

PROCEDURE FOR CONDUCTING ENQUIRY BY THE INTERNAL COMPLAINTS COMMITTEE CONSTITUTED UNDER THE SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT 2013 (SHA)  
(<http://wcd.nic.in/wcdact/womenact13a.pdf> *Act can be read at this link*)

- 1. Constitution of Internal Complaints Committee (ICC).**  
Presiding Officer shall be a woman employed at a senior level, not less than two Members from amongst employees with experience in social work or have legal knowledge; one member from amongst non-governmental organizations; One-half of the total Members so nominated shall be women, NGO member shall be paid allowances.  
(Sec 4 SHA)

*Presiding officer to be at senior level as inquiry by a junior officer cannot command confidence which it deserves. The NGO member ensures objectivity and non bias and hopefully free from pressures of Departmental leanings.*

- 2. Complaint**

Aggrieved woman (AW) may make, in writing, Complaint within a period of three months from the date of incident/ last incident (period can be extended). Committee shall render all the assistance to AW for making the complaint in writing. (Sec-9 SHA).

*Complaint should contain a statement of all relevant facts (detailed, exact with particulars)*

- 3.** If the complaint does not reveal a prima facie case of sexual harassment, no further enquiry in the matter may be carried out.

- 4. Conciliation**

Before Initiating Committee to take steps to settle the matter between AW and the respondent through conciliation: No monetary settlement shall be made as a basis of conciliation. Where a settlement is arrived, no further inquiry shall be conducted. (Sec- 10 SHA)

If conciliation is not arrived at then the complaint would be enquired in to in the following manner:

**5. Procedure to be followed**

If the respondent is an employee, the enquiry shall be conducted as per service rules applicable to the Respondent. If no such Rules exist then in such manner as may be prescribed (Sec 11 SHA).

*Till date no Rules have been prescribed.*

- I. In case of Central Government employees, it has been notified that the Enquiry shall be conducted as per Rule 14 (Procedure for imposing major penalties) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965.
- II. Any act of sexual harassment of women employees amounts to a misconduct. Appropriate disciplinary action should be initiated in such cases against the delinquent Government servant in accordance with the rules. (Rule 3 C of the CCS (Conduct) Rules, 1964)

**6. Conduct of enquiry as per clause 14 of the CCS CCA**

- I. The Member Secretary of the ICC may be designated as the 'Presenting Officer' of the Enquiry Committee.

**II. Pleadings**

- Complaint should contain a statement of all relevant facts (detailed, exact with particulars), a list of documents by which and a list of witnesses by whom, the allegations are proposed to be sustained. The complaint may be treated as the Article of Charges and imputation of statement of misconduct/misbehaviour. Specific Charge Sheet may also be made on the basis of complaints. (F.No. 43012/5/2012-Estt.A Department of Personnel and Training Establishment (A-III))



*It should be made clear in ACT/ Rules that complaint would be treated as statement of charge.*

- Complaint/ Charge sheet, list of documents and witnesses shall be supplied to respondent and be asked to file a written statement of his defence and to state whether he desires to be heard in person with-in a specified period of time. (Rule 14 (4))
- Where all the articles of charge have been admitted by the respondent in his written statement of defence, the Committee shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15. (Rule 14 (5)(a)).
- The Government servant may take the assistance of any other Government servant, to present the case on his behalf, but may not engage a legal practitioner for the purpose, unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits (Rule 14 (8)(a)).
- If the AW requires an assistant, she too may be allowed a legal practitioner or Govt. Servant to assist her in the case, if she so requests and the ICC so deems it fit.
- The inquiring authority shall, if the Government servant fails to appear within the specified time, omits to plead or produce the evidence, the case shall be adjourned to a later date not exceeding thirty days. (Rule 14 (11)(i)(ii)(iii)).
- On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the AW. The witnesses shall be examined by or on behalf of the AW and may be cross-examined by or on behalf of the Government servant. The Inquiring authority may also put such questions to the witnesses as it thinks fit. (Rule 14 (14)).

The statements so recorded should be signed by witness on each page and on last page after putting ROAC (Read over and found correct). The statement shall also be signed by PO. Copies of statements recorded be given to both the parties. (General Practice).

To facilitate the enquiry, Cross examination should be avoided as the same makes the procedure very complicated. The parties and their witnesses may be asked to give their evidence by way of affidavit (Cross examination is not there either under Consumer Act or the PWDV Act)

- When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. (Rule 14 (16)).
- The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the AW. (Rule 14 (17)).
- The inquiring authority may, after the completion of the production of evidence, hear the AW and the Government servant, or permit them to file written briefs of their respective case, if they so desire. (Rule 14 (19)).
- If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority, the inquiring authority may hold the inquiry ex parte. (Rule 14 (20)).



- If the Respondent fails to appear, or give a written defence or cooperate with the ICC, the ICC may come to a decision with the available records.
- Minutes of all proceedings of the Committee shall be prepared and duly signed by the members of the Committee.

*As the record of the proceeding is to be maintained and preserved.*

*In normal enquiries, the Government itself has charges against the employees, whereas in this case an independent person has charges against Government servant, so the Rules have to be read accordingly.*

### Summoning Witnesses

Summons may be issued by the ICC to Witnesses of both the AW as well as the respondent to appear before the ICC for giving evidence.

### Power of ICC

- The Committee may forward (with in seven days) the complaint to the Police for registering the case under section 509 or any other relevant provision of the Indian Penal Code. ( Sec 11(1) SHA)

*There is a confusion section 27 (3) of Act provides that every offence under this Act shall be non-cognizable then how can committee direct for registration of case. There may situation when immediate lodging of case is required AW should have option to get the FIR registered.*

- The Committee, shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure. The powers of summoning and enforcing attendance of Witnesses and examining under oath as well as discovery and production of documents.( Sec 11(3)a, b & c SHA)
- Inquiry shall be completed with in 90 days. ( Sec 11(4) SHA).

The Act is silent as to what would be the implications if the Enquiry is not completed within 90 days and whether the Committee has the power to extend the time

- During the pendency of an inquiry committee may recommend, transfer the aggrieved woman or the respondent to any other workplace; grant leave to the aggrieved woman upto a period of three months; or grant such other relief to the aggrieved woman. ( Sec 12 SHA)
- **Compensation:**  
Committee may order compensation having regard to—(a) the mental and suffering; (b) the loss in the career opportunity; (c) medical expenses incurred by the victim; (d) the income and financial status of the respondent; (e) feasibility of such payment in lump sum or in installments. ( Sec 15 SHA)
- **Confidentiality :**  
The identity and addresses of the aggrieved woman, respondent and witnesses, Information relating to conciliation and inquiry proceedings, recommendations of the Local Committee, action taken by the employer Shall not be published( Sec 16 SHA)

### **Writing of Enquiry Report**

- I) Based on the pleadings and the statements of the witnesses as well as the relevant documents, if any, the ICC may arrive at a finding and accordingly write the Enquiry Report.
- II) Report shall contain-
  - (a) the statement of misbehavior;
  - (b) the defence of the Government servant in respect of each allegation;
  - (c) an assessment of the evidence in respect of each allegation;
  - (d) the findings on each allegations and the reasons therefor. (14 (23))
- III) The Enquiry Report may come up with following three types of findings



2. Filing of malicious complaint. This may be done only if filing of a false complaint can be proved and not because the charges could not be substantiated or proved.
3. The charges are proved. In such a case the Enquiry Report should contain action to be taken as per service rules of the respondent as well as deduct an amount from the salary as the ICC may deem appropriate to be given to the AW

### **Recommendations:**

On the completion of an inquiry, the Committee, shall provide a report of its findings to the employer within ten days. Report to the concerned parties. If allegations not proved, it shall recommend no action if allegation proved, it shall recommend taking action for sexual harassment as misconduct in accordance with the service rules. (Sec 13 SHA)

### ***Submission of Enquiry Report to the Employer***

- IV) As per SHA, Chapter V, a copy of the Enquiry report should be provided to the Employer within 10 days of writing of the report, who would then need to proceed with implementation of the recommendations of the Enquiry. A copy of the Enquiry report would also be provided to both the AW as well as the respondent, within 10 days of completion of the Enquiry.
- V) If allegation against the respondent is malicious, action can be taken against the woman, in accordance with the service rules. (Sec 14 SHA)

### ***Recommended Reading***

[www.vwcalndia.org/PDF/Sexual%20harassment\\_final.pdf](http://www.vwcalndia.org/PDF/Sexual%20harassment_final.pdf)

