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Annexure I

Complaints of sexual harassment against officers of the Delhi Higher Judicial Services and Delhi Judicial Services.

1. It has been brought to the notice of the Committee that clarity is lacking with regard to the manner in which complaints of sexual harassment, if any, against officers of the Delhi Higher Judicial Services ('DHJS') and Delhi Judicial Services ('DJS') have to be dealt with.

2. In the judgment reported as *Vishaka & Ors. vs. State of Rajasthan & Ors., (1997) 6 SCC 241*, the Supreme Court of India dealt with a class action by certain social activists and NGOs with the aim of focussing attention towards incidents of sexual harassment. The writ petition was filed for the enforcement of the fundamental rights of working women under Articles 14, 19 and 21 of the Constitution of India; for assisting in finding suitable methods of realization of the true concepts 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.

3. In its judgment, the Supreme Court expressed grave concern with complaints of sexual harassment at workplace and laid down the guidelines and norms for due observance at all work places or other institutions for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse. Guideline no. 3 titled as "*Preventive Steps*" required government/private employers to undertake the following :

"Preventive steps:

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

(a)-Expressed prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways.

(b)-The rules/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual

harassment and provide for appropriate penalties in such rules against the offender.

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

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

The Supreme Court directed that in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, the guidelines and norms specified for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose, this judgment would be treated as the law declared by this Court under Article 141 of the Constitution of India.

4. Almost fourteen years later, the Government of India enacted the ***Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*** which took effect from 9th December, 2013. This law extends to whole of India. The courts in Delhi are also governed by this legislation.

5. So far as, Courts are concerned, a complaint of sexual harassment may arise not only against Judge but also against a court staff, lawyer, litigant, member of any authority associated with the dispensation of justice (for instance, the police) etc. The complainant could also be any of the above persons.

6. Information has been received that the Committees have been randomly constituted by the District Judges in the District Courts, which are not necessarily in the manner statutorily prescribed by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7. For the present, we confine this consideration to complaints of sexual harassment against judicial officers only of the Delhi Higher Judicial Services (DHJS for brevity) and Delhi Judicial Services (DJS for brevity). These Services are governed by separate disciplinary rules.

8. The Committee has perused the report requisitioned from Mr. Arun Bhardwaj, Joint Registrar (Rules) placing the legal provisions applicable for inquiring into allegations of sexual harassment against officers of DHJS and DJS.

9. So far as the statutory position is concerned, Section 4 of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* (hereinafter referred as 'the Act') mandates constitution of the Internal Complaints Committees which are required to be constituted as under:-

"4. Constitution of Internal Complaints Committee-

(1) 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.

(2) The internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) 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;

(c) one member from amongst non-government organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding

three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

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

10. At this stage we may note Section 13 of the *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013* which provides as under:-

"13. *Inquiry Report.*-(1) 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 within a period of ten days from the date of completion of the inquiry 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 as it may consider appropriate to be paid to the aggrieved woman or to her 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 sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

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

Complaints of sexual harassment against officers of Delhi Higher Judicial Services ('DHJS')

11. Let us first and foremost examine the rule position governing the DHJS. Officers of the Delhi Higher Judicial Service are governed by the *Delhi Higher Judicial Service Rules, 1970 (DHJS Rules hereafter)*. Therefore, recourse has to be made to the residuary powers in these rules. Rule 27 of these Rules which so provides, reads as under:-

"27. RESIDUARY MATTERS: - *In respect of all such matters regarding the conditions of service for which no provision or insufficient provision has been made in the rules, the rules, directions or orders for the time being in*

force, and applicable to officers of comparable status in the Indian Administrative Service and serving in connection with the affairs of the Union of India shall regulate the conditions of such service."

It is noteworthy that in these rules, no specific provision regarding a complaint of sexual harassment against an officer of DHJS has been provided. Therefore, the complaint of sexual harassment against a DHJS officer being a matter not provided for in the DHJS Rules, the rules, directions or orders for the time being in force and applicable to officers of "*comparable status*" in the Indian Administrative Services (hereinafter referred to as "IAS") apply and require to be examined.

12. The *All India Services (Discipline and Appeal) Rules, 1969* provide the manner in which disciplinary proceedings are to be undertaken against members of the IAS. There is no specific provision in these Rules covering proceedings in a complaint of sexual harassment against a government servant.

13. The officers of comparable status in the IAS are also governed by *the All India Services (Conduct) Rules, 1968*.

14. After the above directions of the Supreme Court, the Central Government maintained the rules as they were. However, it separately framed *the All India Services (Prevention of Sexual Harassment) Regulations, 1998* which came into force w.e.f 24th July, 1998 and apply to all officers of the IAS. The relevant extract thereof reads as follows:

"The All India Services (Prevention of Sexual Harassment) Regulations, 1998.

In exercise of the powers conferred by Sub-section (1) of section 3 of the All India Services Act, 1951 (61 of 1951), the Central Government in consultation with the Governments of the States concerned hereby makes the following Regulations under Rule 3 of the All India Services (Conduct) Rules, 1968, namely:-

1. Short title:-

These regulations may be called the All India Services (Prevention of Sexual Harassment) Regulations, 1998.

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

2. Definition:-

Sexual harassment includes such unwelcome sexually determined behaviors (whether directly or otherwise) as:-

- (a) Physical contact and advances;*
- (b) A demand or request for sexual favours;*
- (c) Sexually coloured remarks;*
- (d) Showing pornography or*
- (e) Any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.*

3. Prohibition of sexual harassment of working women-

(1) Every member of the Service shall take all possible steps to ensure that all Government Servants for the time being under his control and authority keep away from any act of sexual harassment of working women.

(2) Every member of the Service who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such working place.

(3) No member of the Service shall indulge in any act of sexual harassment of any woman at working place”.

By virtue of Rule 27 of the DHJS Rules, these Regulations are also applicable to the Officers of DHJS and made sexual harassment of women at the workplace an act of misconduct by the officer rendering him liable for disciplinary action.

15. The Central Government also added a *proviso to Rule 8(2) of the All India Services (Discipline and Appeal) Rules, 1969* (which is also applicable to all IAS officers including those of a status comparable with DHJS officers) vide Notification dated 18th June, 2014 which reads as under:-

“Provided that where there is a complaint of sexual harassment within the meaning of rule 3 of the All India Services (Prevention of Sexual Harassment) Regulations, 1998, the Complaints Committee established in each Ministry or Department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been made for the Complaints Committee for holding the inquiry into the complaints of

sexual harassment, the inquiry as far as practicable, in accordance with the procedure laid down in these rules”.

Therefore, as, per Rule 8(2) of the *All India Services (Discipline and Appeal) Rules, 1969* the complaints committee is deemed to be the inquiring authority appointed by the disciplinary authority for the purposes of these rules. It is required to follow the procedure prescribed under these Rules for its inquiry. As a result of the above, the report given by the Internal Complaints Committee constituted under section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would be a report submitted by a duly constituted inquiry.

The amended Rule 8(2) of *the All India Services (Discipline and appeal) Rules, 1969* also makes it clear that there is no requirement of second inquiry authority nor a second inquiry report regarding allegations of sexual harassment (a ‘misconduct’ within the meaning of the expression for disciplinary proceedings) against officers of DHJS.

Complaints against officers of the Delhi Judicial Services

16. So far as, officers of DJS are concerned, they are governed by *Delhi Judicial Service Rules, 1970* (hereinafter referred to as “DJS Rules”). Again no special provision about a complaint of sexual harassment by an officer of DJS has been provided in these Rules. Therefore, recourse has again to be made to the residuary power in Rule 33 of these Rules which reads as under:-

“RESIDUARY MATTERS: In respect of all such matters regarding the conditions of service for which no provision or insufficient provision has been made in these rules, the rules or orders, for the time being in force, and applicable to Government Servants holding corresponding posts in connection with the affairs of the Union of India shall regulate the conditions of such service.”

17. Disciplinary proceedings against the government servants holding corresponding posts (as officers of Delhi Judicial Service) are conducted under the *CCS (Conduct) Rules, 1964*. By virtue of Rule 33 of the DJS Rules, the CCS (Conduct) Rules, 1964 are applicable to the officers of DJS.

18. Rule 3C of the CCS (Conduct) Rules, 1964 titled as "*Prohibition of Sexual Harassment of Working Women*" makes sexual harassment a misconduct rendering the official concerned as liable for disciplinary proceedings. We set down hereunder this provision which reads as follows:

"3C. Prohibition of sexual harassment of working women

- (1) No Government servant shall indulge in any act of sexual harassment of any women at her work place.*
- (2) Every Government servant who is incharge of a work place shall take appropriate steps to prevent sexual harassment to any woman at such work place.*

Explanation - 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 coloured remarks;*
- (d) showing any pornography; or*
- (e) any other unwelcome physical, verbal or non-verbal conduct of a sexual nature."*

19. In the order dated 26th April, 2004 in Writ Petition (Crl.) No.173-177/1999 (*Medha Kotwal Lele & Others v. Union of India & Others*) the Supreme Court has directed that "*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.*" As a result of the above cited judgment, Sub-Rule 2 of Rule 14 of the **CCS (CCA) Rules, 1965** was amended to specifically provide that the Complaints Committee shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purposes of these rules and the report of the Complaints Committee should be treated as an inquiry report and not a preliminary report.

20. The report given by the Internal Complaints Committee constituted under section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal), Act, 2013 thus would be an Inquiry Report

submitted by a duly constituted disciplinary authority. This position has been reiterated by the Central Government by *notification no. 11012/05/2001-Estt.(A) dated 1st July, 2004 (GSR 225 dated 10th July, 2004)* which provides that the report of the complaints committee would be treated as an inquiry report and not a preliminary report.

21. We are here concerned with the initiation of action on a complaint of sexual harassment against judges of the District Court. While the procedure stands prescribed by the rules extracted above, the question which remains is as to who would be the competent authority directing the inquiry?

22. **Article 235 of the Constitution of India, 1950** vests control over District Courts and Courts subordinate thereto in the High Court. Disciplinary control over officers DHJS and DJS thus vests with the Delhi High Court. As a result, whenever there is any complaint of misconduct which would include sexual harassment against any officer of DHJS or DJS, the inquiring authority would require to be appointed by the Delhi High Court which would examine the allegations against the said officer. The committee appointed would require to be in compliance with the statute, rules and regulations noted above.

23. To sum up, the legal position which therefore emerges is that:-

(i) By virtue of the All India Services (Prevention of Sexual Harassment) Regulations, 1998 and Rule 27 of the DHJS Rules, sexual harassment of women at the workplace is an act of misconduct by the officer rendering him liable for disciplinary action.

(ii) By virtue of Rule 3C of the CCS (Conduct) Rules, 1964 and Rule 33 of the DJS Rules, sexual harassment of women at the workplace is an act of misconduct by the officer rendering him liable for disciplinary action.

(iii) The internal complaints committees appointed by the District Judges do not have the competence to examine or inquire into the complaints of sexual harassments against officers of DHJS or DJS.

(iv) Complaints of sexual harassment against officers of the DHJS and the DJS are required to be placed before the Full Court on Administrative Side for consideration and appropriate action.

The Committee recommends that all judicial officers of the Delhi Higher Judicial Services and Delhi Judicial Services be apprised accordingly. Information in this regard also be placed on the website of the District Courts and this Court.

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HON'BLE THE CHIEF JUSTICE