicated in clause 19 are not considered appropriate enough to be assigned to the District Officer. The Committee strongly feels that this would be a serious anomaly, resulting in non-delivery of justice to aggrieved woman. The Committee would like to point out that the District Officer is mandated to set up a Local Complaints Committee in every district and sub-district wherever required which will be assigned the role of conducting an inquiry against the employer himself. In such a scenario, absence of such duties like providing necessary facilities to LCC for dealing with the complaint and conducting inquiry, assisting in securing these attendances of respondents and witnesses before the Complaints Committee and making available the required information to it cannot be considered acceptable. The Committee, accordingly, recommends that duties assigned to the District Officer should be on the same pattern as envisaged for the employer to the extent possible.

XXIII. Clause 23: Appropriate Government to monitor implementation and maintain data

23.1 This clause provides that the appropriate Government, i.e. Central or State Government shall monitor the implementation of the proposed legislation and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

23.2 The Committee was informed that the Supreme Court guidelines did not lay down any Central monitoring mechanism but placed the onus on the Complaints Committees to make an annual report to the Government Department concerned.

However, in the absence of any centralised data collection mechanism, the implementation of the Supreme Court guidelines in the private sector could not be ascertained. In the light of the experience gained since the Supreme Court guidelines were given in 1997, the Committee feels that an effective monitoring mechanism has to be put in place if the objective of the proposed law is to be achieved. **The Committee, however, has one suggestion in this regard. The responsibility of monitoring the implementation of various provisions needs to be given to the National or State Commissions for Women who would be better equipped for handling such a task in view of their experience and expertise of working for the cause of women. The Committee, accordingly, recommends that the provision relating to Monitoring of the Act stipulated in the draft NCW Bill, 2010 reproduced below may be included in the proposed law in place of clause 23:**

"The National Commission for Women or, as the case may be, the State Commission for Women shall, in addition to the functions assigned to them under their respective Acts examine and review the implementation of this Act and advise the appropriate Government on its implementation".

XXIV. Clause 24: Power to call for information and inspection of records

24.1. This clause empowers appropriate Government to call for information and inspection of records. It provides that the appropriate Government, i.e. Central or State Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require, and authorize any officer to make inspection of the records and workplace in relation to sexual harassment who shall submit a report of such inspection to it within a specified period.

24.2 The Committee, while appreciating the spirit behind this provision as a part of an effective monitoring mechanism envisaged to be put in place in the proposed law has a word of caution. The Committee finds that Report on the cases of sexual harassment handled by an establishment will be submitted to the State Government annually and the appropriate Government is also mandated to monitor the implementation of the Act and maintain data on the number of cases filed and properly disposed of. Provision in clause 24 authorizing any by officer to

inspect an establishment in public interest or in the interest of women employees on the part of the appropriate Government seems to be somewhat unjustified. The Committee is of the view that such a power may be given only in case of an extreme case of sexual harassment taking place and not being handled properly by the concerned authorities and a specific Complaint/Report being made by the complainant/Complaints Committee/State Commission for Women.

XXV. Clause 25 Penalty for non-compliance with provisions of Act

25.1 Clause 25 provides for penalty for non-compliance with provisions of the proposed legislation. It provides that where the employer failed to constitute an Internal Committee, failed to take action under clauses 13, 14 and 22 and contravened or attempted to contravene or abets contravention of other provisions of the proposed legislation or any rules made thereunder, then, he should be punishable with fine which may extend to fifty thousand rupees. It further provides that if any employer, after having been previously convicted of an offence punishable under the proposed legislation subsequently committed and is convicted of the same offence, then, he would be liable to twice the punishment imposed on his licence or withdrawal or non-renewal or approval or cancellation of the registration by the Government or local authority, required for carrying on his business or activity.

25.2 Many of the stakeholders have expressed reservation about the cancellation or withdrawal of registration which would result in the closure of the business operations of the workplace and would result in loss to ex-chequer in the form of loss of revenue from octroi value added tax, income tax etc. It would also affect the employees and vendors, dependent on the operations of the workplace, inspite of their not committing any uncalled for action. It was pointed out that industry was a human centric industry. Employers licence withdrawal/non-renewal/approval cancellation of registration due to non-compliance with the law would lead to shutting down of units making thousand of employees jobless. It was suggested that this should be modified or removed so that the guilty were punished but it should not adversely impact harmless people.

25.3 The Committee has been given to understand by the Ministry that this clause had been included to provide a strong deterrent for the employer who commits an offence under the Act for the second time. An alternative provision in NCW Draft Bill, 2010 indicates that revocation, suspension of any licence/registration for such period as may

be specified, issued under any law for the time being in force, provided that an opportunity to the employer/respondent to be heard is afforded before initiating any action. **The Committee agrees that strong deterrent should be provided in the Bill itself so that a safe and secure workplace is ensured by an employer and the accused should be brought to book at any cost. However, in doing so, the impact of punishing the employer for not complying with the provisions of the Act should not adversely affect the other employees or dependents of an organization. Cancellation of license or withdrawal of non-renewal or cancellation of registration by the Government or local authority would harm the interests of many persons associated with a particular organization because it is a matter of means of livelihood for many. Also adequate opportunity should be given to the employer to present his case before any such action is taken against him if the clause is proposed to be retained.**

25.4 The Committee, accordingly, recommends to the Ministry to modify the provision in such a way so as to safeguard the interests of other employees, dependents parties and at the same time penalize the employer in a certain manner which does not affect innocent lives.

XXVI. Conclusion

26.1 The Committee believes that a legislation for the protection of women against sexual harassment at workplace is a much needed one for ensuring a secure and safe workplace so that women can work with dignity. It took thirteen years to implement the Vishaka Guidelines into a full fledged legislation. Sexual harassment is a sad reality of our society. It is an index of moral degradation of society in recent years. Although it is high time for such a law to come into effect, a legislation has its own limitation also. It entails the action of a mechanism for redressal of complaints of cases of sexual harassment but cannot change the moral fabric of the society. It is where the need for cultural education and respect for womanhood which has been the cherished value of our culture is felt. The Committee would like to emphasize on the importance of inculcating such values in a child at tender age itself so that it is made known since childhood itself that sexual harassment of women or violence against women is most heinous. This would certainly indirectly result in diminishing acts of sexual harassment. Not just

this, proper training programmes and awareness generation programme should be given due importance so as to educate employees about respect for womanhood by all possible methods.

26.2 Further, proper implementation of the law and its monitoring is essential for the success of this legislation which should achieve its objective of protecting women from acts of sexual harassment at workplace by providing a safe and secure environment/workplace and also a mechanism for redressal of complaints of sexual harassment.

26.3 The Committee adopts the remaining clauses of the Bill without any amendments.

26.4 The enacting formula and the title are adopted with consequential changes.

26.5 The Committee recommends that the Bill may be passed after incorporating the amendments/additions suggested by it.

26.6 The Committee would like the Ministry to submit a note with reasons on the recommendations/suggestions which could not be incorporated in the Bill.
