

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (C) D. No. 20318 OF 2020

IN THE MATTER OF:

APARNA BHAT

...PETITIONER

VS.

THE STATE OF MADHYA PRADESH AND ORS.

...RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF THE ATTORNEY**

**GENERAL FOR INDIA**

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**New Delhi**  
**Dated 1.12.2020**

Mr. G.S. Makker  
Advocate on Record

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1. The Petitioner has filed the instant SLP, in public interest, seeking the regulation of conditions of bail that a Court can set in cases of crimes against women, such as rape and sexual assault. The present written submissions are filed in compliance to order dated 2.11.2020, this Hon'ble Court directed parties to file written notes to assist the Court at the time of hearing. A true copy of the order dated 2.11.2020 is annexed hereto as **Annexure A-1**.
2. This case arises out of an order of the Madhya Pradesh High Court at Indore, which while granting bail to a person accused of the commissions of offences under Sections 452, 354A, 354, 323 and 506 of the Indian Penal Code, imposed certain conditions beyond the purview of the Code of Criminal Procedure. In addition to directing the accused to furnish a bail bond of Rs. 50,000 and certain other conditions, the High Court also directed the accused along with his wife to visit the house of the complainant and request her to

tie a rakhi on his hand, gift her a box of sweets, promise to protect her in the future and also to pay her Rs. 11,000/- as part of the customary gift given by brothers to their sisters on rakhi day and pay Rs. 5,000/- to her son for sweets.

3. The Petitioner has, in IA 102226/2020, also brought to the notice of this Court, several other instances where similar directions have been passed by High Courts and Trial Courts across the country. The wide prevalence of such orders makes it clear that there is a need for urgent intervention of this Court to, *firstly*, declare that such remarks are unacceptable and have the potential to cause grave harm to the victim and to society at large, and *secondly*, reiterate that judicial orders have to conform to certain judicial standards, and *thirdly*, take necessary steps to ensure that this does not happen in the future.
4. To this end, there are two broad areas where the Court can intervene and pass directions:
  - i. Guidelines on bail and anticipatory bail, in line with already settled jurisprudential principles, to ensure that the Court only imposes conditions that are permissible and in line with the statutes;
  - ii. Gender sensitization of the bar and the bench – particularly with regard creating a sense of judicial empathy with the victim, with the judges placing themselves in the victims shoes, and secondly conceptualizing their response to the crime in terms of the same having been committed upon a member of their own family.

5. These written submissions seek to cover these two broad areas.

## **I. ON BAIL IN CASES OF SEXUAL OFFENCES**

6. Section 437(3) of the Code of Criminal Procedure states that the Court granting bail may impose any condition which the Court considers necessary:

- i. in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or
- ii. in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or
- iii. otherwise in the interests of justice.

7. While considering the basic requirements for grant of bail, it has been held that the matters to be considered are<sup>1</sup>:

- i. whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- ii. nature and gravity of the charge;
- iii. severity of the punishment in the event of conviction;
- iv. danger of the accused absconding or fleeing, if released on bail;
- v. *character, behaviour, means, position and standing of the accused;*
- vi. likelihood of the offence being repeated;
- vii. *reasonable apprehension of the witnesses being tampered with;* and
- viii. *danger, of course, of justice being thwarted by grant of bail.*<sup>2</sup>
- ix. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show

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<sup>1</sup>State of U.P. v. Amarmani Tripathi, (2005) 8 SCC 21

<sup>2</sup> Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280, Gurcharan Singh v. State (NCT of Delhi), (1978) 1 SCC 118

that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused.<sup>3</sup>

8. Naturally, any conditions imposed must necessarily have a nexus to these basic considerations of bail, and cannot be extraneous, onerous, fanciful, or alien to these considerations.
9. The Supreme Court in *Kunal Kumar Tiwari v. State of Bihar* (2018) 16 SCC 74 has held:

*“9. There is no dispute that clause (c) of Section 437(3) allows courts to impose such conditions in the interest of justice. We are aware that palpably such wordings are capable of accepting broader meaning. **But such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. The phrase “interest of justice” as used under the clause (c) of Section 437(3) means “good administration of justice” or “advancing the trial process” and inclusion of broader meaning should be shunned because of purposive interpretation.**”*

(emphasis supplied)

10. Equally, while exercising power under Section 438 of the Code for grant of anticipatory bail, the Court is duty bound to strike a balance between the individual's right to personal freedom and the right of investigation of the police.
11. The conditions which can be imposed by the court while granting anticipatory bail are enumerated in sub-section (2) of Section 438 and sub-section (3) of Section 437 of the Code. Normally, conditions can be imposed
  - i. to secure the presence of the accused before the investigating officer or before the court,

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<sup>3</sup>Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528, State v. Jagjit Singh, (1962) 3 SCR 622, Jayendra Saraswathi Swamigal v. State of T.N., (2005) 2 SCC 13

- ii. to prevent him from fleeing the course of justice,
- iii. to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or court, or
- iv. restricting the movements of the accused in a particular area or locality or to maintain law and order, etc.

To subject an accused to any other condition would be beyond jurisdiction of the power conferred on court under Section 438 of the Code.

12. In *Sumit Mehta v. State (NCT of Delhi)*, (2013) 15 SCC 570, it has been held that the words “any condition” used in Section 438 should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail.

13. The Supreme Court has in *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384 and *Sakshi v. State* (2004) 5 SCC 518 taken the view that the entire trial of sexual offences must be conducted in a manner so as to ensure minimal contact between a victim and the accused, including by holding trials in camera.

14. These considerations, if strictly applied by all Courts, would on their own be sufficient to ensure that no absurd conditions form part of bail orders. While reiterating these considerations generally, this

Court may highlight that in cases of crimes against women, the following additional considerations may be kept in mind:

- i. Bail conditions should not mandate contact between the accused and the victim.
- ii. Bail conditions must seek to protect the complainant from any harassment by the accused.
- iii. Where considered necessary, the complainant may be heard on whether there is any peculiar circumstance which may require additional conditions for her protection.
- iv. Wherever bail is granted, the complainant may immediately be informed that the accused has been granted bail.
- v. Bail conditions must be free from stereotypical or parental notions of women and their place in society, and must strictly be in accordance with the requirements of the CrPC.
- vi. The court as part of its adjudication during any stage of the trial process should not seek to minimise the magnitude of the crime by suggesting a compromise for the victim and the accused to get married, as this is beyond the powers and jurisdiction of the Court.

## **II. ON GENDER EQUALITY AND GENDER SENSITISATION**

15. To achieve the goal of gender justice, it is imperative that our judicial officers, judges, and members of the bar (including specifically public prosecutors), are aware themselves of stereotypes, bias, and other irrational tendencies that have to be shunned in the process of judicial adjudication. Such understanding would help foster a judicial system that guarantees the right of



women to equal access to fair and gender-sensitive court proceedings, mediation processes, adjudication and enforcement of judgments.

16. Three aspects which are important to be born in mind to facilitate a more gender sensitive approach are to train judges to exercise their discretion by:

- i. Placing themselves in the shoes of the victim of sexual violence
- ii. Assessing the crime as if the same had been committed on a member of their own family.
- iii. Avoiding the use of gender-based stereotypes while handling cases of sexual violence.

17. The Bangkok General Guidance for Judges on Applying a Gender Perspective in South East Asia, ICJ, pointed out certain stereotypes that are often encountered in the course of judicial decision making. These stereotypes, that must be avoided, include:

- i. Women are physically weak;
- ii. Women cannot make decisions on their own;
- iii. Men are the head of the household and must make all the decisions related to family;
- iv. Women should be submissive and obedient;
- v. Good women are sexually chaste;
- vi. Every woman wants to be a mother;
- vii. Women should be the ones in charge of their children;

- viii. Being alone at night or wearing certain clothes make women responsible for being attacked;
- ix. Women are emotional and often overreact or dramatize hence it is necessary to corroborate their <sup>[1]</sup><sub>[SEP]</sub>testimony;
- x. Testimonial evidence provided by women who are sexually active may be suspect when assessing “consent” in sexual offense cases; and
- xi. Lack of evidence of physical harm in sexual offense cases means consent was given.

A copy of the Bangkok General Guidance for Judges on Applying a Gender Perspective in South east Asia, ICJ, is annexed as **Annexure A-2**.

18.To this end, Professor N. R. Madhava Menon, while working as a consultant to the First National Judicial Pay Commission, Government of India (1999), had made a proposal for gender sensitization of judicial officers, and recommended a course for judicial academies and training institutions. A copy of the proposal is annexed as **Annexure A-3**.

19.It appears that the Ministry of Women and Child Development has already been undertaking training and capacity building workshops for the ‘Gender Sensitization of Judicial Personnel’. Over 15 such training workshops have already been conducted. A copy of the press release dated 6<sup>th</sup> February 2020 by the Ministry of Women and Child Development is annexed as **Annexure A-4**.

20.Additionally, the training of judges at all levels of the judicial hierarchy in aspects of gender sensitization can be conducted at regular intervals by the National Judicial Academy and the State Judicial Academies mandatorily.

21. It must be borne in mind that any directions towards gender sensitization would have to include judges of all levels of the judiciary. This is because all judges come from the general public (either through examinations or the basis of collegium recommendations), and therefore may hold the same stereotypes/may exhibit the same biases as the rest of the population. This would mean that education in this respect must start at the primary level – law school, and then find its way upward to be a part of continuing legal education for all.
22. Currently, there is no course on gender that is taught in law schools compulsorily. Certain law schools have the subject either as a specialization or as an elective. Equally, the All India Bar Examination does not contain even a single question or section relating to gender sensitization. The Bar Council of India may take necessary steps in this regard.
23. The next phase at which gender sensitization must be included is at the stage of exams to the judiciary – the Provincial Civil Services (Judicial) – PCS- J Exams. In addition to training on judgments relating to women and the law, training on biases, stereotypes, approaches to be taken and avoided, and the like may be included. A detailed curriculum may be prepared with the help of subject matter experts by each High Court.
24. Improving the representation of women in the judiciary could also go a long way towards a more balanced and empathetic approach in cases involving sexual violence. For instance, this Court only has 2

women judges, as against a sanctioned strength of 34 judges. There has never been a female Chief Justice of India. This figure is consistently low across the Higher Judiciary<sup>4</sup>:

- i. There are only 80 women judges out of the total sanctioned strength of 1,113 judges in the High Courts and the Supreme Court across India.
- ii. Out of these 80 women judges, there are only two in the Supreme Court, and the other 78 are in various High Courts, comprising only 7.2 per cent of the total number of judges
- iii. Of the 26 courts whose data was accessed, including the Supreme Court, the Punjab and Haryana High Court has the maximum strength of women judges (11 out of 85 judges) in the country, followed by the Madras High Court (9 out of 75 judges). There are eight women judges in both Delhi and Bombay High Courts.
- iv. There are six High Courts, which consists of Manipur, Meghalaya, Patna, Tripura, Telangana, and Uttarakhand, where no sitting judges include any woman judge. At the same time, there is an only one-woman judge in six other High Courts of the country.
- v. Currently, no data is centrally maintained on the number of women in tribunals or lower courts.

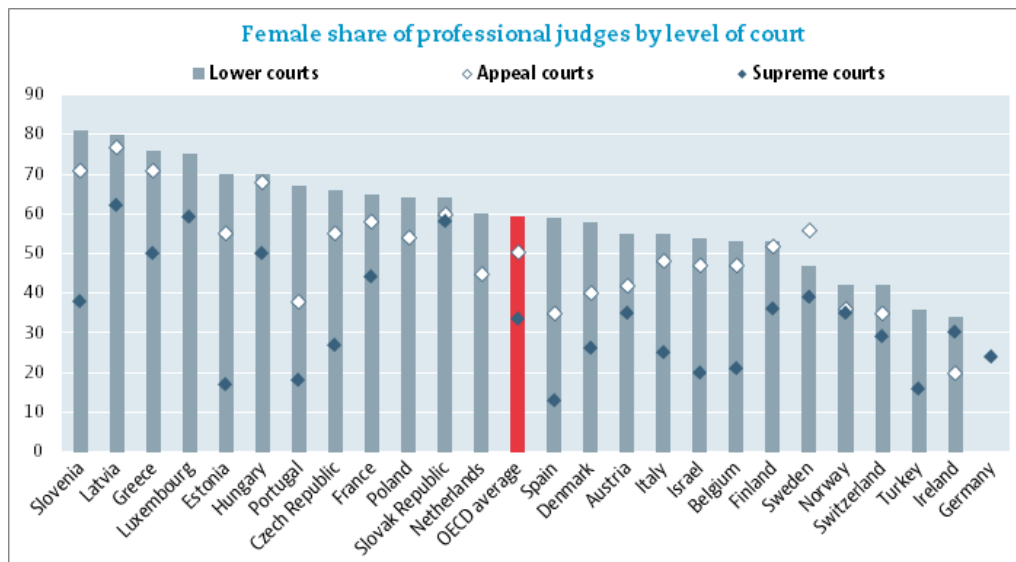
25. Equally, as far as Senior Designation is concerned, there are only 17 women senior counsel designates in the Supreme Court, as opposed to 403 men. The Delhi High Court has 229 men and 8 women

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<sup>4</sup> Lok Sabha question answer, Ravi Shankar Prasad

designates. Similarly, in the Bombay High Court, there are 6 women and 157 men designates.<sup>5</sup>

26. Significantly, these figures are much lower than comparable OECD nations. A recent study found that women only hold 33.6% of judgeships in Supreme Courts. This trend is mirrored in the proportion of presidential positions women occupy. On average, women hold 45.9% of presidencies in courts of lower courts, 28% in courts of appeal, and 18.6% in high courts.<sup>6</sup>



27. To remedy this, this Court must:

- i. Direct collection of data to determine the number of women judges in the lower judiciary
- ii. Direct collection of data to determine the number of women judges in tribunals
- iii. Direct collection of data to determine number of senior designates by all High Courts, year wise.

<sup>5</sup> The wire, 21.04.2019, <https://thewire.in/women/sexism-courts-women-lawyers-judges>

<sup>6</sup> <https://www.oecd.org/gender/data/women-in-the-judiciary-working-towards-a-legal-system-reflective-of-society.htm>

iv. Ensure greater representation of women at all levels of the judiciary, including the Supreme Court. This initiative must come from the Supreme Court itself, considering that the power of appointment rests almost exclusively with the Supreme Court Collegium. The goal must be to achieve at least 50% representation of women in all leadership positions.

28. On 6<sup>th</sup> August, 2013, the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013 were published pursuant to the Vishaka judgment. A copy of the 2013 Regulations are annexed as **Annexure A-5**. In terms of the regulations the Gender Sensitization and Internal Complaints Committee (hereinafter ‘GSICC’) of the Supreme Court was constituted, whose functions include “*To increase awareness about gender sensitization for the Supreme Court community.*”

29. Lastly, in the interest of hearing view points from affected persons and domain experts, the Court may consider issuing notice in this matter to the GSICC so that their inputs can also be heard, and appoint a female lawyer who has been active in this area, as *amicus curiae* to assist the Court.

Place: New Delhi

Date: 1<sup>st</sup> December 2020

ITEM NO.7 Court 5 (Video Conferencing) SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CRIMINAL)..... Diary No(s).20318/2020

(Arising out of impugned final judgment and order dated 30-07-2020  
in MCRC No.23350/2020 passed by the High Court Of M.P At Indore)

APARNA BHAT & ORS. Petitioner(s)

VERSUS

THE STATE OF MADHYA PRADESH & ANR. Respondent(s)

(IA No.102226/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA  
No.97723/2020 - DELETING THE NAME OF PETITIONER/RESPONDENT, IA  
No.97728/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No.97724/2020 -  
EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA  
No.97714/2020 - PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 02-11-2020 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE MR. JUSTICE DINESH MAHESHWARI  
HON'BLE MR. JUSTICE SANJIV KHANNA

For Petitioner(s)

Mr. Sanjay Parikh, Sr. Adv.  
Mr. Pukhrambham Ramesh Kumar, AOR  
Ms. Karishma Maria, Adv.  
Mr. Satwick Parikh, Adv.

For Respondent(s)

Mr. K.K. Venugopal, AG  
Ms. Suhani Sen, Adv.  
Mr. Vinam Gupta, AOR

For intervenor(s)

Mr. Dushyant Dave, Sr. Adv.  
Ms. Aparna Bhat, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Post this matter on 27.11.2020. I.A. No.110616/2020 be listed  
alongwith the main matter.

In the meantime, parties including the intervenors are

permitted to submit written note, as indicated during the discussion today through email/online.

**(ARJUN BISHT)  
COURT MASTER (SH)**

**(VIDYA NEGI)  
COURT MASTER (NSH)**



# Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia



## THE DEVELOPMENT OF THE BANGKOK GENERAL GUIDANCE FOR JUDGES IN APPLYING A GENDER PERSPECTIVE

The *Bangkok General Guidance for Judges in Applying a Gender Perspective* was discussed and adopted by judges from the Philippines, Thailand, Timor Leste, and Indonesia, at a workshop in Bangkok, Thailand, from 24 to 25 June 2016. The International Commission of Jurists (ICJ) and UN Women hosted the workshop.

During the workshop, judges from the four Southeast Asian countries deliberated extensively how best to assist judges in employing a gender perspective in deciding cases before them. They attended several sessions over the course of the two-day workshop, participating in exercises focused on identifying and addressing gender stereotypes.

The idea to initiate the development of the *General Guidance* emerged from the ASEAN Regional Dialogue on Judging with a Gender Perspective, which was held in Jakarta, Indonesia, in 2015. There, the Supreme Court of the Philippines, represented by Justice Teresita de Castro, offered to take the lead on the development of the *General Guidance*.

The *General Guidance* will make judges aware of means to consider evidence without resorting to gender stereotypes and decide cases based on the principle of equality recognized under international human rights standards, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Recommendations for institutional policies that should be adopted by courts to help them become more gender sensitive and gender responsive are also set out in the *General Guidance*.

The *General Guidance* is especially significant as it reaffirms that customs and traditions should not be invoked to justify discrimination against women.

## **BANGKOK GENERAL GUIDANCE FOR JUDGES ON APPLYING A GENDER PERSPECTIVE IN SOUTHEAST ASIA**

**Bangkok, 25 June 2016**

### **PREAMBLE**

*Whereas* the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights;

*Whereas* the Declaration on the Elimination of Violence against Women recognizes that all women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms including: the right to equality, the right to equal protection under the law and the right to be free from all forms of discrimination;

*Whereas* the International Covenant on Civil and Political Rights (ICCPR) affirms that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law; and that the law must prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, including sex or gender;

*Whereas* the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) establishes that all States Parties must ensure the effective protection of women against any act of discrimination through competent national tribunals and other public institutions;

*Whereas* the empowerment of women contributes to the growth and development of a free and just society;

*Whereas* women throughout Southeast Asia still face multiple obstacles in achieving gender equality because of discrimination and stereotyping on the basis of their sex and gender, including within the justice systems of their countries;

*Whereas* every person is entitled to equal treatment before the law and equal access to justice;

*Whereas* the Beijing Statement of Principles on the Independence of the Judiciary in the LAWASIA Region affirms that in the selection of judges there must be no discrimination on the basis of race, color, gender, religion, political or other opinion, national or social origin, marital status, sexual orientation, property, birth or status;

*Whereas* the Regional Judicial Dialogue on Judging with a Gender Perspective was convened in Jakarta, Indonesia from 5 to 6 October 2015 in an effort to strengthen judicial decision-making based on gender equality and freedom from discrimination;

*Whereas* the participants at the Judicial Dialogue identified the urgent need to develop a set of general principles on how to judge with a gender perspective in order to fight discrimination against women and to ensure equal access to justice for all women;

*Recalling* General Recommendation No. 33 of the CEDAW Committee recognizing the obligation of States to ensure that women have access to justice and to guarantee that women are free from discrimination within the legal system;

*Recalling* the words of the Special Rapporteur on the Independence of Judges and Lawyers that a gender-sensitive judicial system is a prerequisite for the full and non-discriminatory realization of human rights for all human beings and the achievement of gender equality on the ground;

*Recalling* the Southeast Asia Regional Judicial Colloquium on Gender Equality, Jurisprudence and the Role of the Judiciary in Promoting Women's Access to Justice held on 4 and 5 September 2013 at which the participating judges reaffirmed that culture, customary rules, religion and traditional practices should not be invoked as justification for violations of the rights and freedoms of women;

*Recognizing* that women are not only victims or clients of the justice system, but also key actors in the administration of justice, as judges, lawyers, law enforcers, prosecutors, mediators, correctional authorities, legal professionals, and other stakeholders;

Recognizing that the elimination of gender inequality and discrimination against women and empowering of women are critical steps in the eradication of violence against women;

We, the judges from Southeast Asia, participating at the 2016 Judicial Workshop on Judging with a Gender Perspective, held in Bangkok, Thailand, from 24 to 25 June 2016, adopt this General Guidance for Judges on Applying a Gender Perspective in Southeast Asia:

## GENERAL CONSIDERATIONS

1. The present Guidance aims to:
  - a) Provide assistance for judges in the understanding and application of gender equality and non-discrimination principles;
  - b) Assist justice sector professionals such as court officers, police officers, prosecutors, mediators, arbitrators, facilitators, lawyers, social workers, medical practitioners and civil society representatives in the identification of situations where same and/or differentiated treatment can lead to discrimination against women; and
  - c) Contribute to the implementation of a judicial system that guarantees the right of women to equal access to fair and gender-sensitive court proceedings, mediation processes, adjudication and enforcement of judgments.
2. This Guidance was elaborated taking into consideration, and in some instances directly tracking the language of international law and standards recognized in the CEDAW and other pertinent international instruments, recommendations issued by the Special Rapporteur on the independence of judges and lawyers and the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW Committee) and comparative national law and standards, good practices, and experiences shared by the participants during the Workshop on Judging with a Gender Perspective held in Bangkok, Thailand on 24 and 25 June 2016.
3. This Guidance constitutes one of the many efforts of Southeast Asian justice sector stakeholders to eliminate the existing arbitrary and discriminatory treatment of women based on sex or gender that affects women in every aspect of their lives, especially when accessing the justice system.

4. This Guidance is directed to the members of the judiciary regardless of their level and area of expertise and to judicial training institutions. The applicability of the Guidance should not be limited to cases related to family law or criminal law, but should be applied in all areas of law.
5. Members of the judiciary play an essential role in combating gender-based discrimination. Through their decisions, judges can help modify practices or customs that reinforce gender stereotypes; establish interpretation criteria to prevent direct and indirect discrimination; determine procedures that demonstrate and maintain respect for the dignity and equality of women within the system of the administration of justice; establish rules for the application of laws to conform to the universal principles of equality and nondiscrimination against women; and influence lawmakers against enacting laws that violate the principles of equality and non-discrimination against women.

## BASIC CONCEPTS

6. For the purpose of this Guidance, the following terms are defined as follows:
  - (a) "Sex" refers to a person's physical, physiological and biological status, usually characterized as male, female or intersex, while the term "gender" refers to the social or cultural distinctions associated with a person's biological sex. This categorization shapes expectations, responsibilities and opportunities ascribed to women and may result in power hierarchies and discrimination.
  - (b) Formal or *de jure* equality requires that men and women must be treated the same and guaranteed equality of opportunity where they are equally situated. Equality of opportunity means that everyone should, at the outset, have the same opportunities so that they can realize their capabilities and participate in all areas of economic, social, political and cultural life as equals.
  - (c) Substantive or *de facto* equality consists of ensuring women "equality of results", which means that progress towards equality must bring about concrete outcomes or long-term changes in gender relations.
  - (d) Discrimination is a difference in treatment based on certain grounds such as race, color, language, religion, belief, caste, employment, political opinion, nationality, social origin, disability, age, location, region, indigenous and minority status, sex, gender, sexual orientation, gender identity, or other status, which has the effect of nullifying or impairing the enjoyment or exercise of rights.

Discrimination may be:

- i. Direct, when the act or law explicitly authorizes differentiated treatment which adversely affects the enjoyment of rights of one group in particular; or
- ii. Indirect, when the act or law seems to be neutral, but its consequences adversely affect the enjoyment of rights of one or more groups in particular.

A person or group of people may be discriminated against based on more than one ground. Discrimination is not usually an isolated occurrence; rather, intersectional forms of discrimination often occur in the context of discriminatory assumptions, norms and practices.

- (e) A distinction may be an objective and reasonable difference in treatment, which may serve a legitimate purpose, and does not adversely affect or restrict the enjoyment of rights.
  - (f) Stereotyping is taking a generalized view or preconception of qualities possessed by or the roles that should be performed by members of a particular group. Stereotyping ignores a particular person's circumstances, abilities, needs and demands.
  - (g) Gender stereotypes are a particular subset of generalizations regarding the characteristics of men and women. They can be descriptive, based on a view or perception of what men or women are like, or they can be prescriptive, based on an ideology of what they should be like. These gender stereotypes often provide the basis for related generalized assumptions as to how men or women should or will behave in a range of circumstances.
7. Equality, equal protection of the law, and non-discrimination are fundamental principles of domestic and international human rights law. These principles prohibit disadvantageous treatment based on the idea of the inferiority or superiority of either of the sexes or on rules rooted in gender stereotypes. Guarantees of equality must ensure formal and substantive equality.
8. Applying a gender perspective will assist judges to:
- a) Be conscious of the gender norms that shape expectations, responsibilities and opportunities as they pertain to women;
  - b) Identify the sources of differentiated treatment based on sex or gender with the law, legal systems and practices;
  - c) Determine whether differentiated treatment upholds equal protection and advances equality of opportunity and outcome or if it is discriminatory;
  - d) Identify and expose the consequences the categorization based on sex and/or gender creates, such as: violation of rights, unequal power relations and differences in rights and opportunities, among others; and
  - e) Identify the legal principles and procedures in domestic and international law, including restorative justice principles and procedures, that judges/mediators/arbitrators can apply in the conduct of court proceedings/mediations/arbitrations and in the evaluation of facts and evidence in adjudication/mediation/arbitration to ensure gender equality, equal protection and non-discrimination.

Judging with a gender perspective would allow equal opportunity, equal access and equal outcome in the dispensation of justice to those persons whose rights are at risk of not being recognized due to their sex or gender.

## GENERAL GUIDANCE FOR THE APPLICATION OF A GENDER PERSPECTIVE IN JUDICIAL DECISION-MAKING

9. Unequal gender relations and norms are socially constructed and must be changed through law, policy and practice.
10. Judges should carefully consider the facts of every case and the context surrounding the facts to determine if one of the persons involved is in an unequal power relationship or if one is adversely affected by unequal treatment, unequal legal protection or discrimination, because of sex or gender, including where sex or gender are one among multiple grounds of discrimination. Judges should be acutely conscious of any such inequalities while continuing to hear and determine the case.

Judges should be aware of intersecting forms of discrimination and exclusion based on race, color, language, religion, belief, caste, employment, political opinion, nationality, social origin, disability, age, location, region, indigenous and minority status, sex, gender, sexual orientation, gender identity, or other status. Cases involving intersecting forms of discrimination or exclusion should be carefully reviewed, especially for the purpose of establishing reparation measures.

11. When hearing and adjudicating cases, judges should be careful to avoid using gender stereotypes.

Some common stereotypes judges should take care to avoid are:

- Women are physically weak;
- Women cannot make decisions on their own;
- Men are the head of the household and must make all the decisions related to family;
- Women should be submissive and obedient;
- Good women are sexually chaste;
- Every woman wants to be a mother;
- Women should be the ones in charge of their children;
- Being alone at night or wearing certain clothes make women responsible for being attacked;
- Women are emotional and often overreact or dramatize hence it is necessary to corroborate their testimony;
- Testimonial evidence provided by women who are sexually active may be suspect when assessing "consent" in sexual offense cases; and
- Lack of evidence of physical harm in sexual offense cases means consent was given.

12. When determining which law to apply to a particular case, judges should:

- a) Evaluate if the law is based on a stereotype or a sexist view of a person;
- b) Evaluate the purported gender neutrality of the law and the consequences of its application, including whether the law may lead to indirect discrimination and discriminatory impacts;
- c) Consider whether there are reasonable constructions and interpretations of the law that better guarantee substantive equality, equal protection and non-discrimination and, where appropriate, apply such an interpretation;
- d) Consider the domestic application of international treaties to which their State is a party and adopt an interpretation that is consistent with the application of any such applicable treaties; and



- e) If their State is not a party to CEDAW or the ICCPR or is a party but has not adequately incorporated CEDAW or the ICCPR in domestic law, judges may resort to these and other applicable international law treaties to resolve ambiguities present in domestic law and fill gaps in domestic law. These standards may also serve as an interpretative guide and as a source of definitions that judges might not find in their domestic legal systems.

13. When deciding on the merits of a case or whether a case merits judicial review, judges should:

- a) Apply domestic law in accordance with international law and standards;
- b) Apply human rights principles of accountability, equality, universality, indivisibility, interdependence, interrelatedness, and inalienability;
- c) Identify any international standards that have been applied and explain their application;
- d) Identify and take into account the existence of any unequal power relation or structural discrimination, as well as any stereotype or gender bias detected in the facts or in the legal process;
- e) Give a reasoned explanation as to why they are applying a particular law to the case;
- f) Explain why applying a particular standard would cause illegitimate differentiated treatment;
- g) Incorporate meaningfully the gender analysis; and
- h) Take care to avoid re-victimization.

14. It should be recalled that under international law, any person who has suffered a human rights violation, including as a result of gender discrimination, has a right to an effective remedy and reparation for harm suffered. If reparation measures are necessary or appropriate, judges should apply measures that:

- a) Are consistent with the principles and standards of international human rights law;
- b) Are free from gender stereotypes;
- c) Effectively redress the disproportionate harm, based on sex or gender, caused to the victim;
- d) Take into consideration the situation and needs of the victims and enable their meaningful participation where possible;
- e) Adhere to the principles of restorative justice in criminal cases; and
- f) Contribute to efforts to address unequal power relations and structural discrimination.

Judges should, to every extent possible, use inclusive or gender-neutral and gender-sensitive language in court proceedings, decision-making, mediation and other court issuances.

15. Women who have suffered from domestic violence should have access to legal aid and be exempted from payment of docket and other legal fees.

16. Appropriate accommodations, including the provision of medical services and social welfare, should be made in the legal process for women in special situations, including adolescents, the elderly and women who are pregnant or lactating.

#### **RECOMMENDATIONS FOR INSTITUTIONAL POLICIES IN THE JUDICIARY**

17. Developing a gender-sensitive and gender-responsive judicial system means not only including gender considerations in rules for adjudication of cases and mediation, but more generally in the administration of justice.
18. Gender equality should be a principle that guides judicial appointments. Women and men must be equally represented on the bench as they bring a diversity of perspectives, approaches and life experiences to adjudication, which influence the interpretation and application of laws. To that end, legislative, administrative and judicial authorities responsible for appointments and promotions, should move expeditiously and progressively to achieve gender parity.
19. Women judges should not be assigned only to cases involving family law or sexual violence, but to any other area that falls within their legal expertise. Women judges should be made eligible and considered for any level of the judiciary.
20. If necessary, temporary affirmative measures –like quotas which should be consistent with requirements of integrity and high competency -should be implemented in order to assure that women are adequately represented in the judiciary. Evaluation procedures for the appointment and promotion of judges should be merit-based and considered with a gender perspective to avoid rules and situations that might place women at a disadvantage in judicial appointments and promotions.
21. Evaluation panels for the appointment and promotion of judges should be composed of men and women. Gender stereotypes should never be a factor, express or implicit, in the evaluation of judges for appointment or promotion. One criterion for the evaluation of candidates should be demonstrated commitment to human rights and gender equality.
22. All judges and other justice sector personnel shall be entitled to the same remuneration for work of equal value.
23. Judges and, in general, all judicial staff should be adequately trained to apply a gender perspective in their daily work. Judicial training institutions should include courses on gender mainstreaming and women’s human rights.
24. It is advisable to establish a gender office, unit, or working group, in the judiciary in order to effectively promote the inclusion and institutionalization of a gender perspective in the administration of justice and monitor compliance thereto.
25. The commitment to gender sensitivity and gender equality of individual judges should be recognized and endorsed to encourage other judges to follow suit and to boost morale in general.
26. The judiciary should endeavor to actively engage with the other branches of government to ensure the implementation of the abovementioned general guidance.

# I. EQUAL JUSTICE TO WOMEN : ROLE OF COURTS AND JUDGES

*BEING A PROPOSAL FOR GENDER SENSITIZATION OF JUDICIAL OFFICERS  
RECOMMENDED TO JUDICIAL ACADEMIES AND TRAINING INSTITUTIONS\*-*

## Structure and Objects

The course is designed to serve gender sensitization of judicial officers at all levels. The minimum duration is two and half days; it can however be stretched for one full week to get optimum results.

The syllabus is prepared on the assumption that women do not get equal protection of the laws and they are discriminated against both in substantive law and in procedure, a lot of which can be moderated in its impact if the presiding officers of courts are sensitive to the inequalities women suffer from in society.

The objects of the course specifically are :

- (a) to appreciate patent and latent discriminatory provisions against women in the laws of the country and the promise of equality made under the Constitution of India;
- (b) to understand women's rights as human rights to be able to interrogate unsustainable attitudes and practices inherited by the legal system;
- (c) To identify instances of gender bias in adjudication and the circumstances which lead to such results;
- (d) to be able to intervene effectively to prevent discrimination against women in court proceedings;
- (e) to develop gender-neutral attitudes and skills; and
- (f) to promote justice to women on the basis of equality guarantee of the Constitution of India.

## PROGRAMME DESCRIPTION

### Day One

2 PM-2.30 PM

### Session I

- Introduction of faculty and participants.
- Discussion on objects and methodology-Roles and Responsibilities for the successful conduct of the workshop.

2.30 PM-3.30 PM

### Session II

Lecture-Discussion on "Women, Equality and Law"

Faculty : A law professor familiar with issues of gender justice debate and an expert in laws relating to women.

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\* The proposal was originally prepared by Professor N. R. Madhava Menon while working as a Consultant to the First National Judicial Pay Commission, Government of India (1999).



Note : This session has four objectives-

- (1) for participants to reflect on perceived injustices in law and procedure relating to domestic violence;
- (2) provide perspectives on possible alternate courses of action open to the court which can be more equitable in domestic relations situations;
- (3) enable the participants to appreciate evidence with a gender perspective and
- (4) understand the importance of being sensitive in taking depositions, issuing interim orders, giving adjournments, writing judgments and invoking services of other professionals (social work, medicine, forensic experts) in domestic violence cases.

Participants will be encouraged to write down their impressions on the two sessions held in the afternoon and turn in their comments on the following day which will form part of the evaluation.

**Day Two**

**9.30 AM-12.30 PM**

**Session IV**

**Saturday**

Topic : **Rape Trials and Problems in Equal Justice**

Faculty : A Prosecutor with expertise in conducting rape trials and a Defence lawyer preferably a woman; a High Court Judge who has written opinions in rape appeals and a woman activist familiar with issues of gender justice in sexual violence cases.

#### **Reading Materials**

- (1) Edited case files of rape cases where injustice is perceived by women's groups.
- (2) Excerpts of Law Commission Reports and Parliamentary Debates on amendment of rape law.
- (3) Report of The National Commission for Women titled "Rape : A Legal Study".
- (4) Selected articles, research studies and media reports on health and psychological problems associated with rape.
- (5) Statistics on incidence of rape, conviction rates etc.

#### **Teaching Methods**

The session will begin with a short video-clipping on the trauma of rape victims and medical opinions on the problems arising therefrom.

It will then be followed by short presentations on the experience of prosecutors and defense lawyers in conducting rape trials.

The discussion will then be initiated by the social activist focussing on what women expect from the courts, prosecutors and defense attorneys. The trainer who moderates the discussion will seek division of the house on controversial issues with a view to involve the judges at an affective level. He would also provide comparative perspectives from other jurisdictions with the help of charts and transparencies.

The High Court judge will then reflect on why and where appellate courts intervene in trial court judgments and what High Court expects the trial Court to do in respect of gender equality in rape and



### Expected Outcomes

Besides acquainting the judges on the peculiar problems experienced by women in matrimonial proceedings, this session will (a) expose the participants to the skills necessary to deal sensitively with matrimonial disputes; (b) help identify usual prejudices associated with dealing with such litigation; (c) promote understanding of the dynamics of inter-personal relations in marriage which should help in negotiating mediated settlements; (d) provide ideas from behavioural sciences on how to deal with child custody matters while being fair and just to the woman involved.

As on the previous day, participants will be asked to write down their specific comments on a proforma circulated in respect of what they learnt or failed to learn in the two sessions. The proforma will be so prepared as to probe the extent of gender sensitization of the respondents in respect of a criminal proceeding as well as a civil proceeding (rape and divorce/custody).

### Day Three

9.30 AM-12.30 PM

### Session VI

#### Sunday

Topic : **Discrimination and Harassment of Women at Work Place**

Faculty : A Woman trade unionist, a member of the Women's Commission or a women activist, a High Court Judge experienced in labour disputes and a woman journalist reporting on women's issues.

#### Reading Materials

- (1) Selected judgments on sexual harassment at work place and on Equal Remuneration Act.
- (2) Reports on discrimination in employment.

#### Teaching Methods

The session will start with a little quiz on participants' perspectives and beliefs on discrimination and harassment of women at work place. Using the flip chart the trainer will consolidate the responses in the class in such a way as to project the range of gender-based prejudices and problems.

This will be followed by a panel discussion amongst the faculty, each highlighting one or other dimension of the problem. The moderator will focus attention of the group on major biases and injustices raised keeping in focus the role of the judge in moderating or aggravating the impact of such biases on women's right to equal treatment and dignity.

The final part of the session will be devoted to small group interactions on writing out a code of judicial conduct in reducing gender-based inequalities in dealing with employment-related disputes and in court administration.

Note : At the end of this session, participants will have (a) clearer understanding of how and where women experience discrimination in work places, (b) acquire minimum skills to be able to correct the imbalances when such disputes come before them and (c) help provide a more gender-friendly atmosphere in the courts.

12.30 PM - 2.00 PM                      Lunch Break

2.00 PM-3.30 PM                      Session VII

Topic : **Sex Equality at the Bar and in the Courts**

Faculty : Chairman of the Bar Council/Bar Association, representative of the Women's Bar, and two participants of whom one to be a woman.

#### **Teaching Methods**

The Session will largely be based on brief presentations by the Faculty. However, the initial few minutes will be devoted to ascertaining the perceptions of participants on what they consider to be the state of affairs at the bar and in court proceedings. The participants will be asked to write in a piece of paper three instances which in their belief can be discriminatory of women in the bar room, court offices and in court transactions including trial.

#### **Expected outcomes**

Besides sensitizing the judges on the problem in their own midst, the session will help in drawing up a judicial code of conduct to create a more genderneutral atmosphere not only to women lawyers and judges, but also women litigants, women witnesses and women employees of courts. Judges will begin to realize the need to adopt gender-neutral language, avoid sexist remarks, renounce double standards wherever they exist and to respect women's dignity particularly of those belonging to minority sections of the population.

3.30 PM-4.00 PM                      Break for Refreshments

4.00 PM-5.00 PM                      Session VIII

**Evaluation and Valediction**

#### **Points to Consider**

There can be many variations of the above design depending upon the specific needs of participants, time available for training and resources which the Academy commands. The point to be noted is that a well-thought-out training design is a pre-requisite for the success of in-service training. Such design should necessarily be based on a needs assessment on which specific objectives to be achieved by each session/module should be spelt out clearly. Participants should be involved as much as possible for which the training methods should be varied and interesting. Lectures ought to be kept to the minimum and each session should be co-taught by a balanced mix of experts carefully chosen and adequately briefed on the expected outcomes of their respective sessions.

Too much of reading materials even if distributed will not be read. As such, careful selection and proper editing should be done well in advance. For a course of 2½ days' duration, it is prudent to contain the reading materials to about 100 neatly typed A-4 size pages. The reading materials should be supplied in bold print with titles and sub-titles and, wherever possible, with short catch notes/summary of points. Additional reading materials may be listed after every module/topic and such materials may be kept in reserve in the library for participants to browse through. Some participants



are likely to take special interest in topics of their choice and would be wanting to learn more on their return to their respective stations. Certainly they would be wanting to consult as many materials as are available on a given proposition as and when the issues confront them in the course of their professional work. The reference list given in the reading materials will be the initial resource to fall back upon.

As far as possible at least a small number of participants must be invariably asked to read the materials in advance and to react in each session so that those who have not read the materials will also be benefitted. It is a good strategy to force participants to bring the materials in class and consult relevant pages occasionally during the session.

Evaluation in a prepared proforma at the end of each day will be more beneficial rather than be content with a general evaluation at the end of the course.

If the course were to be repeated, a few of those judges who were participants in the earlier course may be invited as faculty for the succeeding course.

There may be an opinion that what is presented here for a 2½ day course is rather too heavy and taxing to the ordinarily overworked judges who expect some relief and relaxation in a week-end retreat. It is important that continuing education to succeed must endeavour to remove such impressions which have been created all around from the way they are conducted at present. These are costly exercises and the benefits should outweigh the costs if they have to be sustained with public support. As such, it is desirable to make it tight involving the participants in some or other useful activity all the time available. By corresponding with participants well before their arrival at the academy, they should be prepared to put in their effort and time totally for their own benefit.

Ministry of Women and Child Development

## Gender Sensitization of Judicial Personnel

Posted On: 06 FEB 2020 3:02PM by PIB Delhi

Ministry of Women and Child Development has requested the National Gender Centre (NGC) in the Lal Bahadur Shastri National Academy of Administration (LBSNAA), Mussoorie to include Gender Sensitization training and capacity building of all stakeholders including judiciary for effective implementation of policies/legislation/programmes designed for women safety, protection and security at ground level.

Further, NGC, LBSNAA, Mussoorie, has organised 8 Gender Sensitization programmes during the last year and current year for the judicial personnel including Judges and District Magistrates. The list of Gender sensitisation programmes organised by NGC, LBSNAA during the last year and current year for judicial officers is at **Annexure-I**. In addition, 9 Gender Sensitization trainings have been conducted by the National Judicial Academy, Bhopal, Madhya Pradesh under Department of Justice, Ministry of Law and Justice during the year 2018-19 and 2019-20. The details are annexed at **Annexure II**.

### Annexure-I

**The list of Gender sensitisation programmes organised by NGC, LBSNAA during the last year and current year for judicial officers**

S. No.	Details of Training Programme	Period of Training
1.	Workshop on “Beti Bachao Beti Padhao Campaign” (BBBP)	17-19 May, 2018
2	Workshop on “Combating Violence Against Women and Children”	21-23 June, 2018

3	Conference on Gender Budgeting	30 July–01 August, 2018
4	Workshop on Stepping up to India's Nutrition Challenge	06-07 August, 2018
5	Workshop on Early Childhood Development	29-31 October, 2018
6	Capacity Building Programme on Multi-Agency Coordination in Tackling Violence against Women and Children in India	19-21 December, 2019
7	Workshop on Multi-Sectoral Approach for Eliminating Violence against Women and Children	15-17 January, 2020
8	Eliminating Violence against Women and Children Developing a Multi-Sectoral Approach - A Capacity Building Programme for Trainers	20-24 January, 2020

### Annexure-II

**The list of Gender sensitisation programmes organised by National Judicial Academy during the last year and current year for judicial officers**

S. No.	Details of Training Programme	Period of Training
1.	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	06-12 September, 2018
2	Refresher Course for Family Court: (Session: Gender Justice and Gender Bias: Maintaining Equilibrium)	12-16 October, 2018

3	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	16-22 November, 2018
4	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	04-10 January, 2019
5	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	01-07 March, 2019
6	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	19-21 December, 2019
7	Refresher Course for Family Courts: (Session: Gender Justice and Gender Bias: Maintaining Equilibrium)	20-24 September, 2019
8	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	15-21 November, 2019
9	Orientation Programme for Junior Division Judges: (Session: Role of Courts in Securing Gender Justice)	10-16 January, 2020

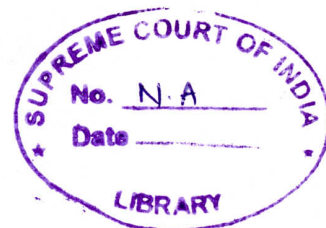
This information was given by the Minister of Women and Child Development, Smriti Zubin Irani, in a written reply in the Rajya Sabha today.

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**MM/ SB**

(Release ID: 1602199) Visitor Counter : 423

Read this release in: Urdu , Bengali



**"The Gender Sensitisation & Sexual Harassment of Women at the  
Supreme Court of India  
(Prevention, Prohibition and Redressal), Regulations, 2013"**

## भाग I — खण्ड 1

## [PART I—SECTION 1]

[(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और उच्चतम न्यायालय द्वारा जारी की गई विधितर नियमों, विनियमों, आदेशों तथा संकल्पों से संबंधित अधिसूचनाएं]

**[Notifications relating to Non-Statutory Rules, Regulations, Orders and Resolutions issued by the Ministries of the Government of India (other than the Ministry of Defence) and by the Supreme Court]**

युवा कार्यक्रम और खेल मंत्रालय

नई दिल्ली, दिनांक 27 अगस्त 2013

संकल्प

सं. ई-11015/3/2009-हिंदी--संसदीय राजभाषा समिति के दिनांक 17.07.2013 के कार्यालय ज्ञापन सं. 25011/3/2009-समिति-5 के अनुसरण में श्री रघुनंदन शर्मा, संसद सदस्य (राज्य सभा) का नाम युवा कार्यक्रम और खेल मंत्रालय की हिंदी सलाहकार समिति में शामिल किए जाने के परिणामस्वरूप भारत सरकार एतद्वारा श्री श्रीगोपाल व्यास, पूर्व संसद सदस्य (राज्य सभा) के स्थान पर श्री रघुनंदन शर्मा, संसद सदस्य (राज्य सभा) को मंत्रालय की हिंदी सलाहकार समिति में सदस्य के रूप में नामित करती है।

2. दिनांक 08.04.2013 के समसंख्यक पूर्ववर्ती संकल्प में मंत्रालय की हिंदी सलाहकार समिति से संबंधित सभी उल्लिखित निबंधन और शर्तें पूर्ववत् रहेंगी।

सुधीर कुमार  
संयुक्त सचिव

SUPREME COURT OF INDIA

New Delhi, the 6th August 2013

No. F.26/2007-SCA(I)—In exercise of the powers conferred by sub-clause (2) of Clause 1 of "The Gender Sensitisation & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013", the Chief Justice of India hereby appoints, the date of publication of the Regulations in the Official Gazette, as the date on which provisions of the said Regulations shall come in to force.

By Order.

RAJ PAL ARORA  
Registrar

No. F.26/2007-SCA(I)—In Writ Petition(Civil) No. 162 of 2013, Ms. Binu Tamta & Anr. v. High Court of Delhi & Ors. vide order dated 17th July, 2013, the Supreme Court has approved of and accepted "The Gender Sensitisation & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal), Regulations, 2013" and directed the Supreme Court in its administrative jurisdiction to take note of the same and to arrange that the same are promulgated and given wide publicity.

Now, therefore, the Supreme Court notifies the following Regulations :—

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**THE GENDER SENSITISATION & SEXUAL  
HARASSMENT OF WOMEN AT THE SUPREME  
COURT OF INDIA (PREVENTION, PROHIBITION AND  
REDRESSAL) REGULATIONS, 2013**

WHEREAS gender discrimination and sexual harassment results in violation of the fundamental right of a woman to equality under Articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under Article 21 of the Constitution of India and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment under Article 19(1)(g) of the Constitution of India;

AND WHEREAS sensitization against discrimination on basis of gender and the protection against sexual harassment

and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the Constitution of India and the said Convention for protection of women against sexual harassment at Supreme Court precincts :-

AND WHEREAS it is necessary to provide for gender sensitization in working environment and protection against sexual harassment of women at the Supreme Court precincts and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto;

AND WHEREAS according to the decision in Vishaka v. State of Rajasthan rendered by the Supreme Court in its judgment dated 13 August 1997, in Writ Petition (Crl.) No. 666-70/92 it is necessary to provide for the protection of women.

AND WHEREAS in the judgment of the Supreme Court in Medha Kotwal Lele v. Union of India & Others, rendered by the Supreme Court on 19 October 2012 reported in (2013) 1 SCC 297, the necessity of protecting women from any form of indecency, indignity and disrespect in all places (in their homes as well as outside), is emphasized and it has been directed to provide new initiatives of education and advancement of women and girls in all spheres of life and the further directions given in the said judgment including the directions with regard to the need to give instructions/circulars by all statutory bodies such as the Bar Council of India, Bar Associations and State Bar Councils, and the liberty granted in the said judgment to approach the respective courts and the directions to the courts to effectively consider the grievances raised in this regard.

AND WHEREAS following upon and in conformity with the above, in Writ Petition (Civil) No. 162 of 2013, Ms Binu Tamta & Ors. v. High Court of Delhi, the Supreme Court of India appointed a committee for framing regulations to ensure a safe working environment for women in the precincts of the Supreme Court, and the said committee having framed regulations to combat the problem of sexual harassment within the precincts of the Supreme Court of India and for the redressal of any complaint that may be filed in that regard;

AND WHEREAS the draft regulations being placed before the Court on 03 July 2013 and the Supreme Court directing for further consideration of the regulations by the parties concerned and the Attorney General for India;

AND WHEREAS upon consideration of all the views placed before the Court, the Supreme Court by order dated 17 July 2013 was pleased to approve the said regulations

and authorize the issuance of the same and order the enforcement of the Regulations inter alia having regard to the aforesaid judgments and in terms of Article 142 of the Constitution of India to render full and complete justice.

AND WHEREAS now these Regulations are being published as a comprehensive code for prevention of sexual harassment of women within the precincts of the Supreme Court of India and for redressal of any complaints that may be lodged in the Supreme Court.

The Supreme Court hereby makes the following Regulations :—

#### CHAPTER I

##### PRELIMINARY

1. Short title, extent and commencement - (1) These Regulations may be called the Gender Sensitization & Sexual Harassment of Women at the Supreme Court of India (Prevention, Prohibition and Redressal) Regulations, 2013.

(2) They shall come into force on such date as the Chief Justice of India may, by notification in the Official Gazette, appoint.

2. Definitions - In these Regulations, unless the context otherwise requires:—

- (a) "aggrieved woman" means, in relation to the Supreme Court, any female, of any age, whether employed or not, who claims to have been subjected to any act of sexual harassment by any person in the Supreme Court of India precincts, but does not include any female who is already governed by the Supreme Court service regulations;
- (b) "appropriate Authority" means in relation to the Supreme Court of India, the sitting Chief Justice of India;
- (c) "Chairperson" means the Chairperson of the Supreme Court Gender Sensitization and Internal Complaints Committee (GSICC);
- (d) "Chief Justice of India" in context of the present Regulations means the sitting Chief Justice of India;
- (e) "habitual Respondent" is a person against whom a previous Complaint of sexual harassment has been received by the GSICC on earlier occasion, irrespective of whether the matter was resolved with or without an inquiry and except where the Respondent has been exonerated in the previous complaint;
- (f) "GSICC" means the Supreme Court Gender Sensitisation and Internal Complaints Committee constituted under Regulation 4;
- (g) "Internal Sub-Committee" means the Sub-committee set up under Regulation 9;
- (h) "Member" means a Member of the GSICC;
- (i) "Prescribed" means prescribed by the present Regulations;
- (j) "Respondent" means a person against whom the aggrieved woman has made a Complaint under the present Regulations;
- (k) "Sexual harassment" includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely :—
  - (i) physical contact and advances;
  - (ii) a demand or request for sexual favours;
  - (iii) making sexually coloured remarks;
  - (iv) showing or exhibiting pornography and/or sexually explicit material by any means;
  - (v) sending undesirable sexually coloured oral or written messages, text messages, e-mail messages, or any such messages by electronic, manual or other means;
  - (vi) stalking or consistently following aggrieved woman in the Supreme Court precincts and outside;
  - (vii) voyeurism including overt or tacit observation by the Respondent by any means of the aggrieved woman in her private moments;
  - (viii) any conduct whereby the Respondent takes advantage of his position and subjects the aggrieved woman to any form of sexual harassment and seeks sexual favours specially while holding out career advancements whether explicitly or implicitly, as an incentive or a natural result of submitting to the insinuations/demands of the Respondent;
  - (ix) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;
  - (x) implied or explicit promise of preferential treatment in her legal career;
  - (xi) implied or explicit threat of detrimental treatment in her legal career;
  - (xii) implied or explicit threat about her present or future legal career;
  - (xiii) interferes with her work or creating an intimidating or offensive or hostile work environment for her; or



- (xiv) any treatment having a sexual colour or content likely to affect her emotional and/or physical health or safety.
- (l) "Supreme Court of India precincts" means the whole premises of the Supreme Court including the Court Block, open grounds, parking, old and new Chamber Blocks, libraries, canteens, bar-rooms, health centers and/or any other part of the premises under the control of the Hon'ble Chief Justice of India;
- (m) "Volunteer" means lawyers or other persons enlisted by the GSICC without any remuneration basis for carrying out the objects and purpose of these Regulations.
3. Prevention of sexual harassment - No woman shall be subjected to sexual harassment at the Supreme Court of India precincts.

## CHAPTER II

## COMPOSITION &amp; CONSTITUTION OF GENDER SENSITISATION &amp; INTERNAL COMPLAINTS COMMITTEE

4. Constitution of the Gender Sensitization & Internal Complaints Committee - (1) The Supreme Court GSICC is constituted herein to fulfill a very important public function of sensitizing the public to gender issues and to address any complaints made with regard to sexual harassment at the Supreme Court precincts.
- (2) The Chief Justice of India shall, by an order in writing, constitute a Committee to be known as the "Supreme Court Gender Sensitisation and Internal Complaints Committee" (GSICC) which shall consist of not less than 7 members and not more than 13 members and shall include the following as far as practicable :—
- (a) one or two Judges of the Supreme Court in terms of the judgment in the case of Vishaka (supra), one of whom shall be the Chairperson of the Committee, to be nominated by the Chief Justice of India;
- (b) one or two senior members of the Supreme Court Bar, with at least 20 years of membership of the Supreme Court Bar Association or the Supreme Court Advocates-on-Record Association to be nominated by the Hon'ble Chief Justice of India, one of whom being a woman;
- (c) one or two members to be elected by General Ballot of the Supreme Court Bar Association who shall be registered member of the Supreme Court Bar Association for at least 10 years out of whom at least one shall be a woman;
- (d) one woman member being a member of the Advocates-on-Record Association elected by General Ballot of the Advocates-on-Record Association;

- (e) one woman member being a member of the Supreme Court Clerks Association elected by General Ballot of the Supreme Court Clerks Association;
- (f) at least one and at the most two outside members to be nominated by the Chief Justice of India, persons who are associated with the Social Welfare Department or non-government organization having experience in the field of social justice, women empowerment, and/or gender justice, out of whom at least one member shall be a woman;
- (g) one woman officer in the service of the Supreme Court of India not below the rank of a Deputy Registrar to be nominated by the Hon'ble Chief Justice of India, who shall function as the Member Secretary of the GSICC; and
- (h) any other member that the Chief Justice of India may deem fit to nominate.

Provided that it shall be ensured that the majority of the members of GSICC shall be woman members.

- (4) The outside Member appointed under Clause 4(2)(f) shall be paid such fees or allowances from the allocated funds for holding the proceedings of the GSICC as may be prescribed.
- (5) Where the Chairperson or any Member of the GSICC—
- (a) as been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him/her;
- (b) fails to constitute an Internal Sub-Committee to inquire into a particular Complaint;
- (c) fails to take action under Regulation 11;
- (d) contravenes or attempts to contravene or abets contravention of other provisions of these Regulations or any notifications/orders issued thereunder; or
- (e) in the opinion of the Chief Justice of India has so abused his/her position as to render his/her continuance in office prejudicial to the exercise of functions of the GSICC;
- such Chairperson or Member, as the case may be, shall stand removed forthwith from the GSICC by a written order of the Chief Justice of India and the vacancy so created shall be filled by fresh nomination/ election in accordance with the provisions of these Regulations.

## 5. Term of Gender Sensitization &amp; Internal Complaints Committee members—

The term of each member of the GSICC shall be for two years, subject to the member being elected/nominated for a maximum period of two terms, and a member who has been

removed under Regulation 4(5) shall not be eligible for re-nomination or re-election.

6. Meetings of The Gender Sensitisation & Internal Complaints Committee - (1) The GSICC shall meet at least once in four months in a calendar year.

(2) Members shall be intimated of meetings and agenda in writing and/or by electronic communication by the Member Secretary.

(3) Minutes of all meetings shall be recorded, confirmed and adopted. The Member Secretary shall circulate the minutes of a meeting and the Resolutions so passed to all Members of the GSICC within 7 days of the holding of the meeting or the passing of the Resolution.

(4) The Ordinary Meeting shall be called by the Chairperson with minimum seven days notice to all members.

Any member of the GSICC may at any time request the Chairperson to call an Emergency Meeting with a notice of Forty-Eight hours. However, this will not prevent the Chairperson from convening an emergency meeting without 48 hours notice.

(6) The quorum for all Meetings shall be one-third of the members of the GSICC. In the event the quorum is not completed for any meeting, an adjourned meeting shall be held within the next 10 days following, for which no quorum shall be required.

(7) All motions shall be carried by a simple majority of those present and voting at all meetings, except where it is specifically provided for.

Whenever a Complaint is received or a Report of the Internal Sub-Committee is submitted, the Member-Secretary shall within a period of 7 days request the Chairperson to call either an Ordinary or Emergency Meeting to take action on the same, and the Chairperson shall call a meeting for this purpose not later than 15 days from the date of the Complaint or the Report.

If a Member does not attend 3 consecutive meetings he/she shall be liable to removal forthwith by the Chief Justice of India, and the vacancy so created shall be filled in accordance with Regulation.

7. Functions of The Gender Sensitization & Internal Complaints Committee - (1) GSICC shall be responsible for framing a Policy from time to time and its implementation with regard to gender sensitization and prevention and redressal of Sexual Harassment in the Supreme Court.

(2) Gender Sensitization and Orientation: GSICC shall take the following steps with regard to gender sensitization and orientation:—

- (i) GSICC will ensure the prominent publicity of the Policy on gender sensitization and prevention and redressal of Sexual Harassment in the Supreme Court of India in all places in the

Supreme Court precincts such as the Court Building, old and new Chamber Blocks, library, health centre, canteens etc.

- (ii) GSICC will organize programmes for the gender sensitization of the Supreme Court community through workshops, seminars, posters, film shows, debates, displays, etc.
- (iii) GSICC shall submit an Annual Report by December 31 every year to the Chief Justice of India which shall be made public outlining the activities undertaken by it and charting out a blueprint for the activities/steps to be taken up in the following year along with necessary budget allowances required by it. The GSICC shall include in its Annual Report the number of cases filed, if any, and their disposal under these Regulations in the annual report.
- (iv) GSICC may enlist the help of NGO's, associations, volunteers, lawyers, lawyer's bodies, or the concerned legal services authorities to carry out these programmes.
- (v) GSICC will enlist and activate an adequately representative team of volunteers and shall ensure the widespread publicity of the contact details (both official and personal) of all its members and volunteers. The services of such volunteers shall be available at all times to any aggrieved woman or any person in need of consultation or guidance. Volunteers will also assist in the gender sensitization, crisis mediation and crises management duties of GSICC, but shall not participate in the task of formal redressal of complaints under these Regulations and Procedures.
- (vi) GSICC will organize and train members and volunteers to equip them to handle sexual harassment cases including legal and medical aspects of aid.

(3) Crisis Management and Mediation - GSICC shall ensure that there is quick and responsive crises management, counselling and mediation available to all aggrieved women expeditiously which shall include the following activities:-

- (i) GSICC will assist in the mediation of crises arising out of incidents of sexual harassment at the Supreme Court precincts.
- (ii) No mediation shall conclude without approval of the GSICC, and the mediated settlement shall be effected and be enforceable only upon it being duly approved by the GSICC which shall satisfy itself that the said mediation settlement is voluntary, fair, unbiased, and free from any extraneous consideration or influence.

GSICC will coordinate with the Supreme Court security services to devise ways and means by which a system of prevention of and crisis management that is both gender-sensitive as well as prompt and effective is put in place. It will maintain regular contact through the Member Secretary with the Supreme Court security services to ensure that in crises arising out of incidents of sexual harassment, GSICC members, and/or the volunteers identified by it, shall be intimated of such incidents without delay.

(4) Complaint Redressal - The GSICC shall ensure that every complaint of an aggrieved woman is adequately dealt with in accordance with the established procedure and with complete sensitivity. The GSICC shall have the power to inquire into and pass orders against the Respondent/deviant/delinquent in a complaint made in relation to any form of sexual harassment in the entire precincts of the Hon'ble Supreme Court.

### CHAPTER III

#### COMPLAINT & INQUIRY INTO COMPLAINT

8. Complaint of Sexual Harassment - (1) Any aggrieved woman may make a complaint in writing of sexual harassment at the Supreme Court of India precincts to the GSICC through the Member Secretary in accordance with the form and procedure so notified by it.

Provided that where the aggrieved woman is unable to make such a complaint in writing due to any reason, the Member of the GSICC or volunteer, 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 for any other reason, her legal heir or such other person directly concerned with her interests may make a complaint under this Regulation.

9. Inquiry into complaint - (1) On receiving a complaint and upon being satisfied with regard to the genuineness of the Complaint, the GSICC shall constitute an Internal Sub-Committee to conduct a fact finding inquiry, which shall comprise of three members of the GSICC itself, or such other persons as to be so nominated by the GSICC in its meeting, with majority members being women, and at least one person being an outside member.

(2) The Internal Sub-Committee shall conduct an inquiry and shall hear and duly record the statements of the aggrieved woman, the Respondent, and any other person ~~the said parties~~ wish to examine, subject to the provisions of Regulation 13(2), and thereafter it shall prepare a Report and enclose therein the complete proceedings of the Inquiry.

(3) The fact finding inquiry into a Complaint shall be conducted and completed within 90 days of the Constitution of the Internal Sub-Committee.

Provided that the validity of any inquiry shall not be called into question upon the inquiry not being completed with the stipulated period due to reasons beyond the control of the Internal Sub-Committee.

10. Inquiry Report - (1) On the completion of an inquiry under these Regulations, the Internal Sub-Committee shall provide the Inquiry Report of its findings alongwith the complete record of the inquiry proceedings including the pleadings and all the material on record to the GSICC within a period of ten days from the date of completion of the inquiry and such Report shall also be made available to the concerned parties.

(2) Where the Internal Sub-Committee arrives at the conclusion that the allegation against the Respondent has not been proved, it shall recommend to the GSICC that no action is required to be taken in the matter.

(3) Where the Internal Sub-Committee arrives at the conclusion that the allegation against the Respondent has been proved, it shall recommend to the GSICC to take appropriate action for gender discrimination and/or sexual harassment.

(4) Upon consideration of the material on record and the Inquiry Report of the Internal Sub-Committee, if more than two-thirds of the members of the GSICC differ from the conclusion of the Internal Sub-Committee, the GSICC shall after hearing the aggrieved woman and Respondent in person, record its reasons to so differ and take consequent action accordingly.

(5) The GSICC shall pass orders either accepting or rejecting the Inquiry Report of the Internal Sub-Committee and thereafter pass consequent orders that may be appropriate and necessary for putting an end to the sexual harassment and take all steps to secure justice to the victim of sexual harassment within 45 working days of submission of the Inquiry Report of the Internal Sub-Committee, excluding the period of holidays, and/or vacation of the Supreme Court.

Provided that the validity of the orders of the GSICC shall not be called into question upon the same not being passed within the stipulated time.

11. Orders on Inquiry Report - (1) Subject to Regulation 9(1) above, the GSICC shall have the power to pass the following orders to secure justice to the victim of sexual harassment:

- (a) admonition;
- (b) admonition with publication of such admonition in the Court precincts including cause lists and Supreme Court Website;
- (c) prohibition from harassing the victim in any manner including, but not limited to, prohibition from communicating with her in any manner such as phones, messages, electronic means, physical or other means for a specified period; and

- (d) subject to Regulation 11(2), pass all orders, directions, and/or direct taking steps necessary for putting an end to the sexual harassment of the aggrieved woman.

(2) GSICC will also have the power to recommend to the Chief Justice of India to pass orders against the Respondent including, but not limited to, the following:

- (a) debarment of entry into the Supreme Court precincts for a specified period extending upto a maximum period of one year; and
- (b) in appropriate cases, to recommend filing of a criminal complaint and/or a disciplinary complaint before the concerned disciplinary authority governing the Respondent (including the concerned Bar Council) for taking appropriate action, and the Chief Justice of India may pass orders thereon subject to Regulation 12.

(3) The GSICC shall pass orders on the Inquiry Report and/or shall make recommendations to the Chief Justice of India within 45 working days of the submission of the Inquiry Report, excluding the period of vacation of the Supreme Court and communicate the same to the parties forthwith.

(4) The GSICC and the Internal Sub-Committee shall have the jurisdiction to inquire into a complaint and take any action thereon notwithstanding that any criminal complaint or any other complaint under any other law (including a disciplinary proceeding under the Advocates Act, 1961) may have been filed with respect to the same complaint/actions.

(5) The orders of the CJI and the GSICC shall be final and binding on the parties.

12. Representation - (1) Any person aggrieved by the order passed (or not passed) by the GSICC under Regulation 11(1), or recommendation made by the GSICC to the Chief Justice of India under Regulation 11(2), or non-implementation of such orders or action may make a representation to the Chief Justice of India who shall have the power to set aside or modify the orders passed or the recommendation made as the Chief Justice may deem fit, and also have the power to issue such orders or directions that may be necessary to secure complete justice to the victim of sexual harassment.

The representation under Regulation 12(1) shall be preferred within a period of ninety days of communication of the order or recommendation.

13. Restraint Order - (1) On the receipt of a Complaint and during the pendency of an Inquiry, on a written request made by the aggrieved woman, the GSICC if it considers it fit and proper may recommend specific interim measures to be taken in a signed decision to the Chief Justice of India, who on receipt thereof may pass such interim orders that may be required for the personal safety and for safeguarding

the dignity of the aggrieved woman, and both the aggrieved woman and the Respondent shall be bound by the same.

(2) Upon disobedience, defiance or violation of the order passed under clause (1) above by the Respondent, the GSICC shall close and/or strike off the defence of the Respondent and pass final orders under Regulation 10(5) and Regulation 11.

#### CHAPTER IV

#### POWERS & DUTIES

14. Powers of GSICC & Internal Sub-Committee - (1) The GSICC shall have the power to issue circulars/notifications prescribing its procedure and for the purpose of carrying out and implementing the provisions of the present Regulations in their spirit and intent.

(2) The GSICC shall have the power to pass any orders to be able to carry out the objectives and mandate of the present Regulations including directing any party or person to take any suitable action.

(3) For the purpose of making an inquiry, the GSICC and the Internal Sub-Committee 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.

(4) The GSICC by Resolution to be passed by two-thirds majority may remove any member of the Internal Sub-Committee and appoint a new member in his/her place, only if it is of the view that such a member has acted prejudicially to the principles of natural-justice, fair play and has acted with bias in the conduct of the Inquiry.

(5) The GSICC shall at all times have supervisory powers over the Internal Sub-Committee and it may issue directions to the Internal sub-Committee from time to time in accordance with the provisions of the present Regulations.

15. Duties - The GSICC in coordination with and with the assistance of the office of the Supreme Court shall-

- (a) take measures to provide a safe working environment at the Supreme Court of India precincts;
- (b) display at any conspicuous place in the Supreme Court of India and on its web-site, the penal consequences of sexual harassments and the order constituting the Internal Committee under the present Regulations;
- (c) display at any conspicuous place in the Supreme Court of India and on its web-site, the status and outcome of complaints of sexual harassment;

- (d) organize workshops and awareness programmes at regular intervals for sensitizing the persons carrying out work at the Supreme Court premises with the provisions of the present Regulations and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- (e) provide necessary facilities to the Internal Sub-Committee for dealing with the complaint and conducting an inquiry;
- (f) assist in securing the attendance of respondent and witnesses before the Internal Sub-Committee;
- (g) obtain such information for the Internal sub-Committee as it may require having regard to the complaint;
- (h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the Respondent and/or the perpetrator;
- (i) monitor the timely submission of reports by the Internal Sub-Committee; and
- (j) take any other action and/or measures to ensure an effective and meaningful implementation of the present Regulations.

## CHAPTER V

## MISCELLANEOUS

16. Confidentiality - (1) The contents of the complaint made under the present Regulations, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to the inquiry proceedings, recommendations of the GSICC and the action taken by the GSICC shall be confidential and shall not be published, communicated or made known to the public, press and media in any manner except upon the aggrieved woman submitting a specific request to do so in writing and upon the GSICC acceding to the said request.

(2) Upon the Respondent being found guilty, information may be disseminated regarding the justice secured to any victim of sexual harassment under these Regulations without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Protection of action taken in good faith- No suit, prosecution or other legal proceedings shall lie against the CJI, GSICC and the Internal Sub-Committee or its members in respect of anything which is done or intended to be done

in good faith in pursuance of these Regulations, and the circulars/orders/notifications issued thereunder.

18. Allocation of funds - The Chief Justice of India may, subject to the availability of financial and other resources allocate and provide suitable funds as may be prescribed

- (a) for the effective implementation of the present Regulations;
- (b) for development of relevant information, education, communication and training materials, for organization of awareness programmes, and for advancement of the understanding of the public of the provisions of these Regulations; or
- (c) for organizing orientation and training programmes for the members of the GSICC, Internal Sub-Committees, volunteers, counselors etc.

19. Regulations not in derogation of any other law - (1) The provisions of these Regulations shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

(2) The provisions of the present Regulations shall not bar any Court from taking cognizance of any offence punishable under any other enactment or law.

By Order.

RAJ PAL ARORA  
Registrar

## MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi-110001, the 27th August 2013

## RESOLUTION

No. E-11015/3/2009-Hindi—Consequent upon the inclusion of his name in Hindi Salahkar Samiti of the Ministry of Youth Affairs and Sports as communicated vide Parliamentary Committee on Official Language's O.M. No. 25011/3/2009-Samiti-5 dated 17.07.2013, Govt. of India hereby nominates Sh. Raghunandan Sharma, MP (Rajya Sabha) as Member in Hindi Salahkar Samiti of the Ministry in place of Shri Shri Gopal Viyas, former MP of Rajya Sabha.

2. All the terms and conditions of the Hindi Salahkar Samiti mentioned in earlier resolution of even no. dated 08.04.2013 wil remain the same.

SUDHIR KUMAR  
Jt. Secy.

मुद्रण निदेशालय द्वारा, भारत सरकार मुद्रणालय, एन.आई.टी. फरीदाबाद में मुद्रित एवं प्रकाशन नियंत्रक, दिल्ली द्वारा प्रकाशित, 2013  
PRINTED BY DIRECTORATE OF PRINTING AT GOVERNMENT OF INDIA PRESS,  
N.I.T. FARIDABAD AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 2013  
www.dop.nic.in