

**Prasar Bharati**  
**(India's Public Service Broadcaster)**  
**Prasar Bharati Secretariat**  
**Prasar Bharati house: Copernicus Marg,**  
**New Delhi: 110001**

F.No 7/2/2020-LC

Date: 30.04.2020

**Subject : Guidelines on Prevention, Prohibition and Redressal of Sexual Harassment of Women at Workplace.**

It has been observed that some cases related to complaints of sexual harassment have not been handled properly as per the provisions of the Prevention of Sexual Harassment (POSH) Act, 2013 and Rules formed thereafter. This has resulted in time overrun or remitting back the matter for further Inquiry Authority.

2. Accordingly, to facilitate the Internal Committees (ICs) as well as with a view to sensitize other stakeholders including regular employees, contractuales, casual assignees, outsourced manpower etc., Guidelines on Prevention, Prohibition and Redressal of sexual harassment of Women at Workplace have been prepared with the approval of CEO, Prasar Bharati. The same are annexed herewith at Annexure-I. These guidelines are compilation of relevant provisions from the POSH Act, DoPT instructions, CCS(CCA) Rules, CCS(Conduct) Rules and Expert Advise. It is mentioned here that these Guidelines are not intended as a substitute for reference to the Rules/ Instructions applicable on the subject matter.

3. Further, a format is also annexed (Annexure-II) for filing of complaint by the complainant as detailed under para 7 of Guidelines. For conducting investigation into the complaint, ICs may take care that Investigation Report is restricted to ascertaining the truth of the allegations by collecting the documentary evidences, as well as recording statements of any possible witnesses including complainant. If it becomes necessary to issue a charge sheet, the Disciplinary Authority will rely on the findings of ICs. Also while drawing charge sheet, the copy of Investigation Report, as far as practicable, may not be made a listed document, instead charge sheet may rely on contents of complaint and related matter.



(R.K. Vashishtha)  
Director (Admn.)

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COMPLAINT FORMAT

1. Name of Complainant:
2. Designation & Office details:
3. Location of incident:
4. Date of incident:
5. Time of incident:
6. Name(s) & identifying details of Respondent(s):
7. Description of the Incident:

(If complainant desires, a separate sheet may be attached indicating complete details of the incident happened)

8. Supporting documents, name and contact details of witnesses, if any:
9. Please tick any one or more of the following unwelcome acts or behavior (whether direct or by implication, namely)
  - (i) Physical contact & advances; or
  - (ii) A demand or request for sexual favour; or
  - (iii) Making sexually coloured remarks; or
  - (iv) Showing pornography; or
  - (v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

(Signature)

Name of the Complainant: .....  
Designation : .....  
Office Address: .....  
Contact Telephone No : .....  
E-mail ID : .....

# Prasar Bharati

## Guidelines on Prevention, Prohibition & Redressal of

### Sexual Harassment of Women at Workplace

Prasar Bharati is a Statutory Autonomous Body established under the Prasar Bharati Act 1990 and came into existence w.e.f. 23.11.1997. For creating general awareness on various aspects of prevention of sexual harassment of women at workplace in general and Prasar Bharati [as in after includes all the offices under its control] in particular, these Guidelines are circulated.

#### 2. Definitions with Reference to Prasar Bharati

For understanding contents of the guidelines, related important definitions, as contained in the Prevention of Sexual Harassment (POSH) Act, 2013 (hereinafter referred as 'the Act'), in Prasar Bharati perspective, are as follows:-

- A. **Employer:** The Chief Executive Officer (CEO) of the Organisation; or the Prasar Bharati Board as the case may be in general. But in relation to any establishment/office under Prasar Bharati, the Head of Department/ Office as the case may be. ADG (P)/ ADG(E) as the case may be will be the employer of her/ his zone/ region and will ensure that the obligations of employer are implemented.
- B. **Employee:** Regular/Part time/Contractual appointed or engaged as per organisation policies. It includes other staff appointed in various projects for fixed period of time. This also includes Guest Artist, Casual Assignees, Resource Persons, frequent visiting artist and part-time news readers etc. on special duty as per organisation's policy.
- C. **Vendor/Service Provider and Vendor Staff:** It refers to the individual or a company who extends the support to the organisation on commercial basis to manage functional and cross-functional activities of the organisation and have contractual agreement with it. This includes the company involved in security service of the organisation, building and construction activities, cable operators, internet service providers, horticulture services, housekeeping services and stations of organisation.
- D. **Outsider:** Outsiders is referred to as those who are visiting the Prasar Bharati and not covered in any one above point/category as defined by this policy document
- E. **Aggrieved Woman- Complainant:** The term complainant refers to:
  - i. A Woman Employee
  - ii. A Woman Visitor
  - iii. A Woman worker of a service provider irrespective of the status of Respondent, if the alleged incident is stated to have happened at Prasar Bharati as workplace, including transportation means such as

vehicle used for official work, outside production venue, and conference venue, etc, it is covered under this policy.

F. **Respondent** : The term respondent means any male member of the workplace or visitor to the workplace under Prasar Bharati.

- a. Where the respondent is a regular Employee of the organisation, action will be taken in terms of CCS(CCA) Rules 1965.
- b. Action against an artist will be taken in the light of conduct and discipline rules of the organisation/related policy.
- c. Where the respondent is engaged on Contract Employment, he will be dealt with in accordance with the terms of contract.
- d. Where the respondent is an Employee of another organisation, action will be taken through that Employer in terms of his service rules.
- e. Where the respondent is a representative of the contractor-service provider, action will be taken in terms of contract/agreement/conditions.
- f. Where the respondent is an outsider, action will be taken in terms of application of appropriate sections of the Indian Penal Code by filing F.I.R. etc.

### 3. **Sexual Harassment, Conduct and Discipline Provisions**

The Organisation has already adopted application of CCS (Conduct) Rules 1964 to its officers and staff. In terms of Rule 3(C) of these Rules, Sexual Harassment is prohibited, and any person, covered under these rules, violating this rule would be guilty of misconduct. The inquiry by the Internal Committee (IC) laid down under this policy will prevail over that laid down under Central Civil Services (Classification, Control and Appeal) Rules as provided under the provision of Rule 14(2) of the CCS(CCA) Rules-1965. The relevant Rule 3(C) is reproduced below:

#### ***Rule-3(C) of the CCS (Conduct rules) 1964:***

[3C. (1) Prohibition of sexual harassment of working women, - (1) No Government Servant shall indulge in any act of sexual harassment of any woman at any work place.

(2) Every Government servant who is in charge of a workplace take appropriate steps to prevent sexual harassment to any woman at the work place.

Explanation. – (1) For the purpose of this rule,-

- (a) “Sexual Harassment” includes any one or more of the following acts or behaviour (whether directly or by implication) namely:-
  - i. Physical contact and advances; or
  - ii. A demand or request for sexual favours; or
  - iii. Making sexually coloured remarks; or

- iv. Showing pornography; or
- v. Any other unwelcome physical, verbal, non-verbal conduct of a sexual nature.

(b) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:-

- i. Implied or explicit promise of preferential treatment in employment; or
- ii. Implied or explicit threat of detrimental treatment in employment; or
- iii. Implied or explicit threat about her present or future employment status; or
- iv. Interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- v. Humiliating treatment likely to affect her health or safety.

(c) "Workplace" includes,-

- i. Any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the Central Government;
- ii. Hospitals or nursing homes;
- iii. Any sports organisation, stadium, sports complex or competition or games venue, whether residential or not, used for training, sports or other activities relating thereto;
- iv. Any place visited by the Employee arising out of or during the course of employment including transportation provided by the Employer for undertaking such journey;
- v. A dwelling place or a house.]

4. For general and basic understanding of nature of conduct of sexual harassment - whether an act or conduct would amount to 'sexual harassment' is dependent on the specifics of the act and the circumstances. The following is an indicative/illustrative (not exhaustive) list of conduct, among others that may amount to sexual harassment:

(a) Indecent exposure, display of sexually offensive pictures, materials or graffiti;

(b) Physically blocking passages/walk ways or forcibly stop/not allow to go;

- (c) Physical assault/violence with sexual intent;
- (d) Coerced sexual intercourse including date rape;
- (e) Comments/unwelcome inquiries about a person's sex life, comment on personal appearance/physical features/age/sexual orientation or spreading rumours about a person's sexual behavior;
- (f) Unwelcome physical touch such as patting/pinching/stroking/kissing /hugging/fondling, or any kind of inappropriate touching on hand/leg/waist /shoulder or trying to unnecessary close proximity;
- (g) Sending/sharing sexist/unwelcome jokes/letters/messages/pictures/video clips either by electronic mail/mobiles/ or otherwise that may cause humiliation/embarrassment to the Complainant;
- (h) Making offensive gesticulations at the complainant or verbal abuse with sexual overtones;
- (i) Persistent unwelcome attention with sexual overtones or watching or stalking or contacting a person physically or virtually or unwanted touching/brushing against a complainant's body;
- (j) Physical contact/attempt when Complainant is under the influence of any drug/alcohol and she is not in situation to refuse or withhold consent to participate in any activity of sexual nature;
- (k) Implied or explicit promise of preferential treatment in employment by grant of promotion, local or foreign travel, favorable working conditions/assignments, or in education by giving a passing grade, granting of honors or scholarship, participation or engagement of the complainant in any of the Organisation's activities or the grant of benefits or payment of a stipend or allowance, etc.
- (l) Derogatory degrading remarks or innuendoes directed toward the members of one sex, or one's sexual orientation or used to describe a person.

## **5. Duties and Responsibilities of the Employer**

In addition to requiring an employer to setup an Internal Committee (IC) and ensure redressal of grievances of workplace harassment in a time bound manner, the Act casts certain other obligations upon an employer under chapter VI of the Act which are as follows :

(a) provide a safe working environment at the workplace with shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force;

(h) cause to initiate action, under the Indian Penal Code (45 of 1860) or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

## 6. Constitution of Internal Committee (IC)

The provisions relating to constitution of the IC is given in the Section 4, 5 and 6 of the Act. As per laid down provision, the IC shall not have less than three office bearers including the presiding Officer and an External Member. After amendment to the Act in the year 2016, the nomenclature is changed to Internal Committee (IC) from the Internal Complaints Committee (ICC). This enhances the Jurisdiction and Role of the Committee. The Committee is no longer complaint driven. Taking into consideration the broad segment from which complaints are coming and the Respondents, the Prasar Bharati has decided to broad base the Committee, when needed, including co-options of representative of the categories other than Employee. The Presiding officer shall be a woman at a senior level at workplace from amongst the employees. In case a senior level woman officer is not available, the presiding officer shall be nominated from other units. Even if senior level woman officer is not available then woman officer shall be nominated from any other workplace of the same employer or other department or organisation.

The employer for the purpose of constituting the IC, where office bearers may change as per provisions of Section 4 of the Act, shall do so by notifying an order in writing. The qualification and disqualification prescribed in the said section of the Act will be followed in appointing or removing an office bearer. **Not less than 50 percent of the Members would be Women.** The constitution of IC shall be as given below:

1	A Senior Woman/Officer	Presiding Officer
2	An External Member from amongst eligible NGO's, Association or Individual committed to the cause of women or having legal knowledge on the subject or familiar with the issues relating to sexual harassment.	External Member
3	Two Eligible Employees	Member

All members shall have term of three years. Employer may increase the membership of the IC under different category at any time in keeping with the needs of the Organisation in consultation with Presiding Officer of the IC.

Any IC member who is a Complainant, Witness, or Respondent in a complaint of sexual harassment shall not be a member of the inquiry committee to inquire into that complaint.

Any member of the IC charged with sexual harassment in a written complaint must step down as member of the IC while an inquiry committee is inquiring into that complaint. If the charge is proved the member will be removed.

## 7. **Procedure for Registering Complaints**

7.1. A complaint of sexual harassment may be filed:

- Within three months from the date of the incident.
- Within a period of three months from the date of the last incident, in case of a series of incidents.
- The Internal Committee may extend the period beyond three months
- Extension to be not exceeding three months.
- The reasons for extension to be recorded in writing by Internal Committee.
- The Committee to be satisfied of the circumstances warranting delay in filing the complaint.

7.2. A Complainant may call/send e-mail followed by submission of a formal paper complaint:

- In terms of Section 9 of the Act the complaint must be in writing.
- The IC may assist the oral complainant to file a written complaint. Presiding Officer or any other member of IC may also provide reasonable assistance to the complainant for making any complaint in writing.
- E-mail complaint to be authenticated and signed by the complainant. A complaint by representative to be authenticated/signed by the aggrieved woman.
- The committee shall nominate one of its office bearers to receive, acknowledge and record the complaint.
- In order to maintain confidentiality, preferably all complaints should be lodged with the recipient in IC's office OR CEO's office or Head of Department's office or Head of Office's office, who in turn shall send the same to the IC for further action. If the complaint is made through official seniors, the person to whom the complaint is made should bring it to the notice of the Presiding Officer/Receiving Officer at the earliest and in such cases, authentication of the complaint will follow as per above procedure .

7.3 Complaint by incapable person

- Physical – 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; or
  - ii. Her co-worker; or
  - 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;
- Mental – 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;
  
- 7.4 The complaint should preferably contain details of the sexual harassment including
  - a. Location;
  - b. Date;
  - c. Time of incidents cited in the complaint;
  - d. Names and identifying details of the respondent;
  - e. Supporting documents and names and contact details of the witnesses if any,
  
- 7.5 The immediate response on receiving a complaint must be
  - a. Acknowledge the receipt of the complaint
  - b. Offer legal and medical support
  - c. Apprise the complainant of her Rights and liabilities
  
- 7.6 Action on receipt of a complaint
  - a. After receiving and recording, the complaint shall be referred to the IC.
  - b. The Committee must first determine whether the complaint is of sexual harassment
  - c. As simple harassment at workplace is not in the jurisdiction of the IC.
  
- 7.7 Committee to exercise jurisdiction only on complaint of Sexual Harassment
  - a. Internal Committee may decide not to conduct an inquiry into a complaint, if it is not a complaint related to sexual harassment.
  - b. It shall record the reasons for the same.
  - c. Make them available to the complainant in writing under intimation to the Employer.
  - d. If the internal committee determines that investigation must be conducted, then notice shall be issued to the respondent within 07 working days of receipt of the complaint and 10 working days shall be given for submission of his reply ( along with list of witnesses & documents).
  
- 7.8 Before investigation
  - a. The Complainant shall be informed of her right to seek interim relief and the nature of relief available to her to be explained in the policy.
  - b. Option to seek remedy under IPC.

## 8. Reconciliation

In accordance with the provisions as contained in Section 10 of the Act , the IC shall apprise the complainant of her right to reconcile, if she so desires. No monetary consideration can be the basis of reconciliation. The relevant Section 10 is reproduced below.

- i. The Internal Committee or, as the case may be, the local committee, may, before initiating an enquiry under Section 11 and at the request of aggrieved woman take steps to settle the matter between her and the respondent through conciliation.  
Provided that no monetary settlement shall be made as a basis of conciliation.
- ii. Where a settlement has been arrived at under subsection (1), the Internal Committee or local committee, as the case may be shall record the statement so arrived and forward the same to employer or the district officer to take action on the specific recommendation.
- iii. The Internal Committee or the local committee, as the case may be, shall provide the copies of settlement as recorded under subsection (2) to the aggrieved woman and the respondent.
- iv. Where a settlement is arrived at under subsection (1), no further inquiry shall be conducted by internal committee or the local committee as the case may be.

The Committee may follow the following steps:

- a) Examine the complaint with a view to see whether it falls within the preview of the committee as a complaint of Sexual Harassment of Woman at workplace [re-examine]. It may be noted that harassment of a woman at workplace is different from Sexual Harassment.
- b) Before initiating the process of inquiry, the committee may invite the complainant for discussion.
- c) During the discussion the complainant may be apprised of her Right for Reconciliation.
- d) The complainant may be informed of the statutory provision that monetary consideration cannot be basis of Reconciliation.
- e) In order to avoid hassles of inquiry process and considering the Degree of Gravity of the incident if the complainant wishes to reconcile on certain conditions, the committee may facilitate the reconciliation process.
- f) The committee may invite the respondent for a meeting in the presence of the complainant.
- g) The terms and condition of reconciliation offered by the complainant may be brought to the notice of the respondent.
- h) The offer of the respondent for modification in the terms of the complainant may be discussed.
- i) A mutually agreed set of terms may be incorporated in a self-contained reconciliation document.
- j) A standard format of reconciliation is given in the annexure.

- k) If the terms of reconciliation are not agreed or are violated, action will be taken against violating party.
- l) A copy of the document may be placed on the record of the employer.
- m) Both the parties to sign the document and no further inquiry shall be conducted.
- n) Copies be sent to Employer, the Respondent and the Complainant separately and close the case.
- o) Violation of terms of the reconciliation documents restores the complaint for inquiry, if it is reported by the Complainant about that to IC, the Internal Committee shall proceed to hear the complainant in accordance with the procedure laid down here.

## **9. Steps in Conducting the Inquiry**

Section 11 of the Act states that in case of respondent being an employee, then the inquiry into the complaint should be made in accordance with the provisions of the service rules applicable; but in the Act, procedure of the inquiry is not delineated, hence Rule 14 of CCS (CCA) Rules, 1965 as far as practicable is followed. Accordingly the steps for conducting inquiry in case of allegation of sexual harassment as envisaged in DoPT , OM vide F.No: 11013/2/2014- Estt. (A-III) dated 16.07.2015 are reproduced as follows:

### **9.1. Need for investigation**

(a) The Committees may act on complaints of sexual harassment when they receive them directly or through administrative authorities etc, or when they take cognizance of the same suo-moto. As per Section 9(1) of the Act, the aggrieved woman or complainant is required to make a complaint within three months of the incident and in case there has been a series of incidents, three months of the last incident. The Complaints Committee may however extend the time limit for reasons to be recorded in writing, if it is satisfied that the circumstances were such which prevented the complainant from filing a complaint within the stipulated period.

(b) As mentioned above, the complaints of sexual harassment are required to be handled by Internal Committee (IC). On receipt of a complaint, facts of the allegation are required to be verified. This is called preliminary enquiry/fact finding enquiry or investigation. The IC conducts the investigation. They may then try to ascertain the truth of the allegations by collecting the documentary evidence as well as recording statements of any possible witnesses including the complainant. If it becomes necessary to issue a Charge Sheet, disciplinary authority relies on the investigation for drafting the imputations, as well as for evidence by which the charges are to be proved. Therefore, this is a very important part of the investigation.

### **(i) Dual Role**

- (a) In the light of the Proviso to the Rule 14 (2) mentioned above, the IC would normally be involved at two stages. The first stage is investigation already discussed in the preceding para. The second stage is when they act as Inquiring Authority. It is necessary that the two roles are clearly understood and the inquiry is conducted as far as practicable as per Rule 14 of CCS (CCA) Rules, 1965. Failure to observe the procedure may result in the inquiry getting vitiated.
- (b) As the IC also act as Inquiring Authority in terms of Rule 14(2) mentioned above, care has to be taken that at the investigation stage that impartiality is maintained. Any failure on this account may invite allegations of bias when conducting the inquiry and may result in the inquiry getting vitiated. As per the instructions, when allegations of bias are received against an Inquiring Authority, such Inquiring Authority is required to stay the inquiry till the Disciplinary Authority takes a decision on the allegations of bias. Further, if allegations of bias are established against one member of the Committee on this basis, that Committee may not be allowed to conduct the inquiry.
- (c) In view of the above, the Complaints Committee when investigating the allegations should make recommendations on whether there is a prima facie substance in the allegations which calls for conducting a formal inquiry. They should avoid making any judgemental recommendations or expressing views which may be construed to have prejudiced their views while conducting such inquiry.

### **(ii) Decision to issue Charge sheet and conducting Inquiry**

- (a) On receipt of the Investigation Report, the Disciplinary Authority should examine the report with a view to see as to whether a formal Charge Sheet needs to be issued to the Charged Officer. As per Rule 14(3), Charge Sheet is to be drawn by or on behalf of the Disciplinary Authority. In case the Disciplinary Authority decides on that course, the Charged Officer should be given an opportunity of replying to the Charge sheet. As per Rule 14(5), a decision on conducting the inquiry has to be taken after consideration of the reply of the charged officer.
- (b) If the Charged Officer admits the charges clearly and unconditionally, there will be no need for a formal inquiry against him and further action may be taken as per Rule 15 of the CCS (CCA) Rules.

### **(iii) The Inquiry-stages**

- (a) In case the Charged Officer denies the charges and his reply is not convincing, the Charge sheet along with his reply may be sent to the IC for formal inquiry, and documents mentioned in Rule 14 (6) will be forwarded to

the IC. As per Section 11 (3) of the Act, for the purpose of making an inquiry, the Complaints Committee shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:-

- i. summoning and enforcing the attendance of any person and examining him on oath;
- ii. requiring the discovery and production of documents; and
- iii. any other matter which may be prescribed.

The Section 11 (4) of the Act requires that the inquiry shall be completed within a period of ninety days.

- (b) The Disciplinary Authority shall also in terms of Rule 14(5) (c) appoint a Government servant as a Presenting Officer to present evidence on behalf of prosecution before the Complaints Committee/ Inquiring Authority. The listed documents are to be sent to the Presenting Officer. The Complaints Committee would, thereafter, summon the Presenting Officer and the Charged Officer. As a first step, the charged officer would be formally asked as to whether he admits the charges. As mentioned above, in case of any clear and unconditional admission of any Article of Charge, no inquiry would be held in respect of that Article and the admission of the Charged Officer would be taken on record. The inquiry would be held, thereafter, in respect of those charges which have not been admitted by the Charged Officer. The Charged Officer is also entitled to engage a Defence Assistant. The provisions relating to Defence Assistant are given in Rule 14(8).
- (c) The Inquiring Authority is, thereafter, required to ask the Presenting Officer to have the prosecution documents, listed in the Charge Sheet inspected by the Charged Officer. Copies of such documents, if not only given to the Charged Officer, would be handed over to him. The Charged Officer would, therefore, be required to submit a list of documents and witnesses which he wants to produce in support of his defense. The Inquiring Authority would consider allowing such documents or witnesses on the basis of their relevance. Normally, any document or witness which reasonably appears to be relevant and helpful in defense may be allowed. Once the documents have been allowed, the Inquiring Authority would send a requisition for these documents to the custodian of such documents.
- (d) When the regular hearing commences, the Inquiring Authority would ask the Presenting Officer to produce the documentary evidence. Such documents as are disputed by the Charged Officer have to be proved by the witnesses before they are taken on record. The undisputed documents would be taken on record and marked as exhibits.

#### **(iv) Examination of Witnesses**

- (a) Summons would, thereafter, be sent to the witnesses listed in the Charge sheet. The Presenting Officer may choose to produce them in any order he finds appropriate. These witnesses would be examined in the inquiry in the following manner. The examination in chief would be done by the Presenting Officer where the Presenting Officer may ask questions of the witness to ascertain the facts. The witness would, thereafter, be cross-examined by the Defense. After the cross-examination, the Presenting Officer would be given an opportunity to re-examine the witness. In the examination in chief, leading questions are not allowed. These are however allowed in the cross examination.
- (b) The procedure of Inquiry requires opportunity to the Charged Officer to cross-examine all the witnesses that appear on behalf of the Prosecution. Failure to do so may be construed as a denial of reasonable opportunity to the charged officer, resulting in vitiation of the Inquiry. If the complainant appears as a witness, she would also be examined and cross-examined. The Inquiring Authority may however disallow any questions which are offensive, indecent or annoying to the witnesses, including the complainant.
- (c) If Inquiring Authority wishes to ascertain some facts for clarity, Inquiring Authority may pose questions to the witnesses. This should however, be done in such a manner as to not show any bias for or against the Charged Officer. This has to be done in the presence of the Presenting Officer and the Charged Officer/Defence Assistant. No inquiry should be conducted behind the back of the charged officer. The witnesses will be examined one by one, and the other witness who are either yet to be examined, or have been examined are not allowed to be present during the examination of a witness.

#### **(v) Daily Order Sheet**

The Inquiring Authority would also maintain a document called Daily Order Sheet in all the main events of the inquiry and including requests/representations by the Charged Officer or the Presenting Officer, and decisions thereon would be recorded. For example (i) if the Charged Officer refuses to cross-examine the witnesses, this should be recorded in the Daily Order Sheet (ii) the Daily Order Sheet should record that the Charged Officer had been advised that he has the right to engage a Defense Assistant (iii) it should also be clearly mentioned that the Charged Officer was also informed as to who are eligible to assist him as Defense Assistant. (iv) the Daily Order Sheet should also record in case request of the Charged Officer for engaging a particular person as Defense Assistant is disallowed in the light of the existing instructions. Daily Order Sheet should be signed by the

Inquiring Authority, Presenting Officer and the Charged Officer/Defence Assistant.

**(vi) Defence Evidence**

- (a) After the prosecution evidence is over, the Charged Officer is required to submit his statement of defense. In this statement, the Charged Officer is required to briefly indicate his line of defense. After this, the Defense evidence will be taken. The evidence will be produced in the same order as the prosecution evidence. First, the documents allowed by the Inquiry Authority would be taken on record and then the witnesses called and their examination, cross-examination and re-examination done. The only difference here would be that the Examination in Chief would be done by defense while the cross-examination would be done by the prosecution. The defense would then have the opportunity of re-examining the witness.

**(vii) General Examination of the Charged Officer**

- (a) After the Defense evidence is over, the Inquiring Authority shall ask Charged Officer as to whether he wishes to appear as his own witness. In case he does so, he will be examined like any other defense witness. In case however, he declines to do so, the Inquiring Authority is required to generally question him. At this stage due care is required to be exercised that as per Rule 14( 18) the purpose of this stage is to apprise Charged Officer of the circumstances which appear to be against him. This is to enable the Charged Officer to explain them to the Inquiring Authority. Presenting Officer and the Defence Assistant do not take any part in the General Examination. Charged Officer may not be compelled to answer questions during examination by the Inquiring Authority.

**(viii) Brief**

- (a) After this, the Presenting Officer would be asked to submit his brief. A copy of this brief would be given to the Charged Officer. Both the Presenting Officer and the Charged Officer may be allowed reasonable time for submission of their brief.
- (b) The Inquiring Authority then writes the Inquiry Report in which the evidence in support of the charges and against them will be examined. The Report should be a speaking one clearly bringing out as to the evidence on the basis of which any particular conclusion has been reached. Based on this analysis, the Inquiring Authority will give its findings on the Articles as proved or not proved. In case any Article of charge is proved only partially, then the Inquiring Authority should record the extent to which that Article has been proved.

**(ix) Powers of the Committee to make recommendations**

- (a) Normally, the Inquiry Officer is not allowed to make any recommendations in his report. Here the function of the Complaints Committee acting as the Inquiring Authority differs. The Complaints Committee may however, make recommendations including what has been mentioned in para 2 above:
- (b) to grant such other relief to the aggrieved woman as may be prescribed; or
- (c) to deduct from the salary or wages of the charged officer such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs.

Any amount outstanding at the time of cessation of the services of the charged officer due to retirement, death or otherwise may be recovered from the terminal benefits payable to the officer or his heirs.

Such compensation will not amount to penalty under Rule 11 of CCS (CCA) Rules in terms of the Explanation (ix) to Rule 11 inserted vide Notification of even Number dated 19-I I-2014.

Committee may recommend action to be taken against complainant, if the allegation is malicious, or the complainant knows it to be false, or has produced any forged or misleading document.

The Committee may also recommend action against any witness if such witness has given false evidence or produced any forged or misleading document.

- (d) The Complaints Committee should also remember that as per the Section 16 of the Act, notwithstanding the RTI Act, 2005, information as regards identity and addresses of the aggrieved woman, respondent and witnesses, Inquiry proceedings, Recommendations of the Committee, shall not be published or communicated or made known to public, press or media in any manner. Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.
- (e) With the above stage, the inquiry would be formally over. The Inquiring Authority should prepare separate folders containing the documents mentioned in Rule 14(23(ii)).

**(x) Suspension**

- (a) A Government servant may also be placed under suspension before or after issue of a Charge Sheet where his continuance in office will prejudice the

investigation, for example if there is an apprehension that he may tamper with witnesses or documents. Suspension may also be resorted to where continuance of the Government servant in office will be against wider public interest such as there is a public scandal and it is necessary to place the Government servant under suspension to demonstrate the policy of the Government to deal strictly with officers involved in such scandals. It may be desirable to resort to suspension in case of misdemeanour involving acts of moral turpitude.

## **9.2 The Inquiry Report**

After the conclusion of the inquiry, the next step is preparation of the inquiry report. The IC shall prepare an inquiry report in terms of Rule 14(23)(i) of CCS(CCA) Rules thereby containing the charges; the defence of Respondent, assessment of the evidence and the finding on each article of charge, supported by reasons. Accordingly the relevant guidelines as provided in Training Module of ISTM ([www.istm.gov.in](http://www.istm.gov.in)) on drafting of inquiry report are reproduced as under:

The purpose of this Inquiry Report is to assist the disciplinary authority, by providing an impartial and professional assessment of the nature of sexual harassment, and the impact of the respondent's offending behaviour on the workplace, the risk of re-offending, and the interventions necessary to reduce that risk; and most importantly, it forms the basis for taking disciplinary/punitive action against the respondent. In simple words the inquiry report brings out correct facts of the case, after conducting an impartial and fair hearing inquiry, in accordance with the prescribed procedure. The report should clearly and in unambiguous language state the reasons for deciding in favour of the complainant or for refusing to grant her relief. Broadly speaking, the IC has to perform the following functions before recording the conclusion in the form of a Report:-

- i. To bring on record all documents in support of the charges and those permitted for the defence.
- ii. To record oral testimony of the complainant and the respondent/defence witnesses after subjecting them to cross-examination.
- iii. To examine the respondent after the evidence has been recorded, the purpose being to get clarifications from the respondent on the evidence against him.
- iv. To analyse the evidence recorded by him and make correct and proper assessment of the effect of total evidence on record.
- v. To write a reasoned report of inquiry giving pointed findings whether the charges are proved or not proved.

### **(i) Status of Inquiry Report**

As clarified by the Supreme Court in the case of Medha Kotwal Lele, the Committee constituted as a redressal mechanism for complaints of sexual harassment, will be deemed to be an inquiry authority for the purposes of CCS (CCA) Rules and the Report of the Committee shall be deemed to be an inquiry report under the CCS (CCA) Rules. The disciplinary authority will act on the report of the Committee against Sexual Harassment in accordance with the Rules.

### **(ii) Findings**

The Inquiry Report may come up with following three types of findings:-

- Charges are proved. In that case the Inquiry Report should contain action to be taken as per Service Rules of the respondent.
- Allegations not proved. In which case the matter may be closed concluding no further action required. If the allegations have not been proved, it does not mean that the sexual harassment did not occur, but that, there was not sufficient proof on record to prove a case of sexual harassment and IC may recommend steps to be taken by employer to create a gender friendly environment at the workplace and take corrective actions.
- Complaint is malicious. In which case the matter may be referred for taking action in accordance with the service rules. The Act provides that in case the complaint is found to be malicious, the action may be taken against the complainant (aggrieved woman) as per service Rules.

### **(iii) Format**

An Inquiry Report is an expression of the ultimate opinion of the committee, which is rendered after due consideration of evidence and arguments, advanced before the Committee. The inquiry report puts a final end to the controversy involved in the matter, so that the dispute brought before the Committee by the aggrieved woman is set at rest.

The recommended essentials are as under:-

- (a) **Title page**- The title page should at the outset identify the names of the parties, and the case which is being decided should be serial numbered. The date of the complaint should be mentioned at the top of the report, along with the relevant reference number, if any. This should be followed by the names of the IC members, their title, and designation.

The title page is important for it indicates as to which matter the inquiry report pertains to, and by whom it has been decided by/ which committee. The date of delivery of the Inquiry report to the parties should also be mentioned.

- (b) **Nature of allegation-** The report should begin with nature of allegation followed by a background information, and statements of both the aggrieved woman and respondent. In doing so, efforts of the Presiding Officer should be to note every relevant fact, but at the same time, there should be no repetition and unnecessary facts should be omitted.
- (c) **Respondent's defence-** The Respondent's defence may be noted in detail as made before the IC. No editing or modification should be made therein.
- (d) **Charges and points for determination-** The Presiding Officer may there after proceed to decide the charges, in the order they are framed. Findings should be recorded charge-wise. Arguments of each party should be discussed with reference to their evidence relevant to the charge in the question. The Presiding Officer should record his finding on each of the charges by supplying his own reasons and giving logic for his doing so and not just by accepting the case of one party or rejecting that of the other. Findings on each of the points should be recorded in such a manner that they remain cohesive and linked to each other.
- (e) **Reasons-** Findings recorded by the Presiding Officer on the charges, for or against any party should always be supported by clearly explained reasons. Every party has the right to know how, and for what reasons has the matter been decided, in favour of or against, either of the parties. Reasons are also necessary for the reason that during an appeal, the appellate court will be in position to appreciate the view point taken by the Committee in deciding the matter, the way it has done.

Giving reasons is considered integral part of the principles of natural justice. In fact, right to know the reasons of a decision is inherent in the right of appeal. A Presiding Officer ought not to merely decide a case just by saying "dismissed" or "allowed" without giving the reasons how as to how "she" (the IC is headed by a woman) came to that conclusion.

The Inquiry Report is the most important document which the Committee hands out to the seeker of justice, therefore, the reasons that it contains assume significance.

- (a) **Conclusion and recommendations for corrective action-** The operative part of the Inquiry Report comprises the conclusion and recommendations for corrective action as to whether sexual harassment occurred; along with the

supporting rationale for disciplinary action. Where disciplinary action or termination is warranted the Presiding Officer should ensure that the recommendation is appropriate, and reflects the seriousness of the offense, and is not reactionary.

- (b) **Disciplinary action recommended**- Once the inquiry is completed, the Committee has to determine what disciplinary action is recommended to be taken against the respondent. A balance has to be found to ensure that the aggrieved woman should not suffer any adverse consequences, and conversely, it should not be assumed that a finding of misconduct will always be sufficient to establish "cause" for termination. Each incident should be reviewed based on the related factors like, severity of the misconduct, employee's prior work history (progressive discipline), mitigating circumstances (ask the employee) etc.
- (c) **Penalty**-The IC in the Inquiry report can recommend penalties ranging from 'censure' to dismissal' as per Rule 11 of the CCS (CCA) Rules, 1965 'for good and sufficient reasons'.
- (d) **Signature**-The end of the Inquiry Report should have the signatures of the Presiding Officer and all the members of the Committee. Each person's typed written name should be in brackets along with designation and date of signing.

#### (iv) Time Frame

The Sexual Harassment Act of 2013 has a strict time frame of 90 days for completion of inquiry as provided in Section 11 (4) being well aware that undue delays and faulty disposal are not uncommon in government

### 10. Post Inquiry- Submission of Inquiry Report to the Employer

As per Section 13 of Act, on the completion of an inquiry under the Act, the Internal Committee is required to provide a report of its findings to the Disciplinary Authority of the respondent within a period of ten days from the date of completion of the inquiry.

In case the committee finds that the allegations have been proved, it shall recommend to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent.

### 11. Penalty

As it is mandatory to provide the Inquiry Report to both the complainant and respondent, the competent Disciplinary Authority ( as per Prasar Bharati regulations duly notified dated 19.11.2012 and subsequent notifications for disciplinary

proceedings) shall first take decision under Rule 15 of CCS(CCA)Rules 1965 for acceptance or otherwise of the inquiry report as the case may be. Thereafter on receipt of written representations from complainant as well as respondent shall take decision on imposition of penalty as per provision contained under Rule 11 of CCS(CCA)Rules 1965 for good and sufficient reasons.

**12. Where Sexual Harassment amounts to criminal offence**

Where the conduct of sexual harassment amounts to a specific offence under the Indian Penal Code (45 of 1860) or under any other law; it shall be the duty of the IC to immediately inform the complainant of her right to initiate action in accordance with law with the appropriate authority, and to give advice and guidance regarding the same.

She should be informed of her rights and the fact that any such action or proceedings initiated shall be in addition to proceedings initiated and /or any action taken under the Act by the IC.

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