YWCA OF INDIA

SEXUAL HARASSMENT AT THE WORKPLACE

Prevention, Prohibition & Redressal Act 2013

Introduction

It was for the first time in the history of the Indian Courts in 1997, that the Supreme Court of India recognized Sexual Harassment at Workplace as a violation of human rights but also as a personal injury to the affected woman.

The landmark judgment of Vishakha and others Vs State of Rajasthan laid down guidelines for the preventing and redress of the complaints by women who were sexually harassed at workplace. The Guidelines made the employer accountable to provide a safe and conducive work environment for women

The problem of Sexual Harassment of women was not a new development as it has been a part of a woman's life at some point or other. The only reason that it not so widely reported was because before the Vishakha guidelines came into picture, women had to take matter of Sexual Harassment at Workplace through lodging a complaint under Sec 354 and 509 of IPC.

Furthermore there was no seriousness in dealing with complaints of such nature and no strict action was taken against the perpetrator.

In India till the Vishakha judgment came there was no law to govern this matter and the guidelines which came as an outcome of this case were derived from the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) which has been signed and ratified by the Government of India in 1993

The Supreme Court grounded its ruling on the provisions of the Constitution of India stating that Sexual Harassment is a violation of the fundamental rights of a woman – Her right to equality under Articles 14 and 15 of the Constitution of India ; her right to life and to live with dignity under article 21 of the Constitution ;and her 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):

Till the Sexual Harassment at the Workplace Prevention,Prohibition and Redressal Act 2013 was notified in December 2013, the issue of Sexual Harassment was governed by the guidelines laid down by the Vishakha judgment. The main objective of the Act of 2013 was to implement the guidelines of Vishakha and to strengthen the penal consequences to ensure an access to a safe workplace for woman.

However, statistics provided by the National Crime Records Bureau following the notification of the Act in 2013 indicate that cases of Sexual Harassment in office has risen by more than 100% in 2014 and 2015. There has been 51% rise in other places of work bringing the figures to 469 in 2014 to 714 in 2015.

The Indian National Bar Association has conducted a survey of 6,047 participants (both male and female) on Sexual Harassment at workplace between April and October 2016. Most of the respondents were from sectors like IT, media, education, legal, medical and agriculture.

The survey found that 38% women had faced Sexual Harassment at work place but 70% also said that they have not reported Sexual Harassment even while being victimized. 65.2% women also stated that their Companies have not followed the procedures as laid down under of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Further more 46.5 % surveyed said that the Complaints Committee are not aware of the sections and legal provisions available under the Act.

The survey also stated that 25 percent women were sexually harassed by inappropriate touching, the same percentage of women were harassed by comments and physical harassment while 12.5 per cent were harassed by sexism and by asking for sexual favours.According to an FICCI-EY survey 36 percent of Indian companies and 25 per cent among MNCs are not compliant with the Sexual Harassment Act, 2013

The statistics is shocking and it is the responsibility of each and every employer to try their best to combat this problem by adopting new policies and measures.

Sexual Harassment at the Workplace Prevention, Prohibition & Redressal Act 2013

The Sexual Harassment at the Workplace Prevention,Prohibition and Redressal Act 2013 is an Act to provide protection against Sexual Harassment of **WOMEN AT WORKPLACE** and for the prevention and redressal of complaints of Sexual Harassment and for matters connected with it.

Sexual Harassment in the most simplistic form means "any unwanted or inappropriate sexual attention. It includes touching, looks, comments, or gestures". The important aspect is that a woman finds its unconducive and unwanted and her sensitivity to the situation is the key factor that needs to be considered.

Many times it is power at play that makes it difficult for women to report Sexual Harassment. In fact, many Sexual Harassment incidents take place when one person is in a position of power over the other.

The Complainant fears to report the same to the higher officials or the concerned authorities as there are higher repercussions –loss of job; being demoted, fear of jeopardizing one's career and stigma attached by the society. In some cases it is the lack of understanding and knowledge on Sexual Harassment-what it qualifies and how should one deal with it that prevents to filing of complaints

WHAT IS THIS ACT ABOUT?

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 makes it illegal to sexually harass women in the workplace. It talks about the different ways in which someone can be sexually harassed and how they can complain against this kind of behavior

WHAT IS SEXUAL HARASSMENT UNDER THE ACT?

Section 2n of the Act, defines Sexual Harassment and shall include any one or more of the following unwelcome acts or behaviour (whether directly or by implication), namely

- Physical contact and advances, or
- A demand or request for sexual favours, or
- Making sexually coloured remarks, or
- Showing pornography, or
- Any other unwelcome physical, verbal, non verbal conduct of sexual nature

Sexual Harassment may also include many things:

- Actual or attempted rape or sexual assault
- Unwanted deliberate touching, leaning over, cornering, or pinching
- Unwanted sexual teasing, jokes, remarks, or questions
- Whistling at someone.
- Kissing sounds or smacking lips
- Touching an employee's clothing, hair, or body
- Touching or rubbing oneself sexually around another person

Section 3 (2) of the Act further elaborates that if any of the following circumstances occurs or is present in relation to or connected with any act or behavior of Sexual Harassment among other circumstances, it may amount to Sexual Harassment:

a) Implied or explicit promise of preferential treatment in her employment.

b) Implied or explicit threat of detrimental treatment in her employment

c) Implied or explicit threat about her present or future employment status

d) Interference with her work or creating an intimidating or offensive work environment for her

(e) Humiliating treatment likely to affect her health or safety.

The word implied has been specifically mentioned at it the perception of the Complainant

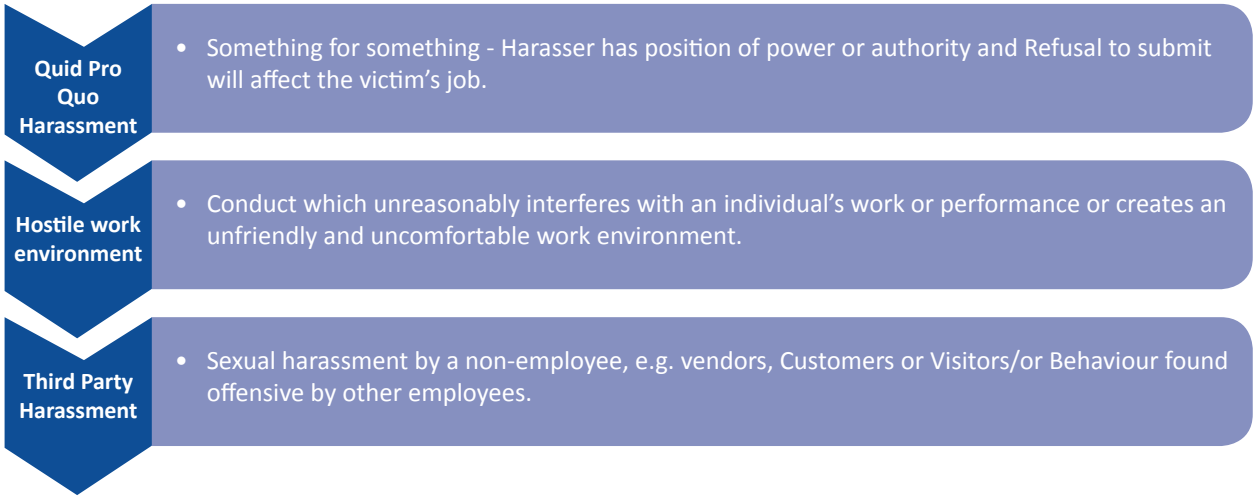
(aggrieved woman) that is taken into account. In case something is implied , it is understood to be true or to exist, although it is may not have been stated directly or in a legal terms .

Explicit is where it is fully and clearly expressed or demonstrated; leaving nothing merely implied; unequivocal:

The humiliating behaviour that can affect the health of women and promise of preferential or detrimental treatment can now amount to Sexual Harassment under amended service rules for government employees. The Central Civil Services (Conduct) Rules, 1964 were amended by the Ministry on November 19 ,2017 to widen the definition of Sexual Harassment and to make workplaces more conducive for women.

FORMS OF SEXUAL HARASSMENT AT WORKPLACE

Sexual Harassment has traditionally been divided into three well-known forms



In **QUID PRO QUO HARASSMENT IS WHERE A WOMAN IS HELD** to ransom as her refusal to comply with a request can be met with retaliatory action such as memos, dismissal, demotion, flawed performance appraisals a¬nd an unconducive work environment.

HOSTILE WORK ENVIRONMENT is the most common and more persistent form of Sexual Harassment. It creates a situation where the woman finds it difficult to comply with her responsibilities and her respect and dignity is questioned continuously. She not only faces direct harassment but her colleagues and superiors ignore her and treat her with disdain and mistrust.

WHAT IS NOT COUNTED AS HARASSMENT

It is not sexual harassment where:

- There is attraction between employees until it crosses the boundary between welcome conduct.
- It is Uninvited but still welcomed
- It is Offensive but still is tolerated

Consensual Relationship may some time lead to complaints of harassment as colleagues are spending more time at work than at home. People are more relaxed and casual towards each other. A relationship develops naturally as there is bonding of thoughts and interest. This relationship may be friendly and flirting. However, it may not always have a negative effect on either sex. Once this relationship moves from being verbal to physical it may have some complications.

Flirtation at the workplace is common and by mutual consent. It is accepted, liked and can be controlled most of the time. Harassment on the other hand is a serious matter and hurts the dignity of a woman. Harassment comes not because of sex but is a matter of power and is done mostly by a person who has an advantage over the other.

Consensual relationships should not be allowed to be developed in a workplace as they also affect on the other employees sometimes negatively.

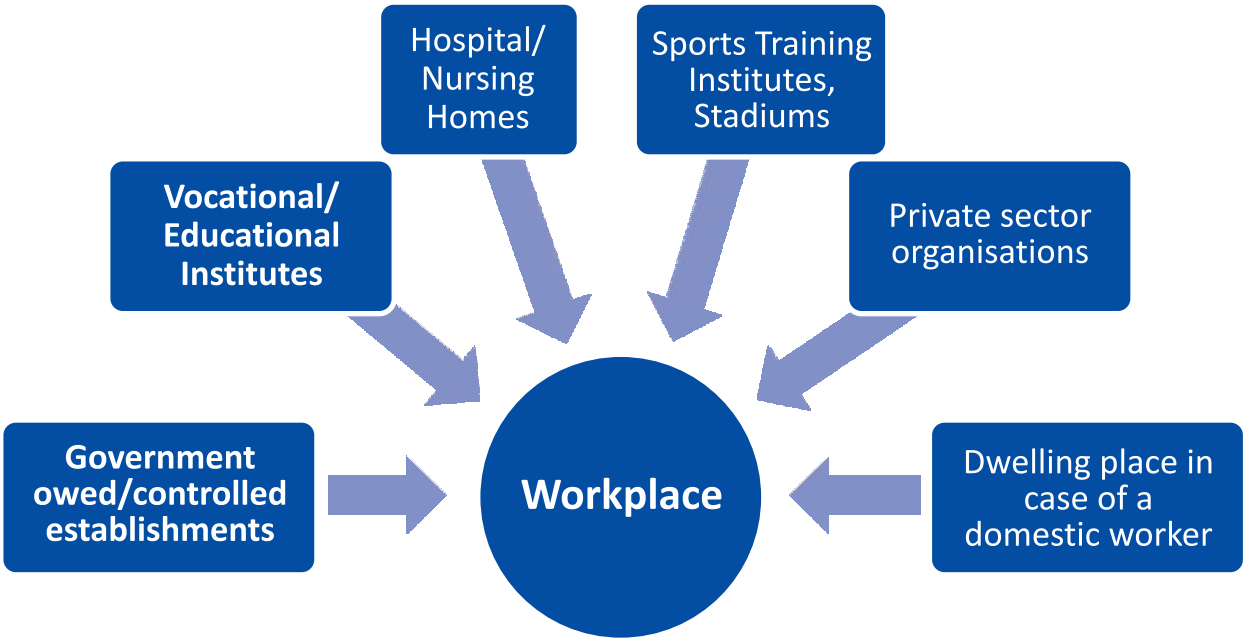
However, just because an employee does not make a complaint does not mean that harassment is not occurring — if you see it or hear of it, put a stop to it.

WHO IS A HARASSER AND WHO IS HARASSED:

While it is a common premise that workplace Sexual Harassment is limited to interactions between male bosses and female subordinates. This is actually not true. Sexual Harassment can occur between any co-workers, including the following:

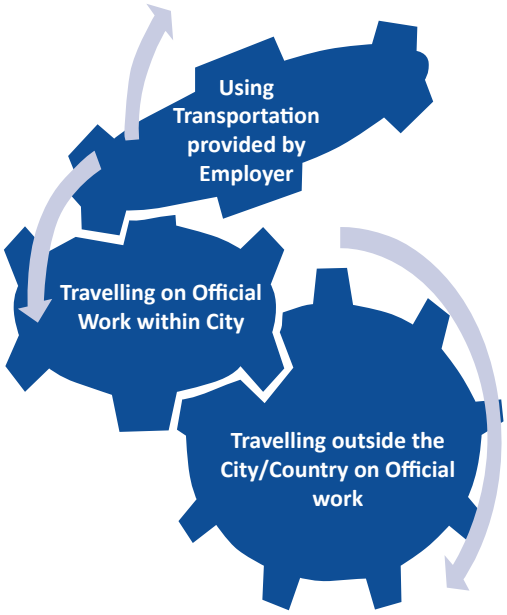
1. Subordinate harassment of a superior;
2. Men can be sexually harassed by women; A recent survey of 527 male employees across 7 cities has found that 19% have faced some kind of Sexual Harassment at the office
3. Same sex harassment- men can harass men; women can harass women;
4. Offenders can be supervisors, co-workers, or third party non-employees such as customers, vendors, and suppliers

WORKPLACE UNDER THE ACT



The Act includes the Organised and the Unorganised sectors in its definition of the workplace. It covers organisations, departments, offices, branch unit etc. both in the public and private sector, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and even homes.

The extended workplace covers any place visited by the employee during the course of employment including the transportation to and from that extended place of work. It is the responsibility of the Employer to provide a safe and conducive work atmosphere at the extended place of work

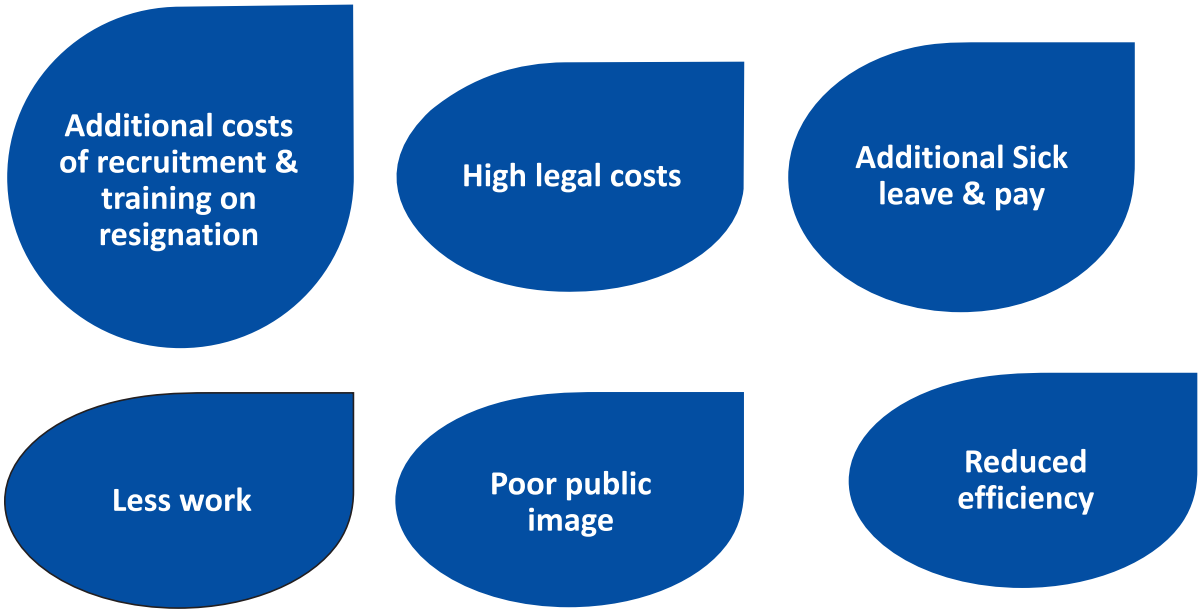


SEC. 3 - PREVENTIVE MEASURES FOR SEXUAL HARASSMENT

What harm does sexual harassment cause

Sexual Harassment at the work place can have serious consequences for the woman. It affects her performance, her dignity, her credibility and also may result in physical and psychological trauma

CONSEQUENCES ON PRODUCTIVITY



The affects of Sexual Harassment does not remain restricted to the woman as an individual but has long term affect on the credibility and image of the Company/ Organisation if it is known to the general public. Financially it is a drain on the resources as legal costs may mount. Staff turnover may involve more training costs.

Therefore, in the interest of the individuals and the Company/Organisation, the Employer should take care of sensitizing the employees and conduct awareness sessions in whatever manner possible.

AWARENESS AND SENSITIZATION

Section 19, of the Act requires every employer shall –

- Periodically carry out employees awareness programmes and create forum for
- dialogue
- Conduct capacity building and skill building programmes for the Members of the Internal Committee;

While the Act requires periodic training there is no specific directions on number of times these awareness programmes need to take place. Hence, Employers can plan sessions at Orientation meetings, Get togethers; or use of emails messages; flyers; video conferencing or even make the information part of the employment kits to new employees etc

Refresher training of the Internal Committee members is important for them to keep abreast with the latest case laws and the applicability of the Act.

Constitution of the Internal Committee (IC)

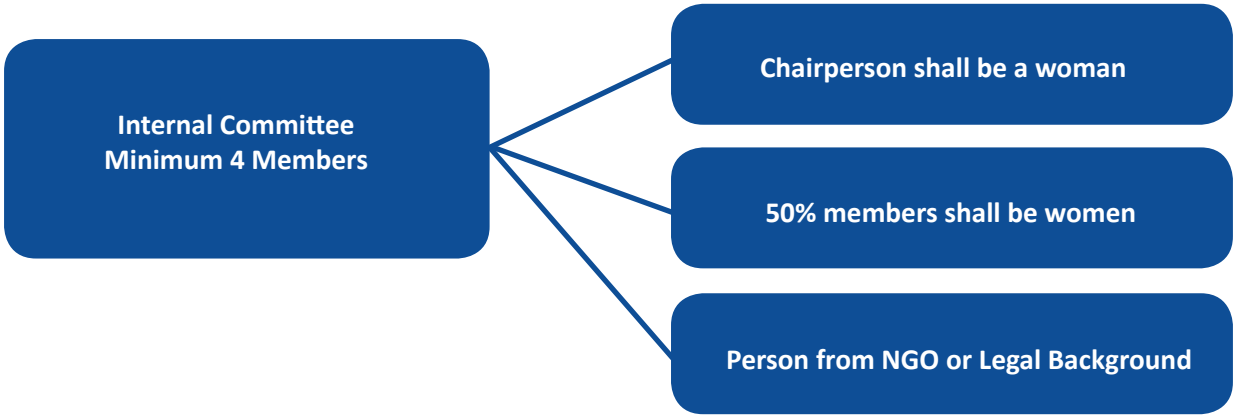
Sec. 4 requires that an Employer needs to constitute an Internal Committee to deal with complaints of Sexual Harassment at the workplace.

The Employer has been defined under in Section 2 of the 2013 Act, as "in relation to any department, organization, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organization, undertaking, establishment, enterprise, institution, office etc. In short it is anyone who is responsible for management, supervision and control of the workplace and including a dwelling place or house

Many Employers however feel that one need not comply in case there are no women employees or if they are a small or medium enterprise. They also feel that the law is for the protection of women employees only but doesn't know that an organisation/ company is liable even if the Complainant is not an employee.

It is a mandatory requirement under the Act to constitute an Internal Committee wherever there at 10 or more employees irrespective whether there are any women on rolls or not.

COMPOSITION OF THE INTERNAL COMMITTEE



Section 4 of the 2013 Act states that the Chairperson (Presiding Officer) is a who shall be a woman employed at a senior level at workplace from amongst the employees; Any woman holding the senior most position can hold the office of the Chairperson (Presiding Officer) and is authorized to hear complaints against persons even above her rank.

The Act further requires that there should be not less than two members from amongst employees who are committed to the cause of women and at least one half of the members of the Internal Committee must be women.

The Composition of the Internal Committee is the choice of the Employer and the numbers can be increased up to five or more persons looking at the staff strength and the aspects of voting at time of decision making on part of the Committee members.

The Employer has to set committees in every office or administrative units of a workplace in case these are located in different places, division or sub-division.

Furthermore, where there is no woman officer of sufficiently senior level available in a particular office, an officer from another office must be appointed. The Supreme Court has laid down certain guidelines for the employers to follow in connection with the setting up of the Internal Committee. It must

- Must maintain confidentiality.
- Provide protection to the Complainant as well as the witnesses against repercussions or discrimination.
- Should submit an annual report to the concerned Government department with information of the action taken (if any) so far by them.

CHARACTERISTICS OF THE MEMBERS SERVING ON THE COMPLAINTS COMMITTEE:

First and foremost, it is important to identify the right persons to serve as members on the Complaints Committee. The persons identified should have traits which would hold them in good stead as well as ensure justice for the Complainant.

OBJECTIVITY: A focused unbiased attitude with an unconditional belief in the truthfulness of the Complainant (unless something on record completely negates her complaint).

COMPASSION: The members should empathize with the complainant and does not judge her by their moral standards.

EXTERNAL MEMBERS ON THE COMPLAINTS COMMITTEE/S

The third prerequisite is having one External NGO member committed to the cause of women, or familiar with the issues relating to Sexual Harassment.

The phrase 'person familiar with the issues relating to Sexual Harassment' has been explained in the 2013 Rules with the following provisions:

a. A social worker with at least five years experience in the field of social work in the area of empowerment of women, and in particular Sexual Harassment at the workplace, or

b. A person familiar with labour, service, civil or criminal law;

The External member on the Complaints Committee/s (from civil society or legal background) should possess the following attributes:

1. Demonstrated knowledge, skill and capacity in dealing with workplace Sexual Harassment issues/complaints;
2. Sound grasp and practice of the legal aspects/implications.

Such expertise will greatly benefit Internal Committees in terms of fair and informed handling of complaints leading to sound outcomes.

FEES FOR EXTERNAL MEMBER - External Member shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed **Who cannot serve on the Committee**.

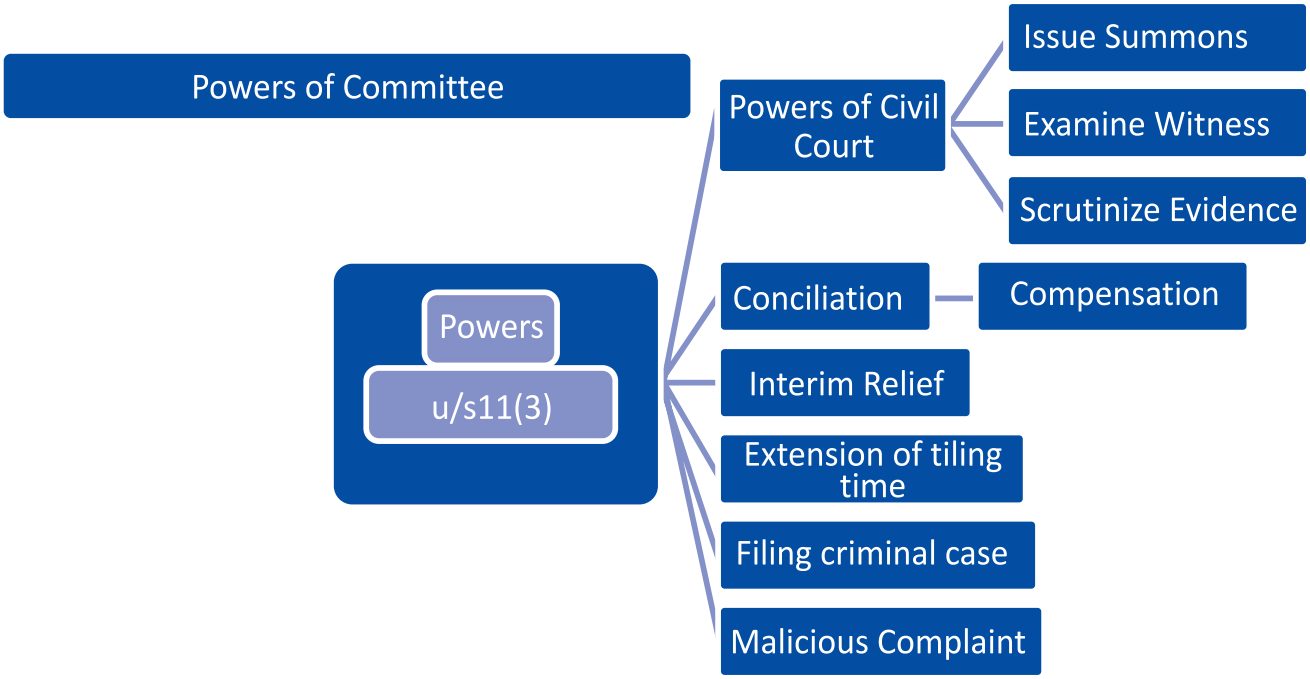
The following persons are not eligible to serve on the Internal Committee

- Contravenes section 16, i.e have published or made known the name and details of the complainant
- Convicted for an offence or enquiry under any law and is time being pending against him/her.
- Has abused his/her position /been found guilty or disciplinary proceeding is pending against her /him

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

Any Complaint Committee member facing Sexual Harassment and wanting to file a complaint must step down as member, during the inquiry into that complaint.

POWERS OF THE COMMITTEE



Under section 11 of the Act the Internal Committee is vested with the powers of 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/her on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

TENURE OF THE COMMITTEE - The maximum tenure is 3 years. However, once reached the Committee is dissolved and can be reconstituted with same or new members depending on the availability of the requisite numbers and people having expertise in the Company/Organisation to serve on the Internal Committee.

Details of the names of persons serving on the Internal Committee with their contact details are to be displayed conspicuously at the workplace.

DOS AND DON'TS FOR INTERNAL COMMITTEE

Do's	Don'ts
Create awareness on the presence of the Internal Committee and make known complaint procedures.	Do not guide or lead the complainant to make statements
Treat the complainant with respect	Do not insist on a detailed description of harassment. This could increase the complainant's trauma.
Ensure that the body language of each member communicates complete attention to the complainant and the Respondent.	Do not interrupt or allow interruptions when conversing with the complainant and/or Respondent
Reject set ideas and stereotypes on how the Complainant or Respondent should appear or act.	Do not determine the impact of the harassment on the complainant
Be open to the fact that sexual crimes are committed in privacy and eye witnesses may not be existing or forthcoming.	Do not, under any circumstance, get aggressive
Ensure safety for witnesses, friends and supporters of the complainant. Must handle complaints in a confidential manner and within a time-bound framework	Do not discuss the complaint in the presence of the complainant or the Respondent
Understand that it is difficult for a woman to talk about anything sexual. Hence there can be long time interval between the harassment and the actual complaint	Do not allow third parties to enter the room-be it for tea/refreshments. Stop proceedings when such things are taking place
Understand that only one out of many may be subjected to Sexual Harassment. The complainant, when she complains, has at stake her personal life and career. Therefore, drawing up similarities or generalisation should be avoided	Remember, this is a human rights issue, therefore, (a) do not give too much weightage to intention, focus on the impact, and (b) 'proof beyond reasonable doubt' is not required, circumstantial evidence is enough.

Never make these statements while dealing with Complaints of Sexual Harassment
♀ It's just teasing – no big deal. Just ignore it
♀ Our staff would never do this…
♀ It's your fault for dressing so provocatively
♀ You need to learn to handle these things
♀ He puts his arms around everyone
♀ You must have wanted it, or you would have said no
♀ Why can't you learn to accept a compliment?
♀ We've never had a complaint, so we don't have a problem

GUIDELINES FOR INTERNAL COMMITTEE

EVALUATING SEXUAL HARASSMENT BEHAVIOUR: The Internal Committee set up for investigating complaints needs to-

- look at circumstances under which the alleged incidents have occurred and determine the process based on facts which may vary from case to case.
- keep in mind the inappropriateness and unprofessionalism which has taken place even though the complaint may not fall within the parameters of legal Sexual Harassment.

A few bench marks for evaluation are:

- Was the action/comment related to gender or gender identity of the complainant
- Did the Complainant find the behaviour/ action unwelcome and was an objection voiced
- Was there a power struggle-work specific, relation ship
- How relentless was the behaviour-offensive, intimidating, threatening, stressful, shameful
- How often did it occur
- How widespread-Has it happened to others

PRELIMINARY HEARING WITH THE COMPLAINANT

Once the evaluation has taken place, the Internal Committtee may decide to call the Complainant for a preliminary hearing. At the hearing-

- Ask for factually written complaint if not available already. Encourage the complainant to note details of each incident of harassment including any changes in work patterns or attitude on the part of the alleged harasser.
- Give a document for the complainant giving information on the policy and process of the investigation
- Find out if harassment has stopped or continuing since lodging of the complaint.
- Establish if the complainant is at any immediate risk and is any protection required against reprisal
- Listen, be supportive, ask questions which are not judgmental and avoid making assumptions. Take the statements seriously
- Don't make promises or give guarantee of a particular result
- Deal seriously with the concerns of complainant
    - Fear, humiliation, retaliation
    - Keeping confidentiality from the date of inquiry till end

- Ensure that the Complainant understands that she /he will be kept abreast with the developments and progress
- Document facts and record proceedings and affix signatures of all present for accuracy and record.

PRIMA FACIE REPORT

Once the preliminary hearing with the Complainant is over the Committee shall, within ten days of the receipt of the complaint, establish if there is a prima facie case of Sexual Harassment on the basis of both the definition of Sexual Harassment as given in this policy, and the jurisdiction of this policy.

It shall:

- Intimate the Disciplinary authority whether or not the Committee considers that a prima facie case has been made out in the prescribed Form (Annexure 1)
- Record reasons for not pursuing a complaint in the minutes and make it available to the complainant in writing
- After the prima facie report, the Complaint Committee may not be required to present any other/interim/progress report during the inquiry.

IF PRIMA FACIE CRIMINAL CASE EXIST

Certain instances of Sexual Harassment may constitute a criminal offence. In such a case it is the responsibility of the Employer to assist the Complainant to approach the Police and file a FIR under Indian Penal Code(IPC) 509, 294, 354 in general.

Complaint of Sexual Harassment

As the objective is to end the harassing behavior at the lowest possible informal methods must be part of the complaints mechanism. These are cost effective and can resolve complaints effectively and positively. Informal options act as a buffer or filter, save bad blood, prevent the office environment getting uncomfortable for all, if employees can be advised as to how to handle the situation before it gets out of hands. Platforms to resolve complaints or to stop harassing behavior must be provided before the complaints escalate into full-blown, formal complaints.

FILING OF COMPLAINTS

Section 9 of the 2013 Act read with Rule 6 and 7 of the 2013 Rules, talks about complaint mechanism.

The definition of "aggrieved woman", provided under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

TIME FRAME FOR SUBMISSION OF COMPLAINT

The complainant has to submit six copies of the complaint along with all supporting documents within a period of three months from the date of incident / last date of the series of incidents happened on different dates as the case may be. The Internal Committee has the authority to extend the time limit by another three months on reasonable ground to be recorded in writing.

WHO CAN FILE A COMPLAINT

- Any woman facing harassment can file a complaint
- If physically incapable with written consent by any Relative/ friend / co-worker/ officer / having knowledge of the incident
- If mentally incapable by any Relative / friend /special educator / Guardian / under whom she is receiving treatment or by any person having knowledge of the incident
- If dead by any person who has the knowledge with the written consent of her legal heir.

Broadly speaking complaints may be lodged by the aggrieved woman or any of her relatives, friends, co-workers or any officer of the National Commission for Women or State Commission for Women, any qualified psychologist or psychiatrist or any person who has knowledge of the incident, with her relative or friend or a special educator etc. or with her written consent or in case she is dead by approval of her legal heir.

Even if the complaint is not possible to be given in writing, Internal Committee is required to provide all possible assistance to make it in writing. Thus, tremendous flexibility is provided in the law, so far as filing of the complaint is concerned.

OPTIONS FOR FILING COMPLAINTS

The employer has to provide different options for filing of the complaints in a timely manner-through the Supervisor/HR Department/Complaint Committee Chairperson, calling a helpline, complaining through letters/email, etc. It is the responsibility of the Employer to make known the process of and hierarchy of filing complaints.

Recently the Ministry of Women and Child Development has launched a SHEBOX in which the Government and the Private sector women employees can file their complaints which will be forwarded to the respective Departments/Companies/ Organisations

COMPLAINT MECHANISM

ON PREPARING A COMPLAINT

The complaint has to be incident specific and not general or vague - Exact details, dates, witnesses and documents needs to be provided. The Complainant has to prepare a statement of events as far as possible in chronological order. This makes it easier for the Committee to understand the sequence of events and call in the witnesses accordingly. Furthermore, it strengthens the case of the complainant where clarity of thoughts and statements are available. However, there may be a possibility that when the complainant had written the complaint she may have been in a shock or in trauma and may had forgotten to mention crucial facts. In such circumstances, the Committee may give her a chance to add to her complaint so that the facts are established further. This option should be made available only once in the whole Inquiry process

- **Prayer for interim Relief or Action against the Respondent -** The Complainant may also seek an interim relief in her complaint itself. She may also bring to the notice of the Committee the harassment still being faced and pray for action against respondent

SECTION 10 CONCILIATION/ SETTLEMENT - The section provides that before initiating an Inquiry under Section 11, the Internal Committee/Local Complaints Committee can initiate a conciliation process. However, this process can only be initiated at the start of the Inquiry and at the specific written request of the complainant.

This option has been given to protect the right of the complainant and not to force her into conciliation against her will. The Internal Committee can arrive at a settlement between the parties without any monetary settlement under Sec. 10(1) of the Act).

When such a settlement is being reached between the parties, both should indemnify each other against any further action. Such a settlement is also to be recorded by the Internal Committee and forwarded to the employer to take action (Section 10(2) of the Act).

Copies of the settlement shall also be given to both complainant and the respondent (Section 10(3).

FURTHER INQUIRY AFTER SETTLEMENT

Once a settlement is reached, no further inquiry shall be conducted as in Section 10(4). The matter can be reopened only when the complainant informs of failure of any terms or conditions of the settlement not being met by the respondent. In such a case the Internal Committee can proceed to inquire or forward the complaint to the police. (Section 11(1) of the Act

RIGHTS OF COMPLAINANT AND RESPONDENT

Complainant	Respondent
• An unbiased attitude • Copy of the statement along with all the evidence and a list of witnesses • Keeping identity confidential • Recording of statement in absence of the respondent • Right to appeal, in case, not satisfied with the recommendations/findings • Support, in lodging FIR for criminal proceedings	• An unbiased attitude • Copy of the statement along with all the evidence, list of witnesses • Keeping identity confidential • Right to appeal, in case, not satisfied with the recommendations/findings

SECTION 12 -ACTION DURING PENDENCY OF COMPLAINT

The Internal Committee can recommend Interim Relief under Section 12 of the Act to the Complainant on her written request. This recommendation may permit for:

- Transfer of the Complainant or the respondent to any other workplace.
- Leave up to a period of three months. This leave is a special leave and is not to be counted as part of the regular leave.
- Restraining of the respondent from reporting on her work performance or writing her confidential report.

ADMINISTRATIVE LEAVE:

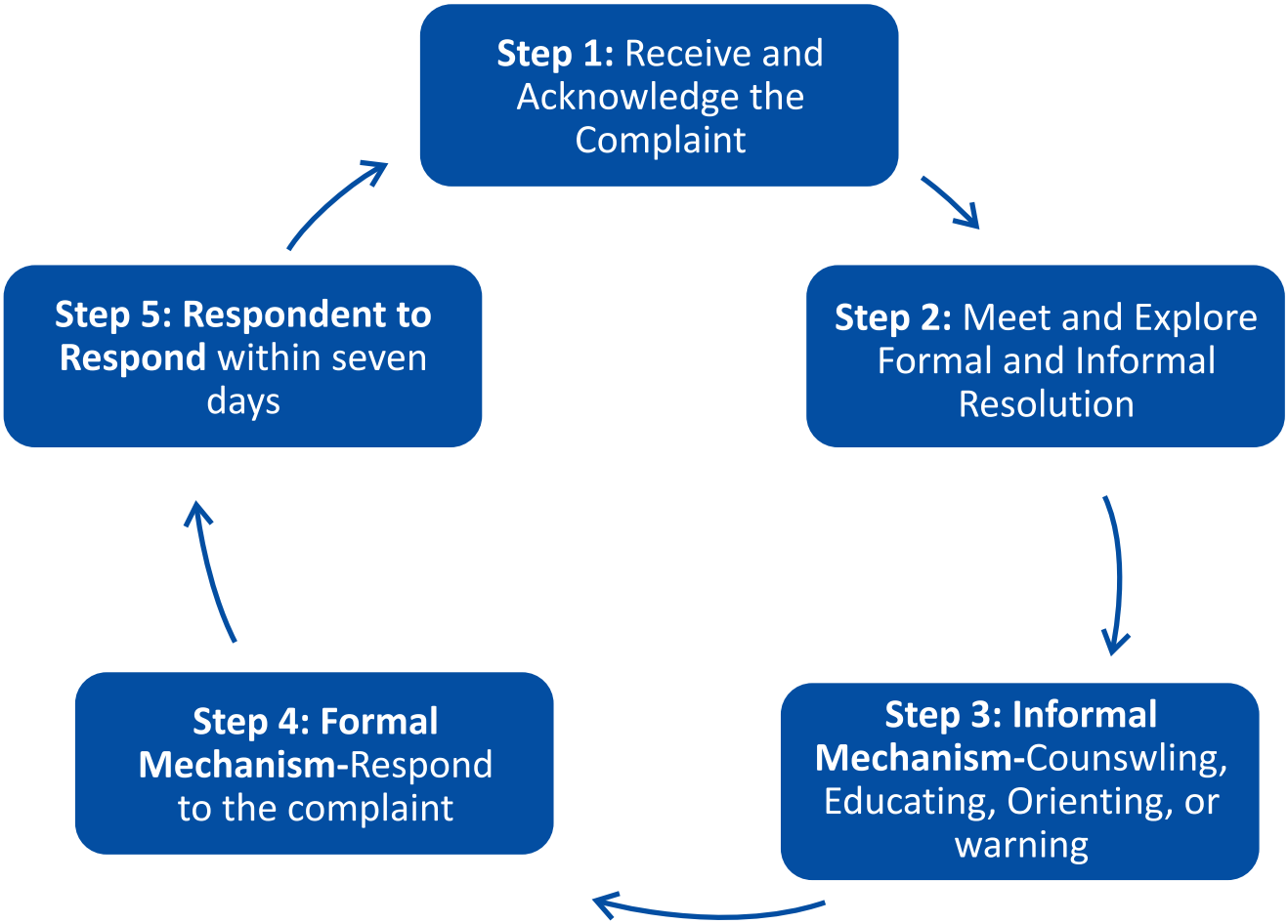
After interviewing the Respondent if the internal Committee feels that the Respondent has violated the anti-harassment policy it can decide to send him on administrative leave/or recommend suspension. It also may be appropriate even when the conduct is denied if the employee's continued presence at work could: (1) intimidate the complaining employee; (2) intimidate other employees/potential witnesses; (3) result in contact with the complaining employee; or (4) distract or interfere with a thorough and prompt investigation. This is particularly likely if the Respondent employee is a manager or supervisor.

Even in the absence of such a request by the Complainant, the Internal Committee must take corrective action to ensure transparent and fearless proceedings and recommend actions to the Employer.

It is the responsibility of the employer to inform the Committee after implementing the above measures.

Inquiry of the Complaint

Section 11 Deals with the Inquiry in the Complaint



The Committee is required to assess the severity and if necessary, advise and enable the complainant to opt for the formal route. The choice of a formal process rests with the complainant and she cannot be forced. However, where the Internal Committee feels that the complaint needs to be pursued in the best interests of the Company/ Organisation it may decide to proceed accordingly.

The Committee shall follow the Five Rights while examining and hearing the complaint:

- Right to be informed of the charge
- Right to receive document in support of charge
- Right to have evidence led in the presence of the charge sheeted person
- Right to led evidence in favour
- Right to cross examine

In case where the complainant does not wish to be confronted by the charge sheeted person the Internal committee can carry out the cross examination on behalf of the charge sheeted person.

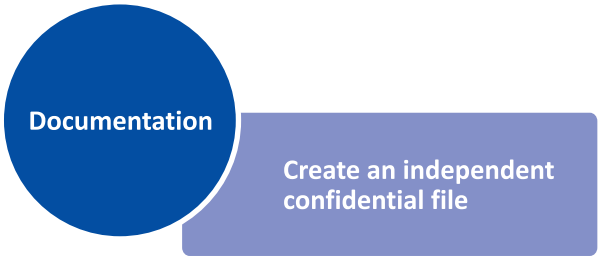
ISSUING A CHARGE SHEET - Sexual Harassment is a misconduct and requires filing of a charge sheet, spelling out the facts, giving dates, time and nature of the incident.

The Internal Committee shall deliver to the Respondent the copy of the complaint and an opportunity to refute the allegations to the Respondent. The Respondent is required to submit, within ten days, a written statement of his defense and state whether he desires to be heard in person. If charges are denied, then an appropriate enquiry as per rules should be conducted.

Where the complaint carries the names of witness the Internal Committee can prepare a gist of the charges and give it to the Respondent to submit his response. This is to ensure that the witnesses are not compromised even before the Internal Committee has a chance to meet with them.

Once it is decided that Inquiry will take place a notice needs to be issued giving the date, place and time of the proceedings. On the date fixed for the inquiry, the oral and documentary evidence by which the charges are proposed to be proved shall be produced by the complainant.

STAGE TWO: PLANNING CAREFULLY



Once the Complaints Committee decides to proceed with the complaint it should draw up from the statement/s of the Complainant/complainant:

- the substance of the accusation of Sexual Harassment into explicit and distinctive chargea statement of the accusation of Sexual Harassment in support of each charge,
- which shall contain; a statement of all relevant facts: a list of documents by which, and a list of witnesses by whom, the charges are proposed to be sustained.

The Internal Committee shall prepare an independent file on each complaint. The File shall have all the minutes of the meetings; the attendance sheets; the Complaint; the Respondent statements; statements of all witnesses and any documentary proof that has been taken on record.

STAGE THREE: INTERVIEWS

The Internal Committee should:

- Plan the Hearing and the sequence. It should start by hearing the Complainant, then the Respondent and followup with Witnesses from both sides.
- Each person should be interviewed separately and in confidence.

Section 13 read with section 11 of the Act 14 of 2013 clearly indicates the inquiry to be concluded under section 13 is not a preliminary inquiry but it should be a full fledged inquiry as to the finding of fact. The inquiry that has to be conducted by Internal Committee in same manner to prove misconduct in disciplinary proceedings as referable in Service Rules, if no Service Rules exist in such manner, domestic inquiry is conducted. The Rules framed under the Act of 2013 also would indicate that the Committee shall follow the principles of natural justice [See the Rule 7(4)].

Guidelines for holding Inquiry

(i) Before starting with the inquiry, the Chairperson(Presiding Officer) or any othermember of the Internal Committee will explain the procedure to be adopted to the complainant and the respondent.

(ii) There are three methods of the recording the statements in the inquiry. The first method is that Internal Complaints Committee may write the statements in his/her own hand. The second method is to dictate the statement to a stenographer and decipher it later on. The third method is to speak out the statement to the typist and he /she may type it as the statement is being made. All these three methods are legally valid.

(iii) The language of inquiry depends upon the fact and circumstances of each case. It should be preferably in the language known to both the complainant and the respondent.

(iv) An inquiry is a quasi-judicial inquiry and the Internal Committee has to act judicially. The report of the inquiry must be in a speaking order in the sense that the conclusion is to be supported by reasons. An inquiry report by Internal Committee must be based on analyzation of evidence as adduced before the Internal Committee. It is imperative that while giving its findings the Committee should discuss and link the evidence with the allegations of misconduct otherwise it will be rendered as perverse.

(v) If the Respondent admits the charges in the Complaint, that must be recorded and the inquiry can be concluded.

(vi) After conclusion of the statement, the Committee will record as RO&AC (read over and found to be correct)

(vii) The Respondent will be asked to cross-examine the Complainant. If he does not cross-examine, then this should be recorded in the proceedings that opportunity for cross-examination given but the respondent declined to avail.

(viii) While recording evidence, no witness will be present inside the room/chamber where the inquiry is being held.

(ix) The conclusion of cross-examination would also state the same words i.e RO&AC.

(x) The evidence of the witnesses be recorded in the form as stated above and the Respondent will be provided opportunity to cross-examine the witnesses of the Complainant otherwise the inquiry will be vitiated.

(xi) After the evidence of the witnesses of the complainant is concluded, the respondent will be asked to produce his evidence by starting with his own evidence with cross-examination thereafter his witnesses will be produced. Similar procedure as stated above will be adopted.

(xii) The documents including complaint will be exhibited as C1(C stands for Complainant, the documents of the Respondent as R1, by witnesses of the complainant as CW1 (and so on) the witnesses of the Respondent or his witnesses. Only those documents will be exhibited which are either original or the originals are with the Complainant, respondent of the witnesses.

(xiii) Whenever there is ambiguity in evidence being produced by the parties, any member of the Internal Complaints Committee can ask for clarification. Also whenever there is an irrelevant question, any member of the Internal Complaints Committee can ask the cross-examiner to clarify the relevancy.

(xvi) On conclusion of the proceeding, the Internal Committee can provide opportunity to the parties for arguments but if the parties so desire in response to the question by the Internal Committee then opportunity be given.

(xvii) The appearance of advocates in the enquiry to represent the Complainant or respondent is not permitted.

(xviii) The Internal Complaints Committee has to submit its report to the employer as stipulated by section 30 of the Act 14 of 2013.

Right to summon

- Notice to the witnesses will be sent by the Internal Committees
- Witness can be summoned by the Committee if knowingly not appearing through police involvement
- They can be summoned as many times as required for supplementary testimony and/or clarifications.
- It shall summon any official papers or documents pertaining to the complaint

However, the past sexual history of the aggrieved woman shall not be probed and shall be deemed irrelevant to a complaint of Sexual Harassment.

MEETING WITH THE RESPONDENT:

The Respondent may appear in person to present his response. On receipt of the written statement, the Internal Committee may look into the defense presented against the charges levied. It should study carefully all charges which are not admitted, and where all the articles of charge have been admitted by the Respondent in his written statement of defense. The Internal Committee shall record its findings on each charge after taking such evidence as it may think fit.

On meeting with the Respondent if the Committee is satisfied of the explanation and innocence of the Respondent it can decide to drop charges and close the proceedings. If the Respondent to whom a copy of the charges has been given does not submit the written statement of defense on or before the date specified for the purpose or does not appear in person before the Internal Committee or otherwise fails or refuses to comply with the provisions of this rule, the Internal Committee may hold the inquiry exparte.

If the Respondent has not admitted to any of the charge in his written statement of defense or has not submitted any written statement of defense, but appears before the Complaint Committee, the Committee shall ask him whether he is guilty or has any defense to make. The Internal Committee shall thereafter record the plea/statement, sign the record and obtain the signature of the Respondent thereon.

If the Respondent fails to appear within the specified time or refuses or omits to plead, the Internal Committee shall require the production of evidence by the complainant by which the charges are to be proved, and shall adjourn the inquiry to a later date not exceeding fifteen days, after recording an order that the Respondent may, for the purpose of preparing his defense

- inspect the documents of record of evidence
- submit a list of witnesses to be examined on his behalf;

If the Respondent applies in writing for the supply of copies of the evidence the Internal Committee shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the inquiry proceedings.

It is important to note that the interview with the Respondent should be carried out objectively. He should be allowed to respond to each allegation and should be told about the type of disciplinary action that may be taken if the allegations are true. If the Respondent is uncooperative, he should be told in a nonthreatening way that his failure to cooperate will be considered as obstructing the investigation and may result in indiscipline, regardless of the findings of the Internal Committee.

DEPOSITION OF THE WITNESS:

Names of people who are believed to have witnessed, or aware of matters related to the complaint can also be called by the Internal Committee to depose before it be given.

The Internal Committee can also call any person as a witness, who it believes, has something to contribute to the inquiry process.

The Internal Committee may also permit the testimony of any witnesses who volunteer to give such testimony

There are two methods of recording the statement of the witnesses.

- First- recording the question and answers given
- Second -is recording the answers only

Both methods are used commonly and are legally acceptable.

The witnesses shall be examined by the Complainant and may be cross-examined by the Respondent. The Internal Committee may also put such questions to the witnesses as it deems fit.

Witnesses should be informed that failure to cooperate can lead to indiscipline and that they will not be retaliated against for cooperating.

Each person who is interviewed should sign a statement outlining the information they have provided. If the session is tape recorded or videotaped, the person being interviewed should be informed before questioning begins. When physical violence or sexual assault is alleged, both parties should be told that reports will be made to the appropriate legal authorities.

Once the initial interviews have been conducted, individuals should be questioned again based on the corroborating or conflicting testimony of other witnesses. Stories may change when the parties are confronted with evidence that they hoped would not be presented.

THE COMMITTEE SHALL NOT

- Make supportive admissions
- Add to the witness views or lead the witness with their comments
- Show outrage or dismay at any answer (this reaction may cause the story to change); promise complete confidentiality or anonymity, or that punishment will be less severe if the employee confesses;
- The Internal Committee shall document as much as possible about the interview, including the person's answers, gestures, appearance, accuracy of memory, and overall credibility.

CROSS EXAMINATION

- Both parties have a right of cross-examination of all witnesses
- The Cross examination must be in the form of written questions and responses via the Committee only.

- Both parties are required to submit questions that he/she desires to pose to the aggrieved woman/witness.
- The Committee (IC) shall retain the right to disallow any questions if irrelevant, mischievous, slanderous, derogatory or gender-insensitive.
- The Committee may at any time prevent face-to-face examination of any party or their witnesses

In interest of natural justice an opportunity has to be given to the Respondent and the Complainant to cross examine witnesses produced against him/her. If no opportunity for effective cross examination is given the inquiry can be declared null and void. Failure to cross examine will not negate the inquiry if there is no factual doubt on the statements given by the witnesses.

The Respondent can also be given an opportunity to produce his /her witnesses to give credence to his/her explanation. However, the Committee can refuse to cross examine a witness if it feels that it has no bearing to the case.

A record of the proceedings of each hearing shall be written and duly signed by all Internal Committee members.

PRODUCTION OF FRESH EVIDENCE/WITNESSES NOT LISTED EARLIER

The Internal Committee may if it deems fit before the close of the inquiry of complainant allow the complainant to produce evidence not included in the list given to the Respondent or may itself call for new evidence or recall and re-examine any witness.

The Respondent shall have an opportunity of inspecting such documents before they are taken on the record. In such a case the Respondent shall be entitled demand the copies of the fresh evidence. In case of new evidence, the proceedings may be suspended allowing time of atleast three days for the Respondent person to give his rejoinder/produce evidence in defense.

However new evidence shall not be permitted or called for or any witness shall not be recalled to fill up any gap in the evidence unless when there is a lacuna or defect in the evidence which has been produced originally.

PROCEDURAL SAFEGUARDS DURING INQUIRY

- The Complainant shall not be compelled to face the Respondent against her wishes. The option to have face to face questioning lies with the complainant and the same may be explained to her and her consent taken in writing.
- The character of the complainant/ alleged Complainant shall not be the subject matter of cross examination.
- Filing of a complaint shall not have any reflection on the complainant's status/ job/salary/promotion, grades etc. It cannot hold any repercussions on any

sort. No one can refuse/disallow to the complainant to work in any particular department or any particular task because of a Sexual Harassment complaint

- No opposing complaints/or inquiries/or show cause notices/or memos/transfer/ or disciplinary proceedings against the complainant/s will be acted upon by anyone till such time as the Internal Committee completes its inquiry report.
- The Internal Committee shall recommend action against anyone who intimidates the complainant or members of the Internal Committee, during or after the inquiry.
- After submission of the final report, confidentiality should be maintained, if the complainant so desires, by withholding the complainant's name and other particulars that would identify her.

PROCEDURE FOR SITE INSPECTION:

There may be instances were site visit may be required The Internal Committee may decide to form a Taskforce to visit the site However the presence of the NGO representative should be ensured The formation and purpose of this task force should be minuted with due authorisation and terms given in writing.

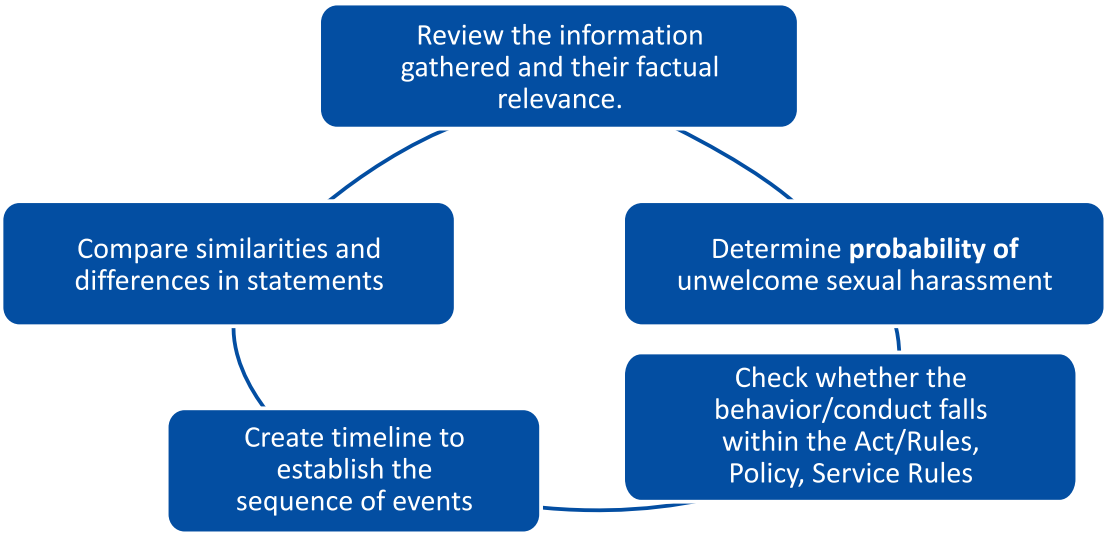
An entry shall be made at the site on this visit without stating the purpose. This is to establish the date of the physical verification of site and respective witnesses if any.

CLUBBING OF COMPLAINTS:

While an inquiry is pending with the Complaint Committee, if another complaint/s against the same Respondent is received by the Committee both or all such complaints may be clubbed together and inquired into.

STAGE FOUR

The Committee shall look at evidences available and decide on plan of action.



DISCLOSURE OF DOCUMENTS-

The Committee can obtain material, information from all sources and channels and is not delayed by rules and procedures. However, all documents that may go against the Respondent must be disclosed to him/her with an opportunity to refute the charges/ or give an explanation.

The proceedings may be considered null and void if a document used for arriving at a finding is not disclosed to the Respondent. If documents collected by the Internal Committee will not be used for finalizing the findings, there is no need to bring these to the notice of the Respondent and he/she cannot insist to the same.

The Respondent may ask in writing copies of the documents however due relevance of the documents required by him shall be indicated. The Internal Committee shall, on receipt of the written request forward the copies.

Provided that the Internal Committee may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case/or will compromise the investigation /or the security of the witness.

RIGHT TO EXAMINE TRANSCRIPTS

- Both parties shall have the right to examine written transcripts of the recordings with the exclusion of witnesses' names and identities.
- Both parties should inform the Presiding Officer specifically if they wish to exercise this right in writing.
- The Presiding Officer shall allow access to documents on two days advance notice.
- At no point in time, however, can the concerned parties take these documents
- outside the office.

PRODUCTION OF DOCUMENTS

Documents which can be summoned in a Sexual Harassment claim include:

- Personnel files of the Complainant and Respondent.
- Documents concerning the employer's polices in effect during the relevant time period, including Sexual Harassment policies, internal complaint procedures, disciplinary polices and termination policies;
- Documents concerning Sexual Harassment training provided by the employer.
- Witness statements;
- Documents concerning the employer's investigation of plaintiff's internal complaint and the action taken in response to that complaint and/or investigation;
- Documents reflecting the job duties and responsibilities of the position held by The Respondent. (This information is important in cases where there is an

issue as to whether the harasser was a supervisor, manager, managing agent, independent contractor or co-worker.);

- Documents regarding complaints, charges or lawsuits of any kind filed against the Respondent
- Correspondence or other written communications between the Complanaint and the Respondent.
- All electronic information stored on computers and hand-held devices, including e-mails, text messages, CCTV recording, etc.

A record of the proceedings of each hearing shall be minuted and duly signed by all Committee members.

Notice of meetings of the Internal Committee will be issued by the member with the approval of the Chairperson.

During an inquiry the quorum for all Internal Committee meetings will be one-third of the total membership.

The Internal Committee may form sub-committees from within the Committee members for such purposes as it may deem necessary.

HEARSAY EVIDENCE

Hearsay evidence can be considered if it is logically possible and gives reasonable credibility

SUCCESSION OF THE COMPLAINTS COMMITTEE

In an event of the Complaint Committee, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to function due to any reasons and is succeeded by another Complaint Committee, the succeeding Committee may be within its jurisdiction to act on the evidence so recorded by the earlier Committee partly or fully.

However, if the succeeding Committee is of the opinion that further examination of witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re examine any such witnesses as it deems fit.

EX-PARTE DECISION

Inquiry can be terminated or ex-parte decision given:

- if the complainant or the respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings
- Ex-parte or termination order will not be passed without giving the complainant/
- respondent a 15-day notice in writing

STAGE FIVE – RECOMMENDATIONS

- Where it has been is unable to uphold the complaint, it shall recommend no action
- Where it upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules
- Provided, before finalization it shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee

RECOMMENDATIONS TO THE EMPLOYER

At the conclusion of the investigation, the employer must decide whether the alleged conduct occurred and whether the conduct was a violation of its harassment policy. An employer's policy may prohibit conduct that is offensive even if it is not actually illegal.

Where allegations are proved-The IC will recommend the following as per Section 13(3):

- Take action as a misconduct in accordance with the provisions of the service rule or policy laid down
- Deduct from the salary or wages of the respondent such sum to be paid to the aggrieved woman or to her legal heirs
- In case of false statements, malicious complaint or documents found- it may recommend action against such persons (Section 14(1) of the Act.)

DETERMINATION OF COMPENSATION

Section 15 of the Act gives basic guidelines for the purpose of calculating the sum of money to be awarded to the complainant as compensation, as follows:

a. mental trauma, pain, suffering and emotional distress;
b. loss in career opportunity;
c. medical expenses (physical and psychiatric);
d. the income and financial status of the respondent;
e. the compensation amount can be paid in lump sum or installments

Punishment can be a recommended based on the service rules or the adopted policy on Sexual Harassment

- written apology,
- a warning,
- a reprimand or censure,
- withholding of promotion

- withholding of increments,
- termination of service,
- subjecting to counseling

REDRESSAL

The Department may be justified in suspending the Respondent person after a prima facie case has been established.

It shall be liable to institute disciplinary action on the basis of the recommendations of the Complaint Committee under relevant service rules.

In communicating a final decision, the employer should:

- document and list each reason for the decision
- limit the communication to those individuals who are directly involved and any members of management who have a legitimate need to know.

STAGE SIX (SECTION 13)

INQUIRY REPORT - Findings and Recommendation(Report) The Employer or District Officer is obliged to act on the recommendations within 60 days

SECTION 14 -PUNISHMENT FOR FALSE OR MALICIOUS COMPLAINT AND FALSE EVIDENCE

Section 14 of the Act read with Rule 10 of the 2013 Rules provides for punishment of the complainant or any other person concerned in the event of false or malicious complaints, or the production of false or misleading document or evidence. Section 14 clarifies that mere inability to substantiate a complaint or provide adequate proof will not attract action against the complainant under this provision. The 2013 Act also makes it a criminal offence on the part of the employer if it fails to take action against such aggrieved woman or witness who takes recourse of falsehood.

BASIC TIME LINES

Within 3 months of the last instance Aggrieved shall give written complaint
Within 7 days the Committee shall send a copy of the complaint to the respondent
Within 10 Days from receipt of the complaint Respondent shall file a reply along with documents, name & address of the witnesses
Within 90 days the Committee shall complete the proceeding
Within 10 days the Report should be ready and given with recommendation to the employer

SECTION 16 & 17 CONFIDENTIALITY

It is the responsibility of the Internal Committee to maintain utmost confidentiality in its proceedings and to protect the identity and addresses of the aggrieved woman, the respondent and the witnesses.

The Complainant, Respondent and the witnesses also are required to be forewarned of the need for confidentiality at the outset of the hearing proceedings.

Following the close of the Inquiry, records should be kept in the Chairperson/ Department files. However, these records should not be filed in personnel files. Only a note from the inquiry with a written recommendation of disciplinary action shall be filed in the files of both complainant and Respondent.

These precautions should be taken to maintain confidentiality and controlling spread of sensitive information within the organization. These department files however shall be made available in case of any legal action by the parties concerned.

Publication, communication or making known of any information relating to the conciliation proceedings and the inquiry proceedings, including the action taken, to the public, the press or the media in any manner is strictly prohibited in Section 16& 17. Violation of this provision invites penalty in accordance with the applicable service rules, or in the manner prescribed.

Anyone who discloses the name or identity of the aggrieved woman or witnesses will be liable to pay a penalty of Rs 5,000.

But information regarding the justice secured to the complainant, without disclosing the identity, can be publicized. The Complainant may also prior to start of the hearing share aspects of her Complaint with others and that cannot be considered as breach of confidentiality but can be taken on record as circumstantial evidence

The right to Information Act is not applicable under the Act.

PARTICIPATING IN AN INVESTIGATION

All employees have a responsibility to cooperate fully with the investigation of a Sexual Harassment complaint. The Internal Committee has the authority to summon any witness and can also seek the help of the police in the matter

RETALIATION

- The complainant and witnesses are protected against retaliation for exercising the right to complain or for testifying or assisting in an investigation or hearing.
- There can be no retaliation against anyone for complaining about Sexual Harassment, for helping someone else complain, or for providing information regarding a complaint.

SECTION 18 APPEALS

Section 18 and the 2013 Rules in Rule 11 makes it clear that where there are existing appellate mechanism in the concerned Service Rules, those have to be followed. In all other situations, the appellate authority under the Industrial Employment (Standing Orders) Act, 1946, is designated to entertain appeals under this law. The appellate authority would differ in different States depending on the State notification. Insofar as adjudication of disputes in the Central sphere is concerned, the Central government has notified and established the Central Government Industrial Tribunal-cum-Labour Courts (CGIT-cum-LCs). There are 22 such CGIT-cum-LCs set up in various States, which are headed by Presiding Officers who are selected from amongst serving or retired High Court Judges and District/ Additional District Judges. The 2013 Act and the 2013 Rules expand the jurisdiction of such CGIT-cum-LCs, to the extent that they are enabled to entertain appeals under the 2013 Act which would ordinarily have remained outside their jurisdiction under employment law. The appeal is to be filed within 90 days from the date of the action/recommendation appealed against.

Appeal can be filed in the following situations where the:

i. Committee arrives at a finding that the allegation of Sexual Harassment at the workplace has not been proved, and therefore recommends in its report to the employer/ District Officer that no action is required against the respondent;

ii. Committee arrives at a conclusion that the allegation of Sexual Harassment at the workplace has been proved, and recommends to the employer to take action against the respondent for Sexual Harassment as misconduct.

iii. Committee arrives a conclusion that the allegation of Sexual Harassment at workplace has been proved, and recommends to the employer to deduct appropriate sums from the salary or wages of the respondent to be paid to the aggrieved woman,

iv. Committee arrives at a conclusion that the allegation of Sexual Harassment at the workplace is malicious or false or based upon a forged or misleading document;

v. Committee arrives at a conclusion that a witness has given false evidence or produced a forged or misleading document;

vi. Penalty is imposed on any person entrusted with the duty to handle or deal with the complaint,

SECTION 19 DUTIES OF EMPLOYER

Every Employer needs to assess whether his/her organization/company is 100% compliant under the Sexual Harassment Act 2013.

I. Has an Internal Committee (IC) been constituted in all offices / branches of the organization to which the act applies?

The 'Internal Committee' ("IC") has to be set up at each office or branch that

employs at 10 or more employees, even if they do not have women employees to constitute an Internal Committee. This compliance is important because the law allows even third parties like contractors, customers and anyone who is visiting the premises of an organization to file a complaint of Sexual Harassment that took place with the workplace.

II. Has the Company/Organization adopted an anti-Sexual Harassment policy in accordance with the Act

The Policy has to meet with the requirements of the Organisation/Company and should be well thought out document which should clearly incorporate all provisions as laid down under the Act

III. Has changes been made in the employees contracts and service rules in compliance with the Act?

The service rules, standing orders or the employment contract, as the case may be, should clearly state that Sexual Harassment will be treated as a form of misconduct. Ideally, organisations should insert a specific clause in the employment agreement for all new hires stating that Sexual Harassment will be considered as misconduct. In case of existing employees, the organization can ask the employees to sign on the amended service rules and share a copy of the Sexual Harassment policy and submit the same with the HR Development.

IV. Have workshops and awareness programmes been organized periodically for, a) sensitizing employees on implications of Sexual Harassment at the workplace and b) organizing orientation programmes for members of the Internal Committee?

It is the Employers responsibility to sensitize employees regarding Sexual Harassment issues by organizing workshops and seminars. The Act require the Employer to engage in the following:

1. Dissemination of the policy against Sexual Harassment.
2. Carrying out orientation programs for the members of Internal Committee.
3. Conducting capacity and skill –building programs for the members of Internal Committee by using NGO's ,State Governments for conducting awareness programmes for employees regarding the provision of the law.

Employers may consider inviting legal practitioners who have worked on women's rights issues, representatives of NGOs, organizations working on the issues of women's rights or human rights for such orientation and sensitization programs.

V. Is the Information on Internal Committee and the penal consequences displayed prominently at the Workplace

Companies/Organisations should put up notices/posters in prominent and well visited places such near cafeteria, water cooler, coffee machines, washrooms, photocopier machines, etc.

VI. Is information pertaining to Sexual Harassment being submitted to specified authorities?

1. *Preparation of annual reports-* For employers who are not required to prepare an annual report, g. sole proprietorship businesses, partnership firms and LLPs, the employer is required to inform the District Officer appointed under the Sexual Harassment Act about the number of cases filed under this act with the organization and their disposal status.

   Companies, Societies and Trusts: are also required to file such reports with the Charity Commissioner or the Registrar of Societies /Registrar of Companies. In such cases (where annual reports are to be filed), information about Sexual Harassment must be included in the annual report.

2. *Report implementation of interim measures to the Internal Committee or the Local Complaints Committee (LCC)*

   Whenever the Internal Committee awards an interim measure, the employer is required to send a report to the Internal Committee on the implementation of the interim measure.

3. *Monitor submission of reports by the Internal Committee*

   The Internal Committee is required to submit a number of reports pertaining to its activities (which need to be submitted at the end of each calendar year, ie, after 31st December) or forward copies of settlements under the Sexual Harassment Act. The employer is required to ensure that these actions taken by the IC on a timely basis.

VII. Has support been given to the employee to initiate legal action against the perpetrator

If the Complainant requests, the employer is obligated under the law to provide adequate assistance to her in approaching the police and filing an FIR.

VIII. Have facilities been provided to the Internal Committee to hold hearings?

The Internal Committee will require facilitation and assistance from the employer to carry out inquiries. Facilitation necessary from the employer's end could include:

1. Provision of a venue where IC proceedings can be carried out in a confidential
2. manner.
3. Ensuring that committee members have access to secure communication (internet, phone connections, postal
4. services) so that inquiry and hearings can be smoothly carried out.
5. Providing access to company policies and manuals, any basic legal literature which is possessed by the employer, etc.

6. The employer must assist the Internal Committee in securing the attendance of the person alleged to be the perpetrator and any witnesses before the Internal Committee.

SECTION 26 PENALTIES

Section 26 talks about the consequences on failure on part of the Employer on compliance. An Employer can be penalized

1) when there is failure to:
   - Constitute an Internal Committee
   - Take action on the Inquiry Report (Sec 13,14 and 22)
2) When there is contravention or attempt to contravene the provisions of this Act or any rules made there under.

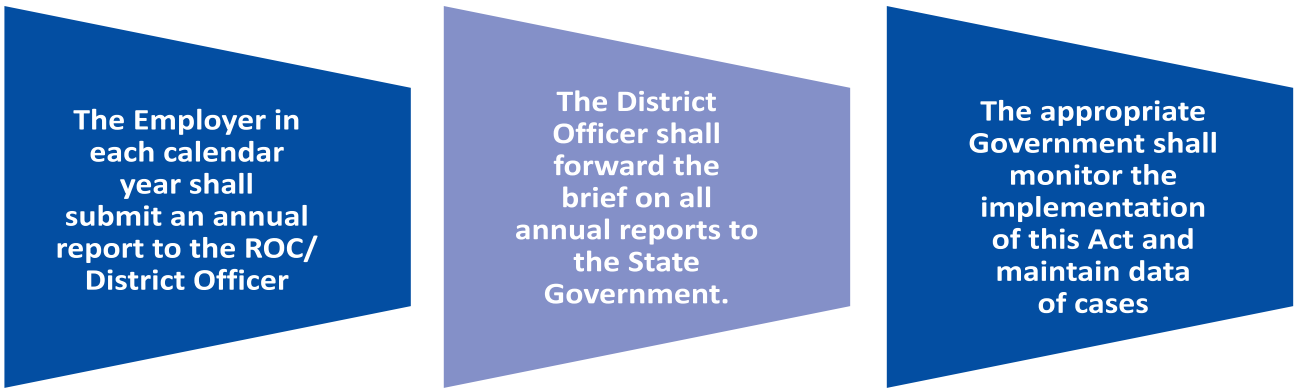
Non-compliance with the provision to constitute an Internal Committee has significant consequences – an employer who fails to constitute an Internal Committee as per the Sexual Harassment Act will be liable for a monetary penalty of up to Rs 50,000 if a complaint is made to the Magistrate.

Any woman who has faced Sexual Harassment at the workplace, or any person authorized by the Internal or Local Complaints Committee can file a complaint with the Magistrate.

Repeated non-compliance of this provision can result in the punishment being doubled or even cancellation of the license by the government or local authority to carry on business.

Similarly, failure to implement the recommendations of the Internal Committee or the Local Committee, or failure to include appropriate details will invite penalty.

SECTION 22 EMPLOYER TO INCLUDE INFORMATION IN ANNUAL REPORT



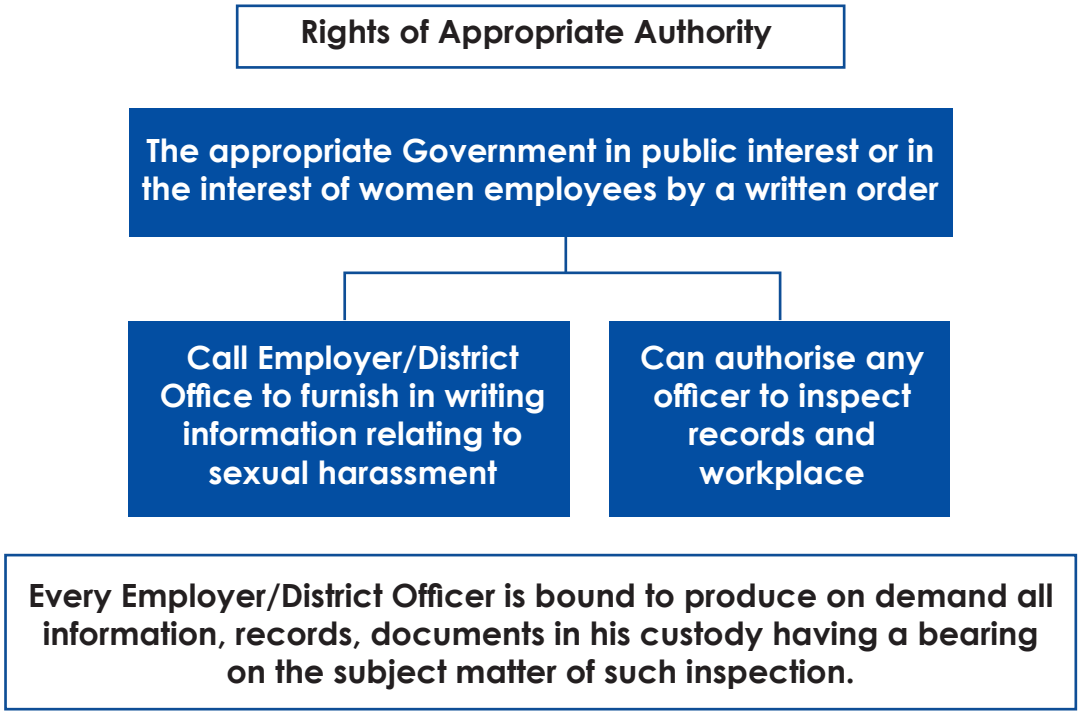
Internal Committee is required to submit an annual report on a calendar year basis containing reports of Sexual Harassment in the organisation to the District Officer. However, it has been noticed that many states have not appointed the District Officer. In such cases one can submit the mandatory annual report to the Chief Minister's office and the Women and Child Development Department/Ministry as a safeguard.

- The Committee, shall give a detailed list of information which is mandatory
- Number of Sexual Harassment complaints received in a year
- Number of complaints disposed of in a year
- Number of cases pending for more than 90 days
- Number of awareness programs or workshops
- Nature of action taken by the employer or district officer with respect to the cases

ANNUAL REPORT BY EMPLOYER TO REGISTRAR OF COMPANY /DISTRICT OFFICER

- The Employer in each calendar year shall submit an annual report to the Registrar of Company / District Officer
- The District Officer shall forward the brief on all annual reports to the State Government
- The appropriate Government shall monitor the implementation of this Act and
- maintain data of cases

SECTION 23 APPROPRIATE GOVERNMENT



DISTRICT OFFICER

The District Officer also has statutory obligations under the 2013 Act, including:

- receiving the report of findings and recommendations of the Internal Committee, taking a decision on the action to be taken upon the said reports, and taking such action within the statutory time frame.
- monitoring the timely submission of annual reports by the LCC.
- preparation and forwarding of report consolidating all the annual reports received to the State government;
- taking such measures as may be necessary to engage NGOs

SECTION 27 COGNIZANCE OF OFFENCE BY COURTS

- The Court will take cognizance of the offence on a complaint of the aggrieved woman or any person authorized by the Internal Committee or the LCC (Section 27(1)
- Only the Metropolitan Magistrate or a Judicial Magistrate of the First class will try any offence punishable under this Act (Section 27(2)).
- Every offence under this Act is non cognizable. Giving of copies of the Findings to respondent and complainant. At the written request of the Respondent and the complainant,the Disciplinary authority can give copies of the Findings.
- The Complainant and the Respondent should append their signatures on every page of the inquiry proceedings and the Presiding Officer as well Members should also append their signatures.

ACT NOW to prevent Sexual Harassment.

It is the *responsibility* of every person to prevent and act the menace of Sexual Harassment at the workplace, some simple doables may help bring change in attitudes and mindsets

Switch Gender Roles
Challenge by being different

Walk the Talk
Don't advocate something you are not practicing in your daily life

Point it Out
Don't be silent when faced with sexiest or misogynist attitudes

Speak up
Don't just point out negative stereotypes, fight them. Answer back

Teach Boys
Involve boys in House work. Raise them to break stereotypes

SPEAK OUT!
STOP HARASSMENT

Sample Formats for Reference

SAMPLE POLICY TO PREVENT SEXUAL HARASSMENT AT THE WORKPLACE

A STATEMENT OF COMMITMENT

Sexual Harassment as generally understood is of two kinds: hostile environment and quid pro quo. Hostile work environment includes pornography in public places, foul language, etc. This may not be directed at any woman employee or student in particular, but the effect on the women is one of discomfort. Second, quid pro quo i.e. "in exchange" for favours such as promotions, employment perks, examination results, etc.

The _____ is committed to creating a hostile free environment for its employees/ beneficiaries. It is committed to ensure that the Supreme Court in guidelines in the case of Visakha Judgment pertaining to Sexual Harassment are followed. As part of this commitment the following policy has been formulated.

This policy shall be binding not only on the employees and the management but also on third party harassment on the premises.

2. Definitions

   a. "Sexual Harassment", as is provided in the Supreme Court Judgment, includes any unwelcome sexually determined behaviour, direct or by implication, and includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornography, any other unwelcome physical, verbal or non verbal conduct of a sexual nature.

   b. "Employee" means any person on the rolls and would include employees working on a casual basis or on projects or employed through a contractor.

   c. Student" includes any person who is enrolled for any course, whether by attendance or distance education,

   d. "NGO" means any Non Governmental Organisation registered as a public trust or a society operating on a secular, non profit basis and involved in work concerning amelioration of status of women and children

3. "Management" means the managing or governing body

4. SCOPE OF THE POLICY

This Policy will be applicable to all complaints of Sexual Harassment by an employee against another employee/student, in either case, irrespective of whether Sexual Harassment is alleged to have taken place within or outside the premises. It shall also be applicable in respect of all allegations of Sexual Harassment made by an outsider against a student/ employee or made by a student/ employee against a third party if the Sexual Harassment is alleged to have taken place within the premises.

5. CONSTITUTION OF A COMPLAINTS COMMITTEE

1. The Department shall, within 30 days of the issuance of this notification set up a Complaints Committee which shall comprise of".
2. At least _____of the members out of which50% shall be women
3. There should be one NGO representative.
4. The term of office of the Committee shall be ____ years.
5. Provided however that a person shall cease to hold office as a member of the Committee if he or she ceases to be an employee in due to resignation, termination or death

DISQUALIFICATION OF CHAIRPERSON AND MEMBERS

A person shall be disqualified for being appointed, elected, nominated or designated or continue as a member if there is any complaint concerning Sexual Harassment pending against him/her or if he is found guilty of Sexual Harassment. The Chairperson/ members shall be disqualified from serving on the Committee if he/she shows bias towards any party Vacancy of a member due to inability to participate in meetings:

If a member elected or nominated or designated to the Committee remains absent without permission of the Chairperson for three consecutive meetings, her/ his office shall thereupon become vacant.

RESIGNATION OF A MEMBER

A member of the Committee may resign from his/ her office at any time in writing to the Chairperson.

FILLING OF VACANCY

The vacancy shall be filled by another in due manner by the Committee.

MEETINGS OF THE COMMITTEE

The Committee shall meet every three months if there is no complaint. During these meetings the Committee may take cognizance of requests of employees, hold informal meetings or have awareness trainings/ programmes.

Special meetings may be called if deemed necessary on receipt of request of the members.

The quorum for any meeting of the Internal Committee will be 50% of its members.

However, when a hearing is scheduled it is mandatory for all to be present.

If the quorum is not present at any meeting it shall be adjourned for not more than seven working days. If at a subsequent meeting the quorum is still not present the meeting shall proceed and the proceedings of such a meeting will not be challenged on the ground of absence of quorum.

POWERS AND DUTIES COMMITTEE

The powers and duties of the Committee shall be as follows, namely:

- To ensure and supervise the proper constitution and functioning of the Complaints Committees;
- To organise regular workshops and training programmes for members of the Complaints Committees;
- To formulate programmes for the spread of awareness
- To disseminate information against Sexual Harassment
- To bring out publications in vernacular languages concerning Sexual Harassment and other information material
- To hear and deal with complaints.
- To ensure implementation of this Policy

PUNISHMENT OF RESPONDENT

Any person found guilty of Sexual Harassment shall be liable to be punished and shall be liable for any of the following penalties:

- Warning, reprimand or censure;
- Withholding of an increment for a period not exceeding one year;
- Reduction in rank;
- Termination of service

Provided however, that in addition to all these penalties the employee can also be called to tender an apology in writing and the matter may be if the Complainant is willing accept the apology.

GRIEVANCE PROCEDURE

- The Complainant will have a right to lodge a complaint concerning Sexual
- Harassment against the Respondent with the Complaints Committee.
- Such a complaint shall preferably be in writing.
- If the Complaint is oral the same shall be reduced in writing
- The Complainant will be give full confidentiality at this stage.
- Within five working days from the date of receiving the complaint, the Chairperson shall convene a meeting of the Complaints Committee.

At this first meeting, the Complainant will be required to be present.

The Committee shall hear the complaint and decide whether a prima facie case is made.

The matter will be closed if the Complaint is unable to establish an offence of Sexual Harassment.

If the case proceeds further the Committee shall take into account the wishes of the

Complainant concerning her meeting with the Respondent.

The Committee shall thereafter proceed in the laid down manner.

IMPOSING MINOR PUNISHMENT

In case the Committee decides to impose a minor punishment, the Respondent shall be given in writing an opportunity to explain within one week why he should not be for good and sufficient reasons be punished for the act of Sexual Harassment on his part. The nature and quantum of punishment if any to be imposed on him shall be decided after considering the explanation, if any given by the Respondent.

IMPOSING OF MAJOR PUNISHMENT

If a Respondent is alleged to be guilty of Sexual Harassment and if there is reason to believe that in the event of the guilt being proved against him, he is liable for imposition of any major penalty the Enquiry Committee shall, first decide whether to place the Respondent employee under suspension. If the Respondent employee is to be placed under suspension the provisions of suspension and subsistence allowance as prescribed under the Statutes for other misconduct will apply.

If a person is charged with physical molestation or rape on the University or college premises, he shall be immediately placed under suspension pending the completion of the investigation and enquiry. In all other cases, the Committee shall within 3 days decide whether the charged person shall be placed under suspension or not and in either event it shall communicate its decision and the reasons for the decision to the Management which shall then implement the decision forthwith.

Within 3 days of the first meeting of the Committee, it shall communicate to the Respondent by hand delivery duly acknowledged or by registered post acknowledgement due the allegations and demand from him a written explanation within 7 days from the date of receipt of the statement of allegations.

1. If Internal Committee finds the explanation of the Respondent not satisfactory or if no explanation is given by the Respondent, the Internal Committee will decide to hold an inquiry against the Respondent.
2. The Presiding Officer of the Committee will be the senior most employee from the Company/Organistaion.
3. The meetings of the Internal Committee will be held during the office hours .

PROCEDURE FOR INQUIRY

The Committee shall

- Prepare a charge sheet mentioning specific charges with the statement of allegation
- It shall also attach with it the complaint and ensure that it reaches the Respondent to respond to
- The charge sheet may be hand delivered or sent by courier/or registered post and duly acknowledged within 3 days of the deciding to conduct the enquiry
- The time limit for response should be about fifteen days
- The rejoinder to the complaint shall be sent to the Chairperson by the Respondent either by registered post or courier or hand delivered
- If the Complainant or the Respondent desire to examine any witnesses, they shall communicate in writing to the Chairperson the names of witnesses whom they propose to so examine;
- If the Complainant desires to tender any documents by way of evidence before the Committee, it shall supply self attested true copies of such documents to the Respondent. Similarly if the Respondent desires to tender any documents in evidence before the Committee he shall supply self attested true copies of such documents to the complainant
- Within 3 days after the expiry of period of 15 days the Committee shall call both the complainant and Respondent to appear before it. Atleast seven days notice should be given by hand delivery duly acknowledged or by registered post acknowledgement for producing evidence, examining witnesses, etc., if any
- The Committee shall ensure that the rule of natural justice is followed and both parties are given reasonable opportunity to be heard and to present their side of the story.
- The Complainant shall have the right to lead evidence and the right to cross examine witnesses brought in by the Respondent.
- The Respondent shall also have the right to be heard in person and lead evidence. He shall also have the right to cross examine witnesses brought by the Complainant
- Enough time and space shall be provided for cross examination of witnesses notified by both the parties
- All the proceedings of the Committee will be recorded and the same together with the statement of witnesses shall be endorsed by both the parties in token of authenticity thereof. The refusal to endorse the same by either party shall be endorsed by the Chairperson
- The enquiry shall ordinarily be completed within a period of three to six months from the date on of the charge sheet given to the Respondent person.
- The Complainant and the Respondent will be responsible to see the witnesses if any are present during the inquiry. However, if the Committee is convinced

about the absence of either of the parties due to valid ground the Committee shall adjourn that particular meeting of the Committee. The meeting so adjourned shall be conducted even in the absence of the person concerned if he or she fails to remain present for the said adjourned meeting.

- The Chairperson shall forward to the Complainant and the Respondent as the case may be a summary of the proceedings and extracts of the statements of witnesses, within four days of the completion of the above steps and allow them a time of seven days to offer further explanation, if any.
- The Complainant or the Respondent, as the case may be shall submit their further explanation to the Chairperson within seven days from the date of receipt of the summary of proceedings etc., either personally or by registered post acknowledgement due.
- On receipt of such further explanation or if no such further explanation is offered within the aforesaid time, the Committee shall complete the enquiry and communicate its findings on the charges against the Respondent and its decision on the basis of its finding to the Management for specific action to be taken against the Respondent within 10 days after the date fixed for receipt of further explanation.
- It shall also forward a copy of the same by hand delivery duly acknowledged or by registered post acknowledgement due to the Complainant and to the Respondent.
- The findings of the Committee shall be binding on the Management which shall implement the same by issuing necessary orders within 7 days of the date of receipt of decision of the Committee
- The Management shall also endorse a copy of its order to the Complainant and to the Complaints Committee.
- The Committee may consider as relevant any earlier complaints against the person charged. However, the Complainant's past sexual history will not be probed into or enquired during the proceedings before any of the committees.

PROTECTION FOR THE COMPLAINANT

The Complaints Committee shall act immediately if the complaint or witness brings to its notice any further harassment because of the complaint or appearing as witness.

OBLIGATION OF THE MANAGEMENT

The employer shall provide all necessary assistance for the purpose of ensuring full, effective and speedy implementation of this policy.

THIRD PARTY HARASSMENT

In case of third party Sexual Harassment the employer will assist and provide all its resources to the Complainant in pursuing the complaint and ensure her safety at least in its premises.

Format for submission of Complaint of Sexual Harassment

To,

The Chairperson Internal Committee/HR Department
.....

Madam/Sir,

I am working as a _____ in the Organisation/Company. I am constrained to make a complaint against Mr _____who is working as _____ in the _____Department.

Mr _____ on ..... (date) at ..... (time) instructed me to be present in the Business Centre for some typing work. As per instructions I reached the place and typed the matter as given. However, in the pretext of correcting the errors in the typing, Mr _____ tried to molest me taking advantage that no one else was present there in the cabin. Despite my resistance, he kept on touching me hence apprehending that he is determined to outrage my modesty, I escaped and came out of the cabin and went back to my home.

I am making the above complaint for appropriate action since there has to be conducive and safe environment for working of women and such like person can take advantage of his status in making advances to outrage the modesty of the helpless girls/women.

Yours faithfully,
Name of the complainant

Note: The inputs of above complaint are from the judgment of Apparel Export Council as reported in 1999 LLR 169 (SC).

Format for Complaint by a Female Officer against an Employee

To,
The Chairperson/HR Department

Sub: Complaint against Mr …… Sweeper

I, being Shift Incharge, in the second shift starting from 5.00 p.m to 1.00 am., was on routine round near the main hall adjacent to Design Department on …… at about 10:30p.m. When I took turn towards main hall near the gate of Maintenance Department, Mr ……, already standing behind the door of the main hall rushed to me and close my eyes from my back with his both hands tightly and tried to kiss my cheeks. In making struggle to get myself free from the clutches of hands of Mr. ……... I fell down and Mr. …… also deliberately fell upon me. On hearing my cries, the women, the woman including Ms……., Ms……. and Ms ……. working in the main hall rushed to the spot of incident but in the meantime Mr. …… fled away.

In the meantime, the other security personnel (men) came to the spot. On making search, Mr. ……. was caught in the gent's toilets by Mr. …… guard and brought him in the Security Office where he apologized for his misconduct. He also gave in writing that he has acted in such manner being under the influence of liquor. Copy of his admission, in writing, is enclosed herewith.

Mr …… cannot be forgiven for his such a serious misconduct that too with me (a lady of 25 years).

You are requested to take necessary action against Mr. ……. so that in future no one can dare to disturb the modesty of any working woman, in any manner.

Thanking you,
Yours faithfully,
(Ms …….....)
Encl. As above

Shift Incharge

Format for calling the Complainant to appear before the Internal Committee

To

.....
.....

Ms _____

In response to your complaint, you are requested to participate and appear before the Internal Committee constituted under section 4 of the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Rules at .....(time) on .....(date). It is also requested to bring a list of witness on the said date of hearing as fixed for the proceedings.

Yours faithfully,
Chairperson
Internal Committee

Format of Inquiry under Section 11 of the Sexual Harassment of Woman at Workplace (Prevention, Prohibition & Redressal) Act, 2013

PRESENT

1. (a) Ms ..... (herein give the description), Presiding Officer of the Internal Committee

   (b) Ms./Mr ..... Member of the Internal Committee

   (c) Ms./Mr ..... Member of the Internal Committee

   (d) Ms./Mr ..... description about NGO or being familiar with the issues relating to the Sexual Harassment. Member of the Internal Committee

2. Aggrieved woman (..... complainant or Complainant)

3. Respondent

Date: ..... Time .....Venue of the inquiry .....

Format of Prima Facie Report

1. Case no._____

2. Name of the Respondent: _____

3. Name of the complainant:

4. Whether the complaint is within the jurisdiction of Complaint Committee yes/no

5. Whether the act/s complained constitute Sexual Harassment as defined in the policy: yes/no

6. Has a prima facie case made out/no prima facie case is established

7. Whether the continuance in office of the Respondent will prejudice the investigation/trial/any inquiry (e.g. apprehended pressurizing of witness or tempering of documents: yes/no

8. Whether the continuance in office of the Respondent is likely to seriously subvert discipline in the office in which the Respondent is working: yes/no

9. Whether the continuance in office of the Respondent will be against the wide public interest other than those covered by (7) and (8) such as there is a public scandal and it is necessary to place the Respondent under suspension to demonstrate the policy of the deal strictly with persons involved in such scandals: yes/no

10. Whether allegations have been made against the Respondent and the preliminary inquiry has revealed that a prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings as likely to end in his conviction and/or dismissal, removal or compulsory retirement from service: yes/no

Format to initiate conciliation proceeding

Chairperson,

Internal Sexual Harassment Committee

Sub. Request to initiate conciliation proceeding in relation to my complaint dated _____given against Mr._____ under Sexual Harassment of Women at work placed Act, 2013.

Sir/Madam,

This has with reference to my complaint dated _____ mentioned above, at this preliminary stage, I am incline to affect conciliation in the mater instead of further enquiry into merits of the complaint. I am willing to arrive at amicable settlement to resolve this matter for personal reasons. Hence request you to affect conciliation in the matter.

Thanking you,

Respectfully yours

Name and Signature of Complainant

Format for Invocation of Conciliation Proceedings

Mr._____

Respondent

Sub: Invocation of Conciliation for Sexual Harassment complaint dated ___ submitted by Ms_____

You are being informed that in the aforesaid matter, the complainant has invoked the process of conciliation. Therefore, you are directed to be present on _____ at _____ hours for affecting conciliation in this matter. If both the parties consented for amiable resolution of the matter on the basis of mutual settlement excluding an settlement on monetary terms, the matter would be dealt accordingly.

Format for Indemnification

Indemnifying the Parties following Conciliation arrived at between Ms. (Hereinafter Referred to as Complainant) against Mr. _____ (Hereinafter Referred to as Respondent) in respect of Complaint Dated _____ filed by Complainant under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 INDEMIFYING

Parties to settlement

1) Ms. _____
2) Mr_____

SHORT RECITAL

Whereas a complaint dated _____ was submitted by Complainant to the Internal Committee (For Short IC) against Respondent leveling grave accusations of Sexual Harassment. Respondent also submitted his reply denying the allegations of Sexual Harassment. During the course of proceedings, Complainant expressed her desire to conciliate and settle the matter of complaint harmoniously citing personal reasons. Respondent also requested to conciliate and settle the complaint amicably. Accordingly, to resolve the dispute amicably on the basis of intentions of the parties, following settlement is arrived at;

Terms & Conditions of Settlement

1. Respondent at the very outset clearly apologize for his past conduct if it caused harassment including Sexual Harassment to the Complainant. Respondent further states that he had no intention to cause inconvenience or harm or harassment to the Complainant and further undertakes that in future he shall not act in similar manner and shall refrain to use any information in his possession to harass/ tarnish the reputation of Complainant. He deeply regrets for inconvenience caused to Complainant. He further undertakes that he will refrain from maintaining any contact with Complainant either physically or through social media.
2. Complainant has accepted the apology tendered by the Respondent. She is completely satisfied and feels contended with the apology cum undertaking submitted by Respondent and in anticipation intends not to pursue further the matter of her complaint before IC. Complainant would further request IC to close the complaint in terms of this settlement.
3. Both the parties shall always abide and remain bound by the terms of this settlement.

Signature of Complainant Signature of Respondent

Witness

1
2

Sample Questions for the Complaining Employee(s)

For each allegation that the complaining employee raises, the investigator should ask him or her:

1. What occurred?
2. When (include the date, appropriate time period involved)?
3. Where did it happen?
4. How did it happen?
5. Who did or said what? In what order? Was anything else said or done?
6. If there was physical contact, describe the contact in detail. Demonstrate the physical contact.
7. How did you respond?
8. Have you ever reported this incident before? If so, to whom? When? Response?
9. Did you discuss the incident(s) with anyone? If so, who? Where? When? What was said?
10. Are you aware of any other incident(s) involving this person? If so, who? What? Where? When?
11. Do you know why it happened?
12. What is your relationship with the respondent?
13. Why are you coming forward now?
14. Are there any notes, documents or other evidence to support your claims? Did the respondent give you anything in writing, or any gifts or other items?
15. Were there any witnesses? Who was nearby? Within earshot?
16. Who else may have relevant information?
17. Was your work affected? How?
18. How did the situation make you feel?
19. What outcome would you like to see from this process?

WHAT TO TELL THE RESPONDENT EMPLOYEE

We are investigating a complaint of alleged inappropriate conduct involving you. (Inform the respondent of each allegation in sufficient detail to enable a full response.)

- The purpose of the interview is to obtain a thorough and accurate understanding of what has occurred, and to identify all evidence and witnesses who may have knowledge of the incident.

- Keep the matter confidential to protect the integrity of the investigation.
- It is against the law and internal policy to retaliate against anyone who has filed a complaint or participates in the investigation of the complaint. Notify management or HR immediately if you believe retaliation has occurred or is occurring.

SAMPLE QUESTIONS FOR THE RESPONDENT

1. What occurred?
2. If denied, what motive would anyone have to make these allegations up? Where were you at the time alleged incidents occurred? Who witnessed your presence?
3. When did it happen?
4. Where did it happen?
5. How did it happen?
6. Who did or said what? In what order?
7. How did the complainant(s) respond?
8. Are you aware of any other incidents involving the complainant(s)? If so, who? What? Where? When?
9. Are you aware of any other complaints by the complainant(s)?
10. Do you know why it happened?
11. Are there any notes, documents, or other evidence to support your version of the facts?
12. Who else may know relevant information?
13. Did you discuss the incident(s) with anyone prior to this interview? If so, who?

Format for summoning the witness as named by the Complainant under Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act and the Rules

To

Ms./ Mr .....

.....

Consequent to complaint by Ms ....., being the Complainant (aggrieved woman) for Sexual Harassment at workplace against Mr ..... (respondent), the Internal Committee has initiated the proceedings. The Complainant has named you as a witness to the incident and as such you are directed to be present on ..... (date) at .....(time) in the office of the M/s ..... (establishment) as a witness.

Chairperson
Internal Committee

Format for Inquiry Report

(By Internal Complaints Committee)

The Internal Complaint Committee consisting of Ms . ……., Chairperson (Presiding Officer); Ms …….., (Member); Mr. ……., (Member); Mr. …… (Member), took the complaint of Ms. …… as referred to the said Committee by the HR Department/Disciplinary Authority.

Brief of the Complaint

Process of Inquiry

On …… the first meeting was held and after having gone through the complaint, the Committee decided to issue letters to the complainant and the Respondent to attend the hearing on ……. at ……. alongwith their supporting documents and list of witnesses. Accordingly, due communication through e-mail and speed post were sent to the complainant and the RespondepondeResdelinquent employee by the Presiding Officer.

On …… the complainant placed on record the following documents in support of her complaint: -

(i) List of witnesses.

(ii) List of documents along with documents including Medical Certificate issued by the Govt. Hospital, two photographs taken from CCTV camera showing her clothes torn during the incident, unconditional apology given by the Chairman.

Similarly, the delinquent employee submitted his written defence which was also taken on record besides a list of one witness. He also moved an application for seeking permission to take help of one of his colleagues during the course of recording of proceedings. The application was not opposed either by the complainant or by her assistant/ colleague. Hence, the same was allowed.

Next date was fixed for …….. for recording of evidence of the complainant.

On ……., the complainant presented herself as CW 1 and 3 other witness as CW 2, CW 3 and CW 4 . Depositions of all the four witnesses were recorded and cross-examination by the delinquent employee and her representative was

conducted. Next date was fixed for …….. for recording of evidence of the defence party.

On ……., the delinquent employee deposed as DW 1 and another witness recorded her statement and their cross –examination was conducted by the representative of the complainant.

After it, both parties were advised to submit their written arguments/submissions …….. enabling the Committee to give its decision.

On……, both the parties submitted their respective written arguments which were taken on record.

Thereafter, the Committee looked into the documentary evidence as well as oral evidence recorded during the proceedings and the Presiding Officer recorded the findings as under: -

The Complainant deposed that though she was Private Secretary to the Chairman but she was not perfect in typing. Nor she was having knowledge to take dictations. She was pressurized again and again by the Chairman to follow his dictates. She was insisted to follow him to the Business places in Taj Hotel and other places. On …….., she was forced to accompany him and the Director to Taj Hotel where she was forced to take dictation from the Director. She was taken to the basement of the hotel where she was asked to type the dictated letter. The Chairman sat close to her touching her body parts time and again in an indecent manner despite her repeated protests for the same. When she was in the lift the Chairman tried to touch her cheeks with his mouth by catching her neck with his hands. She just succeeded to press the emergency button of the lift and till opening of the lift the Chairman had torn her shirt from the side of her right arm upper portion. Since the lift was equipped with CCTV, later on the complainant succeeded to take picture for the CCTV and submitted a photograph showing her torn shirt and touching of her body parts by the Chairman causing her mental agony, physical harassment thereby constituting the misconduct of Sexual Harassment. She tried to meet the Director of the Company next day but she could not succeed. Ultimately she succeeded to meet the Director after 5days on …….. and explained him the whole incident and gave her complaint which is Ex. CW1/1. She also deposed that the apology given by the Chairman unconditional to Ms …….. which was later on passed on to her is Ex. CW1/2.

The CW 2, Ms. …… Deposed that when the lift opened at the 3rd floor, there were only the Chairman with the complainant. The complainant was very upset. Her shirt was in torn condition and she was weeping. The Chairman left her at the spot of the lift and rushed to the office of the Accounts Manager who was having office at the 3rd floor of the office building. She also submitted that the Chairman later on submitted an unconditional apology to her to be given to the complainant which is Ex. CW1/2. She also proved the medical certificate as Ex. CW 1/3 which she was issued after her medicolegal examination on the same day evening from the said Government Hospital.

On ……. the delinquent deposed before the Presiding Officer that he is not at fault at all, as per story made by the complainant and it is a part of conspiracy against him by his opponents who are jealous of his status and performance in uplifting the Company. However, he admitted that in the lift, from 16th floor to 3rd floor, he alone was
accompanying the complainant. However, he stated that in the lift the complainant intentionally started to fall on him in a dramatic manner and he tried to pacify her but he could not succeed. He also admitted that during the process, the shirt of the complainant had torn but in it he was not at fault at all. The apology was given with a view to pacify her to the maximum extent to maintain harmony at the workplace. Medical certificate is a managed one.

Accordingly, the Committee concluded that the person having status of a Chairman, might not have given the unconditional apology on next day if the incident was false or managed.His unconditional apology, coupled with torn shirt, weeping scene of the complainant, medical certificate showing her mental disturbance at the relevant time, CCTV picture showing his touching the complainant again and again instantly, catching her neck with both hands, are sufficient evidence to establish that the delinquent has caused Sexual Harassment to the complainant. The actions of the delinquent, as proved from the evidence (documentary and oral) on record including physical contact and adavances, sexually coloured remarks showing pornography, amounts to Sexual Harassment. Hence, the charges of Sexual Harassment stand proved against the delinquent.

PRESIDING OFFICER Mrs……..
MEMBER SHRI ……
MEMBER Ms ……
MEMBER Ms ……

PRO-FORMA SUGGESTED FOR WARNING LETTER FOR SEXUAL HARASSMENT

To

……
……

This letter is a formal record of the warning and reprimand that was given to you this morning. It was reported to the undersigned from Ms ……. that you touched her in a familiar manner, attempted to kiss her and made improper suggestions that she could advance her career prospects by giving you sexual favours.

When you were told of these suggestions you attempted to excuse your conduct by saying that she encouraged you. Whether or not this was so, your conduct is inexcusable and unbecoming of an employee since it amounts to moral turpitude. Having seen and duly recorded in the CCTV footage, interrogated you both, Ms …… did nothing to encourage you.

You must take this letter as a formal warning that no form of sexual o other harassment will be tolerated. Any repetition may result in dismissal from service for moral turpitude. The matter would also be reported to the police.

Authorised Signatory

PRO-FORMA SUGGESTED FOR ORDER OF DISMISSAL TO BE ISSUED TO THE DELINQUENT WHO HAS BEEN GUILTY OF MISCONDUCT OF SEXUAL HARASSMENT

To

Mr……

……..

This has reference to the charge-sheet dated …….. issued to you and the enquiry held thereafter. The Enquiry Committee has submitted its report with enquiry findings. We have duly considered the report, evidence on record and documents and are satisfied that the charges of Sexual Harassment, as leveled against you, have been proved in the enquiry against you.

The reply to the second show cause notice issued to you alongwith enquiry report has not produced any new considerable defence by you. You have made repetition of your earlier submissions which have already been considered by the Enquiry Committee and decided not to grant any favour to you.

Since the misconduct of causing Sexual Harassment, as committed by you, to a working woman at her work place is serious in nature, which has been fully proved against during enquiry proceedings, it has been decided to dispense with your services with
immediate effect.

Your final payment of dues, will be made to you by our Accounts Department and you may collect the same from there on any working day during working hours after you hand over the properties of the Company, if any, and obtained clearance from the concerned departments as per procedure already known to you.

Authorised Signatory

PRO-FORMA SUGGESTED FOR ANNUAL REPORT BY THE INTERNAL COMPAINTS COMMITTEE

Sexual Harassment: Annual Report for the Year ..... **Under Section 22 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act ,2013)**		
S.No	**PARTICULARS**	**REMARKS**
1	Name of the Factory/ Establishment : -	
2	Name of the Occupier/ Principal Employer	
3	Address of the Establishment /Factory	
4	Members of the Committee	
5	Number of reported cases	
6	Number of cases pending	
7	Number of cases decided	
8	Number of cases forwarded	
9	Number of Awareness programmes held	
10	Number of Meetings conducted	
11	Number of suggestions made	
12	Number of suggestions recommended by the committee	
13	Number of suggestions implemented	
14	Number of suggestions left	
15	Number of suggestions withdrawn	
16	Remarks	
17	Signature by the committee members	
18	Verified By :-	
19	Date of Submission :-	
20	Place of Submission :-	

Date .....

To,

The District Officer

……

Sub: Submission of Annual return under Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Sir,

We are hereby enclosing the return under the provision of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act ,2013 for the period from …….. to …… for the employees employed by us at our …… sites are referred below :-

Name of the Site	Year	Total No. of employees	Total Number of Male Employees	Total Female Employees

We are also enclosing the statement for this period reflecting the data of employee's employed by us at M/s. …….. for your ready reference and records. Please find the Annual Report enclosed for your ready reference.

Kindly issue the acknowledgement for our internal records.

Regards

For M/s ……

(Authorised Signatory)

References

COURTESY ACKNOWLEDGEMENTS FOR REFERENCE MATERIAL AND CARTOONS

1. *Adhikari*
2. *Gender Training Institute*
3. *Human Rights Law Network*
4. *India Centre for Human Rights and Law*
5. *Sexual Harassment at the Work place – A Guide Sakshi*
6. *National Commission for Women*
7. *Think Inc*
8. *Law relating to Sexual Harassment at the Workplace-Lawyers Collective Women's Rights Initiative*
9. *Workplace Sexual Harassment a practical guide – Combat Law Vol-II by Neeta Raymond*
10. *Sexual Harassment at the Work place-An overview-Legal Services India-Arkodeb Sinha*
11. *Recognising and responding to Sexual Harassment Complaints-Affirmative Action Office-Penn State University*
12. *Dos and Donts : Published by Hengasara Hakkina Sangha, Bangalore*
13. *http://www.altindia.net/gender/harassment/draftguidelines.html*
14. *Goa university Sexual Harassment Policy.*
15. *www.scoopwhoop.com/*
16. *National Crime Records Bureau 2014, 2015*
17. *Indian National Bar Association*