



# HANDBOOK

On

## Sexual Harassment of Women at Workplace

(Prevention, Prohibition and Redressal) Act, 2013

for Employers / Institutions / Organisations/  
Internal Complaints Committee / Local Complaints Committee



Towards a new dawn

Government of India  
Ministry of Women and Child Development

NOVEMBER 2015

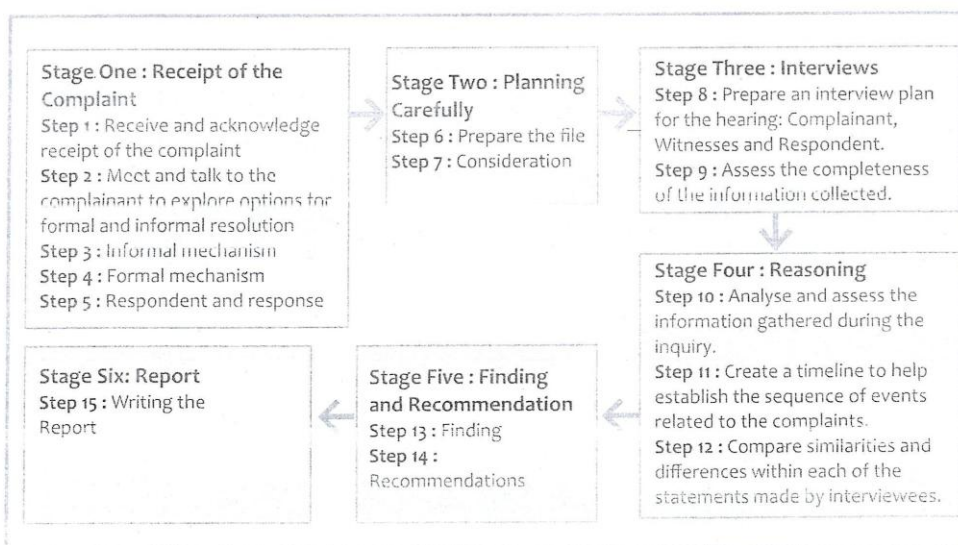


#### 4.2 HOW TO CONSIDER AND ADDRESS THE REDRESS PROCESS

During a redress process the Complaints Committee/s are required to assure confidentiality, non-retaliation and recommend interim measures as needed to conduct a fair inquiry.

#### 4.3 THE SEXUAL HARASSMENT COMPLAINT PROCESS

The Complaints Committee/s needs to have information on the six stages (including fifteen steps), detailed below, for addressing a complaint of workplace sexual harassment.



#### STAGE ONE: RECEIPT OF THE COMPLAINT

A fair, prompt, and impartial inquiry process starts with a Complaints Committee capable of creating an environment of trust and confidence throughout the inquiry.

##### **Step 1 : Receive and Acknowledge Receipt of the Complaint**

The complainant submits a sexual harassment complaint in writing within three months of the last alleged incident to the Complaints Committee or any other person designated by the organization/ District Officer (i.e. Nodal Officer) to receive and manage complaints of sexual harassment.

#### Training and Skill Building : An Institutional Responsibility

It is important that both the Committee and any other person designated by the organization/ District Officer to receive or otherwise handle a sexual harassment complaint has there quired competency and skill building training for managing a complaint and/or any concern related to workplace sexual harassment.

Upon receipt, the complaint should be reviewed for:

1. In the context of workplace that the sexual harassment complaint is to be met with under the Act, such as, Service Rules, Workplace Policy, Vishaka Guidelines and related laws.
2. Clarity in the complaint.
3. Additional information needed from the complainant.

The complainant will be notified in writing to acknowledge receipt.

#### Elements of the Behaviour

The complaint needs to satisfy the following elements:

- |  |   |  |  |
|--|---|--|--|
| <b>1</b> The respondent displayed a potentially improper and/or offensive conduct which may come within workplace sexual harassment; | <b>2</b> The behaviour was directed at the complainant; | <b>3</b> The complainant experienced harm. | <b>4</b> The behavior occurred in the workplace or at any location/any event related to work |
|--|---|--|--|

#### Step 2: Meet and Talk to the Complainant to Explore Options for Formal and Informal Resolution

The complainant needs to be informed about the ensuing process and the informal or formal options available for the redress.

#### Step 3: Informal Mechanism

If the complainant chooses to adopt the informal process to resolve her complaint/experience of workplace sexual harassment, then it is the responsibility of the person designated to receive and manage the Complaints Committee to explore enabling ways to address the complaint. This can include counselling, educating, orienting, or warning the respondent to promptly stop the unwelcome behaviour or appointing a neutral person to act as a conciliator between the parties to resolve the complaint through conciliation.

However, before recommending conciliation, the Committee must assess the severity of the situation and if necessary, advise and enable the complainant to opt for the formal route. At no point, the Complaints Committee will advise the complainant to resolve the matter directly with the respondent. Where such an informal process is successful, such resolution is to be recorded by the conciliator and forwarded to the ICC/LCC who in turn will forward the same to the employer/District Officer for further action based on the resolution. Employers/District Officers are responsible for taking steps to ensure that the complainant is not subject to any backlash.

The choice of a formal process rests with the complainant even if the person responsible for managing the complaint believes that this can be resolved through an informal process.

#### Step 4: Formal Mechanism

1. If the complainant opts for formal redress, or the nature of the complaint is serious which calls for formal redress, then the Complaints Committee responds to the complaint.



2. Complaints Committee/s members must be free of any conflict of interest with either the concerned parties or with the outcome.
3. Ensure that the independent third party member has sound knowledge, skill, and experience in dealing with workplace sexual harassment complaints.

#### Step 5: Respondent and Response

1. As per the procedure provided in the Service Rule; or in absence of the same
2. Within seven days of receiving a complaint, the Complaints Committee will inform the respondent in writing that a complaint has been received.
3. The respondent will have an opportunity to respond to the complaint in writing within ten days thereafter.

### STAGE TWO: PLANNING CAREFULLY

#### Step 6: Prepare the File

A sound inquiry relies on sound preparation. This includes taking into account the following steps:

##### 1. Documentation

Create an independent confidential file of the complaint and all subsequent related documentation.

##### 2. Review Law & Policy

Have a clear knowledge and understanding of the Act/Rules as well as the relevant Service Rules, Workplace Policy, Vishaka Guidelines, existing practices and related laws.

##### 3. Make a List

Make a list of all the dates and events relating to the written complaint as well as the names of witnesses, where applicable.

#### Relevant Witnesses

The complaint may include the names of people believed to have witnessed the alleged incidents or those who may have been aware of other information directly related to the complaint. The respondent may also include the names of witnesses. In addition, the Complaints Committee also has the discretion to call any person as a witness, who it believes, has something to contribute to the inquiry process.

##### 4. Supporting Documents

Obtain and review all supporting documents relevant to the complaint, including those presented by the complainant and the respondent.



**5. Act Quickly**

Create a plan. This can be used as an initial checklist to ensure that all of the critical elements are covered. It includes:

- a. The names of the parties and witnesses to be interviewed
- b. Any documentary support that needs to be examined
- c. Timeline

**Preparing the Plan - Key Elements to Consider**

**1. Defining the Issues**

What is the complaint

Questions or points that require clarification

**2. Determining a violation of the Policy/Act**

What information is needed to determine that there has been a violation

**3. Logistics**

Venue for conducting the interviews. Are special logistics required

Creating timelines for each

**4. Critical Information**

What documents need to be looked at

Witnesses to be questioned and in what order

**5. Areas of Questioning**

Questions for each specific incident and party/witness

Questions for each particular issue

Issues likely to require follow-up

**Step 7: Consideration**

**1. Interim Measures**

While a complaint is pending inquiry, a complainant can make a written request for her transfer or the transfer of the respondent, or for leave (upto 3 months). She can also request the Complaints Committee to restrain the respondent from reporting on her work performance or writing her confidential report or supervising her academic activities (in case she is in educational institution). Even in the absence of such a request, the Complaints Committee must take corrective action. It is essential to take these actions in order to prevent potential *ongoing sexual harassment*.

## 2. Support

Maintain clear, timely communication with the parties throughout the process. Provide complainants with any specific assistance they may require, such as counselling, addressing health-related concerns or sanctioning of leave.

## STAGE THREE: INTERVIEWS

### Step 8: Prepare an Interview Plan for the Hearing: Complainant, Witnesses, Respondent

1. Based on the results of the previous steps and before conducting interviews, the Complaints Committee should decide which issues need to be pursued for questioning.
2. Interviews are meant to obtain information that is relevant to the complaint from individuals.
3. Interviews should be conducted with each person *separately and in confidence*. The complainant and the respondent should not be brought face to face with each other.

### Interviewing Tips

#### 1. Introduction

Questioning the parties and witnesses in a situation of workplace sexual harassment is a sensitive task. The Complaints Committee must therefore proceed with empathy, while appreciating at times, a different version of the facts.

#### 2. Questioning

Determine beforehand the following:

- Date, time, place and order of interviews
- Questions and their order
- Time for each interview

Generally rely on questions related to **who, what, where, when** and **how**. Remember:

- Questions ought to be clear and focused.
- Obtain as much information as possible through the interview.
- Do not share information gathered from other sources.

#### 3. Choose an Appropriate Location

To create trust, comfort and openness

#### 4. Explain the Interview Process

Explain how the interview will be conducted and what is expected

#### 5. Records of the Interview

Take notes and explain the need for a proper record

#### 6. Manage the Interview

The Chairperson of the Complaints Committee is responsible for ensuring the interviews are correctly carried out and due process followed

#### 7. Sign Statements

At the conclusion of the interview, have those interviewed, sign and date statements made and recorded before the Complaints Committee

**Step 9: Assess the Completeness of the information Collected**

At this stage, the Complaints Committee should review the information gathered and their factual relevance to each aspect of the complaint. This will help determine whether there is enough information to make a finding on the complaint.

**STAGE FOUR: REASONING**

**Step 10:** Once the information and review is complete, the Complaints Committee will make its reasoned finding(s), which involves having to:-

- Identify the substance of each aspect of the complaint.
- Determine, whether or not, on a balance of probability, the unwelcome sexual harassment took place.
- Check that such behaviour/conduct falls within the definition of sexual harassment set out in the relevant Act/Rules, Policy, Service Rules or law.
- Comment on any underlying factor(s) that may have contributed to the incident.

**Step 11:** Create a timeline to help establish the sequence of events related to the complaint.

**Step 12:** Compare similarities and differences within each of the statements made by the interviewees.

**STAGE FIVE: FINDING AND RECOMMENDATION**

**Step 13: Finding**

Based on the above, the Complaints Committee must arrive at a finding of whether the complaint is upheld, not upheld or inconclusive.

Provided, where both the parties are employees, before finalising the findings, the ICC/LCC shall share its finding with both the parties and provide them an opportunity to make representation against it before the Committee.

**Step 14: Recommendations**

Based on its findings, the Complaints Committee shall then make appropriate recommendations which may include:

1. Where the Complaints Committee is unable to uphold the complaint, it shall recommend no action.
2. Where the Complaints Committee upholds the Complaint, it may recommend such action as stated within the relevant Policy or Service Rules, which may include a warning to terminate.

In case service rules do not exist, recommended action may include:

- Disciplinary action, including a written apology, reprimand, warning, censure;
- Withholding promotion/ pay raise/ increment;
- Termination;
- Counselling;
- Community service.

3. The Complaints Committee may also recommend financial damages to the complainant, while deciding the amount they shall take into consideration:

- Mental trauma, pain, suffering and emotional distress caused;
- Medical expenses incurred;
- Loss of career opportunity;
- Income and financial status of the respondent.

If the amount is not paid it can be recovered as an arrear of land revenue.

4. The Complaints Committee can also give additional recommendations to address the underlying factors contributing to sexual harassment at the workplace.

#### STAGE SIX: REPORT

##### **Step 15: Writing the Report**

The Complaints Committee will prepare a final report that contains the following elements:

- A description of the different aspects of the complaint;
- A description of the process followed;
- A description of the background information and documents that support or refute each aspect of the complaint;
- An analysis of the information obtained;
- Findings as stated above;
- Recommendations.

An inquiry must be completed within 90 days and a final report submitted to the Employer or District Officer (as the case may be) within ten days thereafter. Such report will also be made available to the concerned parties. The Employer or District Officer is obliged to act on the **recommendations within 60 days**. Any person not satisfied with the findings or recommendations of the Complaints Committee or non-implementation of the recommendations, may appeal in an appropriate court or tribunal, as prescribed under the Service Rules or where no such service rules exist, in such manner as may be prescribed.





Given that most workspaces today are gender unequal and male-dominated, it is important that complaints by women be treated fairly and not dismissed. The mere inability to substantiate a complaint or provide adequate proof will not attract legal action against the complainant. However, making a false or malicious complaint or producing a forged or misleading document is an offence.

#### 4.9 AT A GLANCE

##### 1) Complaints Committee's Checklist

- Review the written complaints and response to complaints
- Review the applicable policy, the Act/Rules, Vishaka Guidelines and other relevant laws
- Develop a plan
  - Meet with the complainant
- Meet with the respondent
- Meet with the witnesses
- Record statements and have them dated and signed
- Review and adapt the plan, as needed
- Proceed with further interviews, as needed
- Analyze all the facts to develop reasoning
- Arrive at the findings
- Give recommendations
- Prepare the report
- Submit the file to the organization or District Officer for implementation of the recommendations and for safe keeping.

