



Modalities on Redressal of complaints of Sexual Harassment of Woman at Work place in NICDC

OBJECT:

The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Act, 2013, (hereinafter referred to as 'Act' for the purpose of brevity) which came into force on April 22, 2013, read with The Sexual Harassment of Women at Workplace (Prevention, Prohibition And Redressal) Rules, 2013, (hereinafter referred to as 'Rules' for the purpose of brevity) 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 therewith or incidental thereto."

This policy has been framed with a view to promote a workplace based on equality and respect, awareness and prevention of sexual harassment at workplace, provide mechanism for redressal in case of complaint of sexual harassment at the workplace etc.

SCOPE:

The policy shall be applicable to all the employees employed at the workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are expressed or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

Sexual Harassment — will have the meaning and definition as defined in section 2 (n) and Section 3(2) of the Act.

'Employee' as per section 2(f) of the Act, shall mean a person employed at a workplace for any work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, includes a co- worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

'Internal Committee' as per section 2(h) of the Act, shall mean Internal Complaint Committee (ICC) as constituted by NICDC to investigate/ inquire into the complaints of Sexual Harassment by any aggrieved woman and to settle the matter.



'Aggrieved Woman' as per section 2(a) of the Act, shall mean in relation to workplace, a woman of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the Respondent.

'Respondent' as per section 2(m) of the Act, shall mean a person against whom the aggrieved woman has made a complaint under section 9 of the Act.

FUNCTIONS & POWERS OF INTERNAL COMPLAINTS COMMITTEE (ICC) CONTAINED UNDER SECTION 9 to 14 OF THE ACT, AND 6 TO 10 OF THE RULES.

MODALITIES FOR REDRESSAL OF COMPLAINTS

COMPLAINT: (Section 9 of the Act)

The woman employee or any aggrieved woman for that matter, may make, in writing, a complaint of sexual harassment at the workplace within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of the last incident to ICC of NICDC. The Internal Complaints Committee shall render all the reasonable assistance to the aggrieved women for making the complaints in writing. This time limit may further be extended for 3 months if the ICC is satisfied that there were circumstances that prevented the woman from filing a complaint within the specified timeline.

- A. Where the aggrieved woman is unable to make a complaint on account of her physical incapacity, a complaint may be filed by-
- i. her relative or friend;
 - ii. her co- worker;
 - iii. an officer of the National Commission for Women or State Women's Commission; or
 - iv. any person who has knowledge of the incident, with the written consent of the aggrieved woman.
- B. Where the aggrieved woman is unable to make a complaint on account of her mental incapacity, a complaint may be filed by-
- i. her relative or friend; or
 - ii. a special educator; or
 - iii. a qualified psychiatrist or psychologist; or
 - iv. the guardian or authority under whose care she is receiving treatment or care; or
 - v. any person who has knowledge of the incident jointly with her relative or friend or a special educator or qualified psychiatrist or psychologist, or guardian or authority under whose care she is receiving treatment or care;
- C. Where the aggrieved woman for any other reason is unable to make a complaint, a complaint may be filed by any person who has knowledge of the incident, with her written consent.
- D. Where the aggrieved woman is dead a complaint may be filed by any person who has knowledge of the incident, with the written consent of her legal heir



INQUIRY:

Conciliation: (as contained in section 10 of the Act)

Manner & Inquiry of the Complaint: (as contained in Section 9 to 14 of Act and Rule 7 & 10)

1. The Complainant shall submit 3 copies of complaints to ICC along with supporting documents and the names and addresses of the witnesses, if any.
2. The Presiding Officer of the ICC of immediately send one copy of the complaints to the respondent within 7 days of receipt of complaint.
3. The respondent shall file his reply along with his list of documents and the name and addresses of the witnesses, if any within 10 days of receipt of complaint copy from the ICC.
4. The Committee, (a minimum of three members including the Presiding Officer of ICC), in conducting the inquiry, while inquiring the complaint referred to it, will call upon both the parties separately, listen, look at proof (if any), verify documents produced by the parties, allow the parties to produce witnesses and to put forth their say. Both the parties during the course of enquiry shall be given an opportunity of being heard.
5. ICC shall have the right to terminate the inquiry proceedings or to give an ex- parte decision on the complaint, if the complainant or respondent fails, without sufficient cause, to present herself or himself for three consecutive hearings convened by the Presiding Officer. However, a written notice of 15 days shall be given in advance by ICC before terminating or giving exparte decision.
6. The Internal Complaints Committee (ICC) will protect the identity of all individuals involved during the process, identity and the address of the aggrieved woman, respondent, and witnesses and contents of complaints' and its enquiry proceedings, reports, recommendations etc., action taken by the Disciplinary Authority and all this information shall not be communicated or made known to the public, press and media in any manner. In case any person entrusted to protect the aforesaid information, contravenes it, the Disciplinary Authority shall recover Rs.5000/- as penalty from him/her.
7. None of the parties shall be allowed to bring in any legal practitioner to represent them in their case at any stage of the proceedings before the Complaints Committee.
8. At the end of the inquiry, the Committee shall prepare a report of findings on the complaint and provide a copy of such report to the Disciplinary Authority, aggrieved woman and the respondent within 10 days from the date of completion of enquiry.
9. In case the Internal Complaints Committee on conclusion of the enquiry finds that the allegation was malicious or has made the complaints knowing it to be false, and or has produced any forged / misleading document, it will recommend to the Disciplinary Authority to take such actions which are prescribed to be taken in case of allegation against the respondent has been proved under this policy against the woman who has made the



malicious complaint. In all such cases the malicious intent on the part of the woman must be established before any action is recommended. However, mere inability to substantiate a complaint or provide adequate proof need not attract action against complainant. Malicious intent on the part of complainant shall be established after an enquiry as per HR policy of the Company, as the case may be, before any action is recommended.

10. ICC generally shall complete the inquiry within a period of ninety days of receiving the complaint.
11. Upon completion of inquiry, ICC will submit its findings and report including recommendations to the Disciplinary Authority of the respondent within ten days.
12. The recommendations of the ICC is to be acted upon within 60 days of receipt of the same by the Disciplinary Authority.
13. Where there is a complaint of sexual harassment against an officer of the company, the Complaints Committee for inquiring into such complaints, shall be deemed to be the Inquiring Authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassments, the inquiry as far as practicable in accordance with the procedure.

RELIEF:

During the pendency of inquiry: (as contained in Section 12 of the Act and Rule 8)

On completion of inquiry: (section 13 to 15 of the Act)

- A. If the allegation has not been proved, ICC shall recommend to the Disciplinary Authority that no action is required to be taken in the matter.
- B. If the allegation against the respondent has been proved, the committee shall recommend to the Disciplinary Authority of the respondent: -
 - Actions in accordance with misconduct.
 - To deduct, notwithstanding anything in the service rules applicable, from the salary or wages of the respondent the such sum as it may consider appropriate to be paid to the aggrieved woman or her legal heir;
 - In case the respondent fails to pay the same, ICC may forward the order for recovery of sum as an arrear of land revenue to the concerned District Officer.



The ICC shall while determining the compensation which is to be paid to aggrieved woman, shall have regard to: -

- a. The mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
- b. The loss in the career opportunity due to the incident of sexual harassment;
- c. Medical expenses incurred by the victim for physical or psychiatric treatment
- d. The income and financial status of the respondent.
- e. Feasibility of such payment in lump sum or in instalments.
- f. Termination from Services or undergoing a Counselling session or to carry out community services.

DUTIES OF THE EMPLOYER UNDER THIS ACT (Section 19 of the Act and Rule 13)

The legislation also provides certain duties to Employer including providing safe working environment at the workplace, organizing workshops and awareness programme, assistance to the woman in filing a complaint in relation to the offence under Indian Penal Code etc.

WHETHER AMENABLE TO RTI ACT, 2005 (Section 16 & 17 of the Act and Rule 12)

Notwithstanding anything contained under RTI Act of 2005, the content of complaint made under section 9, the identity & address of the aggrieved women, respondent & witnesses; any information relating to conciliation & inquiry proceedings, recommendations of the ICC and the action taken by Disciplinary Authority under this Act shall not be published, communicated or made known to public, press & media in any manner. Information may be disseminated regarding the justice secure to any victim of sexual harassment under this Act without disclosing name, address & identity or any other particulars which may lead to identification of aggrieved women or witnesses.



Appeal against the recommendation of Internal Complaints Committee (ICC) constituted under the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013: (Section 18 of Act and Rule 11)

Any person aggrieved from the recommendations made by the ICC or non-implementation of such recommendation may prefer an appeal to the concerned Authority as specified under the PoSH Act, as the case may be, within a period of 90 days of the recommendation.

An appeal shall be preferred within ninety days from the date of communication of the recommendation appealed against. The appeal shall be addressed to the Disciplinary Authority and submitted to ICC whose order is appealed against. The ICC shall forward the appeal together with its comments and the records of the case to the Disciplinary Authority within 15 days. The Disciplinary Authority shall consider whether the findings are justified or whether the penalty is excessive or inadequate and pass appropriate orders within three months of the date of appeal. The Disciplinary Authority may pass order confirming, enhancing, reducing or setting aside the penalty or remitting the case to the Authority which imposed the penalty or to any other Authority with such direction as it may deem fit in the circumstances of the case.
