

MEDHA KOTWAL LELE AND OTHERS

v.

UNION OF INDIA AND OTHERS

(Writ Petition (Criminal) Nos. 173-177 of 1999 etc.)

OCTOBER 19, 2012

[R.M. LODHA, ANIL R. DAVE AND RANJAN GOGOI, JJ.]

SEXUAL HARASSMENT:

Sexual harassment of women at work places - 'Vishaka' guidelines - Implementation of - Further directions given by Court to make amendments in service Rules and Industrial Employment (Standing Orders) Rules and to form adequate number of Complaints Committees at different levels - Report of complaints Committee to be treated as report in the disciplinary proceedings by Inquiry Officer and such report to be acted upon accordingly - State functionaries, private and public sector organizations, Bar Council of India, State Bar Councils, Medical Council of India and all statutory institutions directed to ensure that Vishaka guidelines and the directions issued by the Court subsequently and in the instant judgment are followed by all registered/affiliated bodies - Constitution of India, 1950 - Art.141 - Public interest litigation.

LEGISLATION:

Secure environment for women - Held: Even after 15 years of judgment in Vishaka, the statutory law is not in place - The existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and State Legislatures to protect women from any form of indecency, indignity and disrespect at all places to prevent all forms of violence i.e. domestic violence, sexual assault, sexual harassment at the workplace, etc. and provide new initiatives for education and advancement of women and girls in all spheres of life.

A The instant group of matters were filed in the nature of public interest litigation highlighting individual cases of sexual harassment of women at work places and lack of effective implementation of '*Vishaka*'¹ guidelines . The Court passed orders from time to time and issued notices to all the State Governments. In view of the fact that even after several years of the judgment statutory law was not in place, the Court, on 26.4.2004, directed that the Complaints Committee as envisaged in *Vishaka's* case would be deemed to be an inquiry authority for the purpose of Central Civil Services (Conduct) Rules, 1964 and the report of the Complaints Committee would be deemed to be an inquiry report, and the disciplinary authority would act on the report in accordance with the Rules. The Court further directed that similar amendments be carried out in the Industrial Employment (Standing Orders) Rules. On 17.1.2006, the Court directed the Chief Secretaries of the States to ensure appointment of a nodal agent to collect the details and to give suitable directions. The Labour Commissioner was directed to take steps to ensure that the directions were fully complied with as regards factories, shops and commercial establishments. Details of the steps taken were directed to be furnished. The State Governments filed affidavits.

F Disposing of the matters, the Court

HELD: 1.1 From the affidavits filed by the State Governments, it transpires that some States have amended the Rules relating to duties, public rights and obligations of the government employees but have not made amendments in Civil Services (Conduct) Rules. Similarly, some States/Union Territories have not carried out amendments in the Standing Orders. The said States/Union Territories appear to have not implemented the

H 1. *Vishaka and Ors. vs. State of Rajasthan and Ors.* 1997 (3) Suppl. SCR 404.

order passed by this Court on 26.4.2004. The States which have carried out amendments in the Civil Services (Conduct) Rules and the Standing Orders have not provided that the report of the Complaints Committee shall be treated as a report in the disciplinary proceedings by an Inquiry Officer. What has been provided by these States is that the inquiry, findings and recommendations of the Complaints Committee shall be treated as a mere preliminary investigation leading to a disciplinary action against the delinquent. Further, some States and Union Territories seem to have not formed Complaints Committees as envisaged in the Vishaka guidelines. Some States have constituted only one Complaints Committee for the entire State. [para 9-10] [914-B-G]

Vishaka and Ors. vs. Stae of Rajasthan and Ors. 1997 (3) Suppl. SCR 404 = (1997) 6 SCC 241 - referred to.

Beijing Declaration and Platform for Action - referred to.

1.2 The implementation of the guidelines in Vishaka has to be not only in form but also in substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth. [para 13] [915-D-F]

Seema Lepcha v. State of Sikkim & Ors. 2012 (2) Scale 635 - referred to

1.3 Although Vishaka judgment came on 13.8.1997, yet 15 years after the guidelines were laid down by this

A Court for the prevention and redressal of sexual harassment and their due compliance under Art.141 of the Constitution of India until such time appropriate legislation was enacted by the Parliament, many women still struggle to have heir most basic rights protected as workplaces. The statutory law is not in place. This Court is of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures, to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence - domestic violence, sexual assault, sexual harassment at the workplace, etc. - and provide new initiatives for education and advancement of women and girls in all spheres of life. [para 1 and 15] [901-G; 902-A-B; 916-D-F]

1.4 This Court is of the considered view that guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place:

(i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their respective Civil Services (Conduct) Rules (by whatever name these Rules are called) shall do so within two months by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services (Conduct) Rules. The disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary

action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

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(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted in clause (i) above within two months.

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(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

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(iv) The State functionaries and private and public sector undertakings/ organisations/bodies/ institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant-victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that the harassment and intimidation of witnesses and the complainants shall be met with severe disciplinary action.

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(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered

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A Accountants, Institute of Company Secretaries and
other statutory Institutes shall ensure that the
organisations, bodies, associations, institutions and
persons registered/affiliated with them follow the
B guidelines laid down by Vishaka. To achieve this,
necessary instructions/circulars shall be issued by
all the statutory bodies such as Bar Council of India,
C Medical Council of India, Council of Architecture,
Institute of Company Secretaries within two months.
On receipt of any complaint of sexual harassment
the same shall be dealt with by the statutory bodies
in accordance with the Vishaka guidelines and the
guidelines in the present order. [para 16] [916-G-H;
917-A-H; 918-A-D]

D 1.5 If there is any non-compliance or non-adherence
to the Vishaka guidelines, orders of this Court following
Vishaka and the above directions, it will be open to the
aggrieved persons to approach the respective High
Courts, which would be in a better position to effectively
E consider the grievances raised in that regard. [para 17]
[918-E]

Case Law Reference:

1997 (3) Suppl. SCR 404 referred to para 1
F 2012 (2) Scale 635 referred to para 1

ORIGINAL CRIMINAL JURISDICTION : Writ Petition (Crl.)
Nos. 173-177 of 1999 etc.

Under Article 32 of the Constitution of India.

G WITH
T.C. (C) No. 21 of 2001, C.A. Nos. 5009 and 5010 of 2006.

H A. Mariarputham, AG, Colin Gonsalves, T.S. Doabia, Dr.
Manish Singhvi, AAG, Jayshree Satpute, Jyoti Mendiratta,

Aparna Bhat, S. Uday Kr. Sagar, Krishna Kumar Singh, Praseena E. Joseph (for Lawyer's Knit & Co.), Sunita Sharma, Sadhana Sandhu, B.V. Balram Das, Sushma Suri, M.S. Doabia, Asha G. Nair, S.S. Rawat, Rashmi Malhotra, D.S. Mahra, B. Balaji, J.M. Khanna, Anil Shrivastav, Rituraj Biswas, Hemantika Wahi, Shail Kumar Dwivedi, Tara Chandra Sharma, Ashok Mathur, Abhijit Sengupta, Riku Sarma, Navnit Kumar (for Corporate Law Group), Milind Kumar, Ranjan Mukherjee, S. Bhowmick, S.C. Ghosh, Sushil Kumar Jain, A. Subhashini, Guntur Prabhakar, Rajeev Sharma, Sanjay R. Hegde, V.G. Pragasam, S.J. Aristotle, Praburamsubramanian, Anuvrat Sharma, G. Prakash, T.V. George, Meenakshi Arora, Vasav Anantharaman, Naresh K. Sharma, Khwairakpam Nobin Singh, S. Biswajit Methei, Shreekant N. Terdal, V.D. Khanna, Aruna Mahtur, Novita (for Arputham, Aruna & Co.), Rachana Srivastava, B.S. Banthia, Kamakshi S. Mehlwal, D.P. Mohanty (for Parekh & Co.), V.N. Raghupathy, Hari Shankar K., Abhinav Mukherji, Pramod Dayal, Ardhendumauli Kumar Prasad, Madhu Sikri, Chiraranjan Addey, Shrish Kumar Misra, Praveen Swarup, Akshay Verma, Sushma Verma, Rameshwar Prasad Goyal, Pragati Neekhra, Mukul Singh, Aruneshwar Gupta, H.S. Parihar, Gopal Prasad, P.V. Yogeshwaran, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha, Arun K. Sinha, Ratan Kumar Choudhuri, Sunil Fernandes, Shashank Kumar Lal, S. Thananjayan, P.V. Dinesh, Mitter & Mitter Co., Gopal Singh, Dinesh Kumar Garg, Chandan Ramamurthi, Shivaji M. Jadhav, Sunil Kumar Verma, Bina Madhavan, Jogy Scaria, E. Enatoli Sema, Amit Kumar Singh, D. Mahesh Babu, Mayur R. Shah, Amit K. Nain for the appearing parties.

The Judgment of the Court was delivered by

R.M. LODHA, J. 1. The *Vishaka*¹ judgment came on 13.8.1997. Yet, 15 years after the guidelines were laid down by this Court for the prevention and redressal of sexual harassment and their due compliance under Article 141 of the Constitution

1. *Vishaka and Ors. vs. State of Rajasthan and Ors.* 1997 (3) Suppl. SCR 404.

A of India until such time appropriate legislation was enacted by
 the Parliament, many women still struggle to have their most
 basic rights protected at workplaces. The statutory law is not
 in place. The Protection of Women Against Sexual Harassment
 at Work Place Bill, 2010 is still pending in Parliament though
 B Lok Sabha is said to have passed that Bill in the first week of
 September, 2012. The belief of the Constitution framers in
 fairness and justice for women is yet to be fully achieved at the
 workplaces in the country.

C 2. This group of four matters – in the nature of public
 interest litigation – raises principally the grievance that women
 continue to be victims of sexual harassment at workplaces. The
 guidelines in Vishaka¹ are followed in breach in substance and
 spirit by state functionaries and all other concerned. The women
 workers are subjected to harassment through legal and extra
 D legal methods and they are made to suffer insult and indignity.

3. Beijing Declaration and Platform for Action, inter alia,
 states, “Violence against women both violates and impairs or
 nullifies the enjoyment by women of human rights and
 E fundamental freedoms..... In all societies, to a greater or
 lesser degree, women and girls are subjected to physical,
 sexual and psychological abuse that cuts across lines of
 income, class and culture”.

F 4. Vishaka guidelines require the employers at workplaces
 as well as other responsible persons or institutions to observe
 them and ensure the prevention of sexual harassment to
 women. These guidelines read as under :

G “1. Duty of the employer or other responsible persons in
 workplaces and other institutions: It shall be the duty of the
 employer or other responsible persons in workplaces 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
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harassment by taking all steps required.

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2. Definition:

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

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- (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 nonverbal conduct of sexual nature.

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

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3. Preventive steps:

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All employers or persons in charge of workplace whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the

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A generality of this obligation they should take the following steps:

B (a) Express prohibition of sexual harassment as defined above at the workplace should be notified, published and circulated in appropriate ways.

C (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.

D (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.

E (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 workplaces and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal proceedings:

F 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.

H 5. Disciplinary action:

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

6. Complaint mechanism: B

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. C

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. D

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. E

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

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. G

8. Workers' initiative:

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A 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 employeremployee meetings.

B 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.

C 10. Third-party harassment:

D 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.

E 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."

F 5. In these matters while highlighting few individual cases of sexual harassment at the workplaces, the main focus is on the lack of effective implementation of Vishaka guidelines. It is stated that the attitude of neglect in establishing effective and comprehensive mechanism in letter and spirit of the Vishaka
G guidelines by the States as well as the employers in private and public sector has defeated the very objective and purpose of the guidelines.

H 6. In one of these matters, Medha Kotwal Lele, this Court has passed certain orders from time to time. Notices were

issued to all the State Governments. The States have filed their responses. On 26.4.2004, after hearing the learned Attorney General and learned counsel for the States, this Court directed as follows :

“Complaints Committee as envisaged by the Supreme Court in its judgment in Vishaka’s case will be deemed to be an inquiry authority for the purposes of Central Civil Services (Conduct) Rules, 1964 (hereinafter called CCS Rules) and the report of the complaints Committee shall be deemed to be an inquiry report under the CCS Rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.”

This Court further directed in the order dated 26.4.2004 that similar amendment shall be carried out in the Industrial Employment (Standing Orders) Rules. As regards educational institutions and other establishments, the Court observed that further directions would be issued subsequently.

7. On 17.1.2006, this Court in couple of these matters passed the following order:

“These matters relate to the complaints of sexual harassment in working places. In *Vishaka vs. State of Rajasthan*, (1997) 6SCC 241, this Court issued certain directions as to how to deal with the problem. All the States were parties to that proceedings. Now, it appears that the directions issued in Vishaka case were not properly implemented by the various States/Departments/Institutions. In a rejoinder affidavit filed on behalf of the petitioners, the details have been furnished. The counsel appearing for the States submit that they would do the needful at the earliest. It is not known whether the Committees as suggested in Vishaka case have been constituted in all the Departments/Institutions having members of the staff 50 and above and in most of the District level offices in all the States members of the staff

A working in some offices would be more than 50. It is not
 known whether the Committees as envisaged in the
 Vishaka case have been constituted in all these offices.
 The number of complaints received and the steps taken
 in these complaints are also not available. We find it
 B necessary to give some more directions in this regard. We
 find that in order to co-ordinate the steps taken in this
 regard, there should be a State level officer, i.e., either the
 Secretary of the Woman and Child Welfare Department
 or any other suitable officer who is in charge and
 C concerned with the welfare of women and children in each
 State. The Chief Secretaries of each State shall see that
 an officer is appointed as a nodal agent to collect the
 details and to give suitable directions whenever necessary.

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

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

H 8. From the affidavits filed by the State Governments the
 following position emerges in respect of each of these States:

GOA

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The amendments in the Civil Services Conduct Rules and the Standing Orders have not been made so far.

GUJARAT

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No amendments in the Civil Services Conduct Rules and the Standing Orders have been made so far. It is not stated that all Complaints Committees are headed by women. There is no information given whetherin such committees NGO members have been associated.

C

NCT OF DELHI

The amendments in the Civil Services Conduct Rules have been made. The position about amendments in the Standing Orders has not been clarified. It has not been specified that all Complaints Committees are headed by women.

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HIMACHAL PRADESH

There is nothing to indicate that the State of Himachal Pradesh has made amendments in the Civil Services Conduct Rules and the Standing Orders. No details of formation of Complaints Committees have been given.

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HARYANA

The amendments in the Government Employees (Conduct) Rules, 1966 have been made. However, it is not specified that the amendments in Standing Orders have been made.

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MAHARASHTRA

Necessary amendments in Maharashtra Civil Services (Conduct) Rules, 1974 have been made. The Labour Commissioner has taken steps for amending Mumbai Industrial Employment (Permanent Orders) Rules, 1959.

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A **MIZORAM**

The State of Mizoram has amended Civil Services Conduct Rules and also constituted Central Complaints Committee to look into complaints pertaining to cases of sexual harassment of working women at all workplaces for preservation and enforcement. A notification has been issued giving necessary directions to all private bodies.

SIKKIM

C The amendments in the Civil Services Conduct Rules have been carried out and a notification has been issued for constitution of complaints committees by departments/institutions with 50 or above staff to look into sexual harassment of women at workplaces.

D **UTTARANCHAL**

The State of Uttaranchal has carried out amendments in Civil Services Conduct Rules as well as the Standing Orders. The District Level and State Level Complaints Committees have been constituted.

WEST BENGAL

F The amendments in the Rules relating to duties, rights and obligations of government employees have been made. The amendments in the Standing Orders have been carried out. Out of 56 departments of Government of West Bengal, Complaints Committees have been formed in 48 departments and out of 156 Directorates under the Government, Complaints Committees have been formed in 34 Directorates. Of 24 institutions under the Government, Complaints Committees have been formed in 6.

MADHYA PRADESH

H Although State of Madhya Pradesh has made

amendments in the Civil Services Conduct Rules but no amendments have been made in the Standing Orders. The Complaints Committees have been constituted in every office of every department right from the Head of the Department level to the District and Taluka level. The District Level Committees have been constituted under the chairmanship of the District Collector. The steps taken by the District Committees are monitored by the nodal departments.

PUNJAB

The State of Punjab has carried out amendments in the Civil Services Conduct Rules as well as the Standing Orders. 70 Complaints Committees have been constituted at the headquarters of different Directorates and 58 Complaints Committees have been constituted in various Field Offices.

ORISSA

No amendments in the Civil Services Conduct Rules and the Standing Orders have been made.

ANDHRA PRADESH

Amendments in the Civil Services Conduct Rules and in the Standing Orders have been made.

KARNATAKA

The amendments in the Civil Services Conduct Rules have been made by the State of Karnataka but no amendments have been made in the Standing Orders. It is stated that in most of the committees, the number of women members is above 50%. The Chairpersons are women and in most of the committees, an outside member, i.e., an NGO has been associated.

RAJASTHAN

The State of Rajasthan has carried out amendments in the

- A Civil Services Conduct Rules but no amendments have been carried out in the Standing Orders.

BIHAR

- B The State of Bihar has made amendments in the Civil Services Conduct Rules but there is nothing to show that amendments in Standing Orders have been made. However, only one Complaints Committee has been constituted for the entire State.

C **MEGHALAYA**

The State of Meghalaya has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders.

D **TRIPURA**

- E The State of Tripura has carried out the amendments in the Civil Services Conduct Rules. There are no Standing Orders applicable in the State. 97 Complaints Committees have been constituted in most of the state government departments and organisations.

ASSAM

- F Amendments in the Civil Services Conduct Rules have been made but no amendments have been carried out in the Standing Orders.

MANIPUR

- G The State of Manipur has carried out amendments in the Civil Services Conduct Rules, but no definite information has been given regarding amendments in the Standing Orders. Only one Complaints Committee has been formed for the entire State.

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UTTAR PRADESH

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Amendments both in the Civil Services Conduct Rules and the Standing Orders have been carried out.

JAMMU AND KASHMIR

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The State of Jammu and Kashmir has carried out amendments in the Civil Services Conduct Rules. It is stated that steps are being taken for amendments in the Standing Orders.

NAGALAND

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The amendments have been carried out in the Civil Services Conduct Rules by the State of Nagaland but no amendments have been carried out in the Standing Orders.

ARUNACHAL PRADESH

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The State of Arunachal Pradesh has neither carried out amendments in the Civil Services Conduct Rules nor in the Standing Orders. There is only one State Level Committee for the entire State of Arunachal Pradesh.

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KERALA

Amendments in the Civil Services Conduct Rules and in the Standing Orders have been carried out. There are 52 Complaints Committees in the State. All such committees are headed by women and 50% members of these committees are women and there is representation of NGO members in these committees.

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TAMILNADU

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The State of Tamil Nadu has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

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A **JHARKHAND**

The State of Jharkhand has carried out amendments in the Civil Services Conduct Rules. However, no amendments in the Standing Orders have been made so far.

- B 9. From the affidavits filed by the State Governments, it transpires that the States of Orissa, Meghalaya, Himachal Pradesh, Goa, Arunachal Pradesh and West Bengal have amended the Rules relating to duties, public rights and obligations of the government employees but have not made amendments in Civil Services Conduct Rules. Similarly, the
- C States of Sikkim, Madhya Pradesh, Gujarat, Mizoram, Orissa, Bihar, Jammu & Kashmir, Manipur, Karnataka, Rajasthan, Meghalaya, Haryana, Himachal Pradesh, Assam, NCT of Delhi, Goa, Nagaland, Arunachal Pradesh, Jharkhand and Tamil Nadu have not carried out amendments in the Standing Orders.
- D These States appear to have not implemented the order passed by this Court on 26.4.2004 quoted above. The States which have carried out amendments in the Civil Services Conduct Rules and the Standing Orders have not provided that the report of the Complaints Committee shall be treated as a
- E report in the disciplinary proceedings by an Inquiry Officer. What has been provided by these States is that the inquiry, findings and recommendations of the Complaints Committee shall be treated as a mere preliminary investigation leading to a disciplinary action against the delinquent.

- F 10. The States like Rajasthan, Meghalaya, Himachal Pradesh, Assam and Jammu and Kashmir seem to have not formed Complaints Committees as envisaged in the Vishaka guidelines. Some States have constituted only one Complaints Committee for the entire State.

- G 11. The Union Territories of Andaman and Nicobar Islands, Daman and Diu, Lakshadweep, Dadra and Nagar Haveli and Puducherry have not made amendments in the Standing Orders. The Union Territory of Chandigarh does not seem to have carried out amendments in the Civil Services Conduct
- H Rules. Some of the Union Territories like Dadra and Nagar

Haveli and Chandigarh are reported to have not yet formed Complaints Committees. Daman and Diu have formed one Complaints Committee for the Union Territory. A

12. While we have marched forward substantially in bringing gender parity in local self-governments but the representation of women in Parliament and the Legislative Assemblies is dismal as the women represent only 10-11 per cent of the total seats. India ranks 129 out of 147 countries in United Nations Gender Equality Index. This is lower than all South-Asian Countries except Afghanistan. Our Constitution framers believed in fairness and justice for women. They provided in the Constitution the States' commitment of gender parity and gender equality and guarantee against sexual harassment to women. B C

13. The implementation of the guidelines in *Vishaka* has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. There is still no proper mechanism in place to address the complaints of sexual harassment of the women lawyers in Bar Associations, lady doctors and nurses in the medical clinics and nursing homes, women architects working in the offices of the engineers and architects and so on and so forth. D E

14. In *Seema Lepcha*² this Court gave the following directions: F

“(i) The State Government shall give comprehensive publicity to the notifications and orders issued by it in compliance of the guidelines framed by this Court in *Vishaka*'s case and the directions given in *Medha Kotwal*'s case by getting the same published in the newspapers G

2. *Seema Lepcha v. State of Sikkim & Ors.* [Petition for Special Leave to Appeal (Civil) No. 34153/2010 decided on 3.2.2012. H

A having maximum circulation in the State after every two months.

B (ii) Wide publicity be given every month on Doordarshan Station, Sikkim about various steps taken by the State Government for implementation of the guidelines framed in Vishaka's case and the directions given in Medha Kotwal's case.

C (iii) Social Welfare Department and the Legal Service Authority of the State of Sikkim shall also give wide publicity to the notifications and orders issued by the State Government not only for the Government departments of the State and its agencies/instrumentalities but also for the private companies."

D 15. As a largest democracy in the world, we have to combat violence against women. We are of the considered view that the existing laws, if necessary, be revised and appropriate new laws be enacted by Parliament and the State Legislatures to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence – domestic violence, sexual assault, sexual harassment at the workplace, etc; — and provide new initiatives for education and advancement of women and girls in all spheres of life. After all they have limitless potential. Lip service, hollow statements and inert and inadequate laws with sloppy enforcement are not enough for true and genuine upliftment of our half most precious population – the women.

G 16. In what we have discussed above, we are of the considered view that guidelines in Vishaka should not remain symbolic and the following further directions are necessary until legislative enactment on the subject is in place.

H (i) The States and Union Territories which have not yet carried out adequate and appropriate amendments in their

respective Civil Services Conduct Rules (By whatever name these Rules are called) shall do so within two months from today by providing that the report of the Complaints Committee shall be deemed to be an inquiry report in a disciplinary action under such Civil Services Conduct Rules. In other words, the disciplinary authority shall treat the report/findings etc. of the Complaints Committee as the findings in a disciplinary inquiry against the delinquent employee and shall act on such report accordingly. The findings and the report of the Complaints Committee shall not be treated as a mere preliminary investigation or inquiry leading to a disciplinary action but shall be treated as a finding/report in an inquiry into the misconduct of the delinquent.

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(ii) The States and Union Territories which have not carried out amendments in the Industrial Employment (Standing Orders) Rules shall now carry out amendments on the same lines, as noted above in clause (i) within two months.

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(iii) The States and Union Territories shall form adequate number of Complaints Committees so as to ensure that they function at taluka level, district level and state level. Those States and/or Union Territories which have formed only one Committee for the entire State shall now form adequate number of Complaints Committees within two months from today. Each of such Complaints Committees shall be headed by a woman and as far as possible in such Committees an independent member shall be associated.

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(iv) The State functionaries and private and public sector undertakings/organisations/bodies/institutions etc. shall put in place sufficient mechanism to ensure full implementation of the Vishaka guidelines and further provide that if the alleged harasser is found guilty, the complainant – victim is not forced to work with/under such harasser and where appropriate and possible the alleged harasser should be transferred. Further provision should be made that harassment and intimidation of

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A witnesses and the complainants shall be met with severe disciplinary action.

(v) The Bar Council of India shall ensure that all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, institutions and persons registered/affiliated with them follow the guidelines laid down by Vishaka. To achieve this, necessary instructions/circulars shall be issued by all the statutory bodies such as Bar Council of India, Medical Council of India, Council of Architecture, Institute of Company Secretaries within two months from today. On receipt of any complaint of sexual harassment at any of the places referred to above the same shall be dealt with by the statutory bodies in accordance with the Vishaka guidelines and the guidelines in the present order.

17. We are of the view that if there is any non-compliance or nonadherence to the Vishaka guidelines, orders of this Court following Vishaka and the above directions, it will be open to the aggrieved persons to approach the respective High Courts. The High Court of such State would be in a better position to effectively consider the grievances raised in that regard.

18. Writ petitions (including T.C.) and appeals are disposed of as above with no orders as to costs.

R.P.

Matters disposed of.