To,
1. All the Regional Directors, ESIC, Regional Offices
2. All the Joint Directors, ESIC, Sub Regional Offices
3. All the Medical Superintendents, ESI Hospitals
4. All Director (Medical) ESIC
5. The Joint Director, Estt-V, Hqrs. Office.


Ref: This office letter No. B-21/11/1/94-Estt.I(B) dated 29/04/08.

Sir,
I am directed to refer to the reference and subject cited above and to enclose herewith a copy of above letter with DOPT OM dated 13/02/98 and copy of judgement and guidelines and norms issued by Hon'ble Supreme Court Judgement in the case of Vishakha regarding sexual harassment of working women for information and strict compliance.

Yours faithfully,

Encl: As above.

(V.K.RODA)
DEPUTY DIRECTOR

Copy to:- The Website Content Manager, Hqrs. Office with the request to upload the same on ESIC Website.
EMPLOYEES' STATE INSURANCE CORPORATION
"PANCHDEEP"BHAWAN:HQRS' OFFICE:NEW DELHI


To

All Regional Directors/
Joint Director(Admin.)-II, Hqrs' /
Dir (Medical)Delhi/
Medical Supdt., ESI Hospital,
Basaidarapur, New Delhi /
Jhilmil/ Okhla/ Rohini /
K.K. Nagar, ESI Hospital, Chennai /Director,
Sub Regional Officer, Nagpur /
Director, Sub Regional office, Pune.

SUBJECT:- CCS(Conduct) Rules, 1964- Supreme Court judgement in
the case of Vishaka Vs. State of Rajasthan regarding
sexual harassment of working women.

Sir/Madam,

Kindly find enclosed herewith following papers for adoption
and necessary action:


Hindi version will follow.

Yours faithfully,

(B.D. SHARMA)
JOINT DIRECTOR (ADMIN.)-
No. 11013/10/97-Estt. (A)
Government of India
Ministry of Personnel, Public
Grievances and Pensions
(Department of Personnel & Training)

New Delhi, dated the 13th Feb., 1998.

Ministry of Labour

OFFICE MEMORANDUM

Subject: CCS(Conduct) Rules, 1964 - Supreme Court judgement in the case of Vishaka Vs. State of Rajasthan regarding sexual harassment of working women.

The undersigned is directed to say that in the case of Vishaka and Ors. Vs. State of Rajasthan and Ors. (JT 1997(7) 3C 384), the Hon'ble Supreme Court has laid down guidelines and norms to be observed to prevent sexual harassment of working women.

2. It has been laid down in the judgement above-mentioned that it is the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as:-

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

3. Attention in this connection is invited to Rule- 3 (i) (iii) of the CCS(Conduct) Rules, 1964, which provides that every Government servant shall at all times do nothing which is unbecoming of a Government servant. Any act of sexual harassment of women employees is definitely unbecoming of a Government servant and amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules.

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

6. Complaint Mechanism:- Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in every organisation for redress of the complaint made by victim. Such complaint mechanism should ensure time bound treatment of complaints. Wherever such machineries for redressal of grievance already exist, they may be made more effective and in particular women officers should preferably handle such complaints.

7. Awareness:- Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (copy enclosed) in a suitable manner.

8. A specific provision is, however, being made in the CCG (Conduct) Rules, 1964, prohibiting sexual harassment of women Government servants, in compliance of the judgement of the Hon'ble Supreme Court.

9. The Ministries/Departments are requested to bring these instructions to the notice of all concerned for strict compliance.

10. In so far as persons serving in the Indian Audit and Accounts Department are concerned, these instructions issue after consultation with the Comptroller and Auditor General of India. Hindi version will follow.

Sd/-
(Harinder Singh)
Joint Secretary to the Govt. of

To

All Ministries/Departments of the Government of India.

Copy to:
2. Union Public Service Commission, New Delhi.
5. All Union Territory Administrations.
6. Lok Sabha/Rajya Sabha Secretariat.
7. All Officers and Sections in the Ministry Personnel, Public Grievances and Pensions and MHA.
8. All Attached and Subordinate Offices of Ministry of Personnel, Public Grievances and Pensions and MHA.

Sd/-
(Harinder Singh)
Joint Secretary(E)
GUIDELINES AND NORMS LAID DOWN BY THE HON'BLE
SUPREME COURT IN VISHAKA & ORS. V. STATE OF
RAJASTHAN & ORS. (JT 1997(7) SC 384).

TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time.

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

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

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

2. Definition:

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

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

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

3. PREVENTIVE STEPS:

All employers or person in charge of work place whether in public or private sector should take appropriate steps to prevent sexual harassment Without prejudice to th generally of this obligation they should take the following steps (a) Express prohibition sexual harassment as defined above at the work place should be notified, published circulated in appropriate ways.

...Contd.
(b) The Rules/Regulations of Govt. and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

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

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

4. Criminal Proceedings:

Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority.

In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action:

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

6. Complaint Mechanism:

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

7. Complaints Committee:

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

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

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

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

...Contd.......
Workers' Initiative:

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

9. Awareness:

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

10. Third Party Harassment:

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

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

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993.
(TO BE PUBLISHED IN PART-II SECTION-3 SUB-SECTION (i) OF THE
GAZETTE OF INDIA)

No. 11013/10/97-Estt.(A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

.......

New Delhi, dated the 13th Feb., 1998.

NOTIFICATION

G.S.R....... In exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Comptroller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the President hereby makes the following rules further to amend the Central Civil Services (Conduct) Rules, 1964, namely:

1. (1) These rules may be called the Central Civil Services (Conduct) Amendment Rules, 1998.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Civil Services (Conduct) Rules, 1964, after rule 38, the following rule shall be inserted, namely:

"3C - Prohibition of sexual harassment of working women.

(1) No Government servant shall indulge in any act of sexual harassment of any woman at her work place.

(2) Every Government servant who is in charge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.

Explanations - For the purpose of this rule, "sexual harassment" includes such unwelcome sexually determined behaviour, whether directly or otherwise, as -

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

Sd/-

( Harinder Singh )
Joint Secy. to the Government of India.

............2/-
NOTE: The Principal rules were published in the Gazette of India, vide Ministry of Home Affairs Notification No. 15/4/63-Estt. (A), dated 30th Nov., 1964 (S.O. No. 4177 dated the 12th December, 1964, Part-II, Section-3, sub-section(ii) ) and subsequently amended vide

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(Sd/-)
(Harinder Singh)
Joint Secretary to the Govt. of India.

To

The Manager,
Govt. of India Press,
Mayapuri, New Delhi.

(No. 11013/10/97-Estt. (A) ) New Delhi, dated the 13th February, 1998)

..Contd.....
Copy to:–

1. All Ministries/Departments of the Government of India.
2. Controller and Auditor General of India, New Delhi.
3. UPSC, New Delhi.
5. Central Bureau of Investigation.
6. All Union Territory Administrations.
7. Lok Sabha/Rajya Sabha Secretariat.
8. All attached and subordinate offices of the MHA and Ministry of Personnel, Public Grievances and Pensions.
9. All Officers and Sections of the Ministry of Personnel, Public Grievances and Pensions and MHA.

Sd/-

(Harinder Singh)
Joint Secretary(E).
No. Z-11028/01/(11)/97-Coord.

Government of India/ Bharat Sarkar
Ministry of Labour/ Shram Mantralaya
Shram Shakti Bhawan, Rafi Marg

New Delhi, dated 27th November, 1997.

NOTE

Subject: Supreme Court judgement in Writ Petition (Criminal) Nos. 667-70 of 1992 filed by Vishaka & Ors. against State of Rajasthan & Ors. - Follow up action reg.

A copy of Supreme Court judgement in Writ Petition (Criminal) Nos. 666-70 of 1992 filed by Vishaka & Ors. against the State of Rajasthan and Ors. along with a copy of D.O. letter from Secretary (Labour), addressed to Secretaries of Ministries/Departments of Government of India is forwarded herewith to all concerned for compliance / similar action etc.

Sd/-

( GOPAL SINGH )
UNDER SECRETARY

To

1. All Attached / Subordinate Offices.
2. All Autonomous Bodies / Boards under the Ministry of Labour.
3. All Officers in Ministry of Labour.
4. All Sections / Desks / Divisions etc.
The Hon'ble Supreme Court has in a recent judgement defined what constitutes sexual harassment in workplaces and has laid down certain guidelines to prevent such harassment. These guidelines have the consent of the Government. The Supreme Court has directed that these guidelines be strictly observed at all workplaces for the preservation and enforcement of the right to gender equality of working women. The direction of Court would be binding and enforceable in law until (Article-141 of the Constitution) a suitable legislation is enacted. A copy of the judgement (W.P.(CRL) Nos.666-70 of 1992) is enclosed.

2. As the onus for implementation of the guidelines lies solely on the employer, I would urge you to initiate immediate action to specifically ensure the following:

(i) Bring to the notice of those working in your Ministry/Department as well as attached and subordinate offices, autonomous bodies, public sector undertakings etc. the definition of sexual harassment as laid down by the Supreme Court and its express prohibition.

(ii) Take all necessary action to suitably modify the Conduct Rules governing the employees of Public Sector Undertakings under the jurisdiction of your Ministry to ensure that they include the express prohibition of sexual harassment and provide for appropriate penalties against the offender.

(iii) Take all steps necessary to ensure that appropriate work conditions are 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 has reasonable grounds to believe that she is disadvantaged in connection with her employment.

(iv) Set up a complaints mechanism in your Department to deal with complaints of sexual harassment. The modalities for setting up such a mechanism may please be seen at para-7 of the judgement.

You may also consider setting up such a mechanism in the attached and subordinate offices, autonomous bodies etc. under the jurisdiction of your Ministry/Department.

3. Action taken for implementation of the guidelines laid down by the Supreme Court may kindly be intimated to this Ministry at your earliest convenience.

Yours sincerely,

Sd/-

( Dr. L. Mishra )

Encl: As per list enclosed.
Verma, CJI:

This Writ Petition has been filed for the enforcement of the fundamental rights of working women under Articles-14, 19 and 21 of the Constitution of India in view of the prevailing climate in which the violation of these rights is not uncommon. With the increasing awareness and emphasis on gender justice there is increase in the effort to guard against such violations, and the resentment towards incidents of sexual harassment is also increasing. The present petition has been brought as a class action by certain social activists and NGOs with the aim of focussing attention towards this societal aberration and assisting in finding suitable methods for realisation of the true concept of gender equality; and to prevent sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.

Contd......
The immediate cause for the filing of this writ petition is an incident of alleged brutal gang rape of a social worker in a village of Rajasthan. That incident is the subject matter of a separate criminal action and no further mention of it, by us, is necessary. The incident reveals the hazards to which a working woman may be exposed and the depravity to which sexual harassment can degenerate; and the urgency for safeguards by an alternative mechanism in the absence of legislative measures. In the absence of legislative measures, the need is to find an effective alternative mechanism to fulfil this felt and urgent social need.

Each such incident results in violation of the fundamental rights of 'Gender Equality' and the 'Right to Life and Liberty'. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) 'to practice any profession or to carry out any occupation, trade or business'. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason. A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention; as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry

Contd.....