

Preface

The Maharashtra State Commission for Women was established under the Maharashtra State Commission for Women Act 1993. The Commission was set up to address the grievances of aggrieved women and to effectively monitor and implement laws affecting women, as well as to advise the government on all matters related to improving the status and dignity of women in society.

India is a democratic country. Under Article 21 of the Indian Constitution, all citizens have the fundamental right to live with dignity. In the 21st century, a large number of women are stepping out of their homes for livelihoods, and there is a need to provide them with a safe and positive work environment. Women should be treated with equality and there should be no gender discrimination at the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 was enacted to address sexual harassment of women at the workplace. As per Section 5 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, in every district the Sub-Divisional Magistrate or the Additional District Magistrate or the Deputy Collector has been designated as the District Officer for implementation and compliance of this law. All establishments having 10 or more employees have been instructed through a government resolution by Women and Child Development to constitute an Internal Complaints Committee in their establishment. Its purpose is to prevent sexual harassment and it also provides redressal in case of violation.

Sexual harassment includes such unwelcome sexually determined behavior (whether directly or by implication) as:

1. Physical contact and advances
2. Demand or request for sexual favors
3. Sexually coloured remarks
4. Showing pornography
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

To commemorate International Women's Day, guidelines for Internal Complaints Committee members have been unveiled. These guidelines for Internal Complaints Committee members as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 are being made available on the website of the State Commission for Women for information of all concerned. Inputs were taken from Smt. Anagha Sarpotdar (Ph.D., POSH and Chairperson of ICC for Mumbai City District).

An analysis of the judgments cited by the Honorable High Court shows that all courts and the High Court have laid down the following main principles regarding the constitution and functioning of Internal Complaints Committees:

1. Members of the Internal Complaints Committee should be impartial. That is, they should not have any personal information or bias regarding the case.
2. Members of the Internal Complaints Committee should not have any conflict/dispute/rivalry with the parties in the case.
3. Complete impartiality must be maintained during the proceedings.
4. Objectivity must be maintained during the proceedings.
5. No prejudice or bias should occur against any party under any circumstances.
6. Members of the Internal Committee must have evidence that they are above reproach. The members should be above reproach.
7. The Internal Committee needs independent members to assist, advise and cooperate in order to maintain justice and transparency in the proceedings. Such an independent person should be from outside the organization and for example, if the complainant and respondent are bank employees, should not be a lawyer on the bank's panel.
8. The Internal Committee should not be subject to any undue influence or pressure from senior officials.
9. In cases where the person in a senior position is the respondent themselves, the members of the Internal Committee working under them should not be their choice/persons they prefer.
10. The Internal Committee must follow clear and precise procedures to handle complaints of sexual harassment.
11. Principles of natural justice must be very strictly followed.
12. The aggrieved person should feel confidence, assurance and tranquility in the overall process during the inquiry.
13. The principles and guidelines laid down by the Supreme Court in Vishakha case should continue to guide the constitution of these Committees, even after the

enactment of the statute. These principles must be very strictly followed not just as a remedy.

14. A woman who shows the courage to speak against sexual violence perpetrated against her is inherently a fighter. She should not be merely an object of sympathy or compassion but a woman who is standing up against injustice done to her.
15. The judicial process should reinforce the confidence in courts

An old saying "Justice must not only be done, but seen to be done".

Rashi v. Union of India 2020, Delhi High Court, in W.P. (C)3396/2019

Points 11, 12, 13, 14 and 15 under Guidelines for Internal Committee elaborate the following guiding principles for the Internal Committee.

Key principles to be followed by the Internal Committee:

1. Recognize the importance of promptly and sensitively receiving all complaints .
2. Sensitively and responsibly discharge the duty entrusted.
3. Work towards preventing misconduct.

Necessary qualities in a member of the Internal Committee:

1. Easy availability and access: Members must be readily available as and when required and easy to contact.
2. Empathy: Members need to consider the complainant's perspective with empathy and not judge them by their own standards. Understanding the complaint is paramount.
3. Gender sensitivity: Members must exercise gender sensitivity and take complaints of abuse and intimidation seriously.
4. Insight: Members must recognize that for a person, talking about/discussing their abuse can be extremely difficult. Hence there may be a time lag between the actual abuse and the related complaint.
5. Commitment: Member must devote adequate time to competently fulfill their responsibilities as a Committee member.

Things members of Internal Committee should keep in mind:

1. You have the duty entrusted to you to ensure implementation of the anti-sexual harassment policy to provide a safe and secure work environment for women, free from sexual harassment and discrimination.
2. Recognize that sexual harassment can have a devastating effect on the health, confidence, morale and performance of the person who experiences it.
3. The anxiety and stress created by sexual harassment often results in the victim taking medical leave, poor work performance, or leaving the job to look for another one.
4. Understand the reasons why instances of sexual harassment often go unreported. Lack of complaints does not necessarily mean that sexual harassment is not happening at all. It could mean that the targets of sexual harassment feel that there is no point in filing a complaint because:
 - a. Nothing much would come out of it

- b. It would be considered too trivial/minor
 - c. They would only be victimized further
 - d. Fear of retaliation or vengeance
- 5. Recognize the tangible and intangible losses to the company and the costs incurred to be paid by overlooking such instances:
 - a. Huge expenses towards investigation and litigation
 - b. Negative publicity and reputation
 - c. Embarrassing situation of having to dismiss staff
 - d. Increased absenteeism
 - e. Lowered morale of employees
 - f. Impact on productivity/lower output
 - g. Drop in efficiency

Do's and Don'ts for Internal Committee:

Do:

1. Create awareness among people/employees about the constitution of the Internal Committee and its mandate.
2. Each member must be assured that their body language conveys their complete attention towards both complainant and respondent.
3. Avoid any preconceived notions about how a complainant or respondent should look or behave.
4. Recognize that sexual offenses often take place in private and corroborating witnesses may not be immediately available or even surface in the near future.
5. Understand that out of many, only one or a few may face sexual harassment.
6. When complainants complain, their personal lives and careers are at stake.

7. Consult with the complainant for interim recommendations.
8. Ensure the safety and security of the complainant's witnesses, family, and support system.
9. Help the complainant regain their confidence. Inform them of support services available to assist them.
10. Understand that it may be very difficult for an individual to talk about or discuss the sexual harassment they faced or anything related to it. Hence, there may be some time gap between the actual harassment and the filing of a complaint about it.
11. Handle complaints confidentially and dispose them within the stipulated time.
12. Follow up with management to take cognizance of the orders passed by the committee.
13. Understand your exact role in preventing sexual harassment and coordinate with the HR/Human Resources department on initiatives to curb it.

Don't:

1. Do not guide the complainant to make any particular statement or prompt them to say something.
2. Do not interrupt or allow anyone else to interrupt when speaking to the complainant or respondent. Avoid any other form of distraction.
3. Do not speculate on the impact of the harassment on the complainant.
4. Do not get aggressive or defensive at any point.
5. Do not discuss the complaint in the presence of the complainant or respondent.
6. Do not overemphasize on motive over facts and circumstances.
7. Circumstantial evidence is sufficient.
8. Focus should be on impact of sexual harassment rather than intent.

General rules to be followed during inquiry:

1. Listen to the allegations calmly. Do not be reactive. Just respond.
2. Contact the complainant.
3. Identify the complainant's fears and apprehensions and make a note.
4. Explain to both complainant and respondent the mandate and process to be followed by the Internal Complaints Committee.
5. Recognize that coming forward with a complaint of abuse is difficult in itself.
6. Just gather facts; Avoid drawing conclusions/taking sides.
7. Investigate and examine promptly. Delayed investigation can make testimony less credible.
8. Handle all representations with seriousness.
9. Keep investigation confidential. Assure parties that whatever is discussed will remain between those who absolutely need to know.
10. Limit the number of people with access to sensitive information. Communicate strictly on a "need to know" basis and provide information only to those who absolutely need it.
11. In case of multiple complaints against one person, treat each complaint separately.

Key points for the Internal Complaints Committee:

The Committee will -

1. Be sensitive regarding sexual harassment which is confidential, private and insidious in nature.
2. Recognize that often the complainant may not be able to provide direct or corroborative evidence.
3. Not allow any evidence or examination based on the character, personal life, general conduct, personal and sexual history of the complainant.

4. While evaluating evidence, consider the related social-economic circumstances individuals, the hierarchy of their positions at the workplace, employer equations and other relevant power differences.
5. Not permit any questions to the victim by the respondent that are irrelevant or condemnatory in nature.

When dealing with complaints of sexual harassment, never make the statements:

1. It's just teasing - there's nothing much in it.
2. Our employees would never do something like this.
3. I know his/her behavior didn't mean anything like that / he/she didn't intend way.
4. It's your own fault for wearing such provocative clothes that draw attention.
5. You need to learn how to handle these things, it's not a big deal.
6. He/she touches everyone's shoulder like that.
7. You must have wanted it, otherwise you would have said no.
8. Can't you take a compliment?
9. It was actually a joke that went wrong.
10. His/her flirting got misunderstood.
11. We've never had such a complaint before, so we don't think there is any issue.
12. Everyone knows he/she is so proper in conduct, there is no way he/she could harass anyone.
13. He/she has such a good reputation, it's just not possible.
14. You're making too much out of this. It's not that serious.

Questions to ask the complainant:

1. Who, what, when, where and how? Were there any witnesses to the sequence of events? Get the complete chronology/facts
2. What exactly happened or was said? When did this occur and has it happened again? Where did it happen? How many times has it happened? How has it affected you?
3. What was your response? How did you respond when the incident(s) took place or after it?
4. Did any particular event/incident/situation trigger the harassment?
5. How has the harassment impacted you? Has it affected your work in any way?
6. Is there anyone else who has information about this incident? Were there any witnesses when the harassment took place? Have you told anyone about this harassment? Did anyone chance upon you/meet you immediately after the incident(s) of harassment?
7. Apart from you, is the harasser known to have subjected any others to similar harassment? Are you aware if anyone else has filed a complaint against this person?
8. Do you have any recording/notes, corroborative evidence or any other papers relating to the incident?
9. How would you want the situation to be remedied?
10. Do you have any other information to provide/anything else you would like to share on this?

Questions to ask the respondent:

1. What do you have to say in response to the complaint?
2. How was your interaction with the complainant?

If the respondent has supervisory authority, note their position, get an overview of the nature of their job and identify the duties they are primarily responsible for.

Find out if the respondent has ever instructed/guided the complainant or other employees on work or had any supervisory responsibility over the complainant's or other employees' work, if they have had any authority to recommend employment related decisions directly

impacting others like transfers or promotions etc. or if they only maintain records/monitor others.

Had the complainant and respondent previously had any consensual relationship? How long and from when they have known each other? Did they socialize outside of work in individual or group settings? Their relationship at the workplace like communicating with each other, seating positions, spaces they regularly occupied at work etc.

- If the respondent states that the complainant has made a false complaint, ask why the complainant would file a false case against them.
- Is there anyone else who has information about this incident?
- Do you have any recording/notes, corroborative evidence or any other papers relating to this incident?
- Do you have any other information to provide/anything else you would like to share on this?

Questions to ask a witness:

1. What did you see or hear? When exactly did this happen? Describe the respondent's interaction with complainant and others at the workplace.
2. What exactly has the complainant told you? When did they tell you this?
3. Do you have any other information in this regard?
4. Are there any other individuals who would have information about this case?

Key elements for preparing investigation report:

This report is a detailed analysis of the events and not just a formality. Note that if and when there is a dispute about what transpired, the court will closely examine this report.

Bear in mind that you are testing the plausibility of the alleged incident and circumstances based on the facts at hand.

The report will primarily contain:

1. Your conclusions and the rationale for coming to them.
2. Your analysis should be evidence-based. Substantiate your findings, information discovered, conclusions and recommendations with reference to workplace sexual harassment and by citing any research studies, surveys, articles in periodicals/journals, manuals, precedent cases and other relevant sources.
3. Ensure that anyone reading the report is able to follow the sequence of events coherently and logically. Do not base your conclusions on assumptions or speculations.
4. The report should be clear, unambiguous and not suggestive. It should categorically state whether sexual misconduct has occurred or not, and clearly spell out other issues in accordance with company policy.
5. The report should convey your own reasoned judgement regarding the appropriate conclusion you have arrived at.
6. Avoid getting into too much technical detail in the report. Analyze based on the circumstances and facts of the case.
7. In case there are any inconsistencies in the evidence, assess their implications rather than solely focusing on the contradictions, because even accounts of highly credible witnesses may have some inconsistencies, primarily owing to differences in people's ability to perceive events. Recall them sequentially and articulate the details.

Guidance Note for Members of Internal Committee

1. Duties of Members of Internal Committee

The members of the Internal Committee constituted by the Company/Establishment need to analyze and evaluate the facts and circumstances of each case to understand whether the impugned behavior amounts to 'sexual harassment' or not.

As part of the Internal Committee, your duties and responsibilities will include, among other things:

1. Receiving complaints of sexual harassment, registering and maintaining records thereof;
2. Providing assistance to the complainant so as to enable them to make a complaint in writing;
3. Taking steps to resolve the matter through conciliation, or conducting an inquiry and completing the investigation in accordance with principles of natural justice and law within the stipulated timeline;
4. If the matter is resolved through conciliation, recording the resolution and sending copies to the complainant, respondent and management;
5. If inquiry is conducted, documenting the inquiry proceedings and conclusions thereof, preparing the inquiry report and submitting it to the appropriate disciplinary authority within 10 days of completing the inquiry;
6. Recommending appropriate disciplinary action, in line with the Company's/Establishment's policies and applicable laws, if required;
7. Recommending interim reliefs within the contours of law, if requested by complainant during pendency of inquiry;
8. Identifying cases that appear to be false or malicious complaints and informing the Company/Establishment thereof;
9. Preparing annual reports in the prescribed format for each calendar year and submitting the same to the Company/Establishment and district officer as required under law;
10. Being aware of laws relating to sexual harassment including The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act") and Indian Penal Code, 1860 ("IPC") though not restricted to just these two laws;
11. Keeping up-to-date about the Company's/Establishment's policies regarding prevention of sexual harassment of women at the workplace;
12. Attending regular meetings of the Internal Committee; and
13. Participating actively in training and capacity building programs regarding the issue of sexual harassment organized by the Company/Establishment.

2. Complaint, Conciliation & Inquiry Proceedings

A. Complaint Mechanism

- a) The complainant needs to make the complaint in writing or via email. For incidents, complaint to be made within 3 months of date of incident and in case of series of incidents, within a period of 3 months from date of last incident.
- b) The complainant should provide supporting documents and names and addresses of witnesses along with the complaint.
- c) If the Internal Committee is satisfied that the circumstances were such that the complainant could not make the complaint within the prescribed period of 3 months, it may extend the timeline for filing the complaint in writing, recording reasons thereof.

B. Conciliation/Mediation

The Internal Committee may first attempt to resolve the matter through conciliation, before initiating inquiry proceedings at the request of complainant. However, no monetary settlement shall be made as a basis of conciliation.

Where a settlement has been arrived by way of mutual agreement, the settlement will be recorded by the Internal Committee and copies sent to the complainant, respondent and management.

Once the matter is resolved by conciliation, no further inquiry shall be conducted by the Internal Committee. However, if the respondent fails to comply with any terms or conditions of the settlement agreement, the Internal Committee shall proceed to make an inquiry into the complaint.

C. Inquiry

- a) On receipt of complaint, the Internal Committee shall send 1 copy to the respondent within 7 working days.
- b) Respondent needs to file reply to the complaint along with list of documents, names and addresses of witnesses within 10 working days from the date of receipt of the complaint.
- c) The Internal Committee needs to complete the inquiry as per principles of natural justice and provisions of law.
- d) The Internal Committee will provide opportunity to both parties to represent their case along with witnesses and evidence during the inquiry proceedings. A copy of the findings of the Internal Committee will be made available to both complainant and respondent during inquiry proceedings, so that they have an opportunity to make a representation on the findings to the Committee.
- e) In case complainant or respondent fails to appear for 3 consecutive hearings convened by the Presiding Officer, without sufficient cause, the Internal Committee shall have the right to terminate the inquiry proceedings or give an ex-parte decision. The Internal Committee shall

give 15 days' notice to the concerned party, before terminating the inquiry proceedings or passing an ex-parte order.

f) The Internal Committee reserves the right to disallow lawyers representing parties during proceedings before it.

g) The Internal Committee needs to complete the inquiry within a period of 90 days from receipt of complaint.

h) Within 10 days of completion of inquiry, the Internal Committee shall provide its final report to the "Management", complainant and respondent. The Internal Committee's report of inquiry shall contain, among other things:

- Analysis of the case and conclusions of the Internal Committee; and
- Recommendations for action to be taken against the respondent, if any.

3. Interim relief:

During investigation or pendency of the inquiry, the Internal Committee, under its own authority or otherwise at the request of the complainant, may recommend the following actions to the company's/establishment's official "as deemed fit":

- Transfer of the complainant or the respondent to any other workplace, department or branch;
- Grant leave of up to 3 months to the complainant in sexual harassment cases of aggravated nature;
- Restrain the respondent from reporting on complainant's work performance or writing her confidential report, and assigning the same to another officer; and/or
- Granting any other relief to the complainant as may be prescribed.

4. Punitive consequences:

Where the Internal Committee arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the company's/establishment's official "as deemed fit" to take action for sexual harassment against the respondent, in accordance with the company's/establishment's service rules and policies and may also prescribe the payment of a sum to be deducted from the salary/wages of the respondent to be paid to the complainant or her legal heirs as it may determine.

On the recommendations of Internal Committee, the company/establishment shall act on it within 60 days and report compliance to Internal Committee.

Disciplinary action: The Internal Committee may recommend action to be taken against the respondent to the company's/establishment's official "as deemed fit", which may include:

- Written apology by respondent to complainant
- Warning or reprimand or censure to respondent
- Withholding promotion of respondent
- Withholding pay rise or increments of respondent
- Terminating the respondent from services of the Company/Establishment
- Community service
- Imposing fine on respondent
- Counselling of respondent

Deductions: In case the company/establishment is unable to make deductions from salary/wages due to respondent's absence or termination/resignation, the Internal Committee may direct the respondent to pay such sum to the complainant directly. If the respondent fails to pay the prescribed sum, the Internal Committee may forward the order to the District Officer who shall recover the sum as an arrear of land revenue and pay it to the complainant.

While determining the sums to be paid, the Internal Committee shall consider:

- Mental trauma, pain, suffering and emotional distress caused to the complainant;
- Loss of career opportunity due to the incident of sexual harassment;
- Medical expenses incurred by complainant for physical/psychiatric treatment;
- Income and economic status of the respondent;
- Feasibility of payment in lump sum or installments

5. False or malicious complaint/allegations:

If Internal Committee arrives at the conclusion that the allegation against the respondent is false or the complaint is malicious or the complainant has produced forged or misleading documents, it may recommend appropriate disciplinary action to disciplinary authority in Company/Establishment "Designation" against the complainant as per

Company's/Establishment's service rules/policies. Please note that mere inability to substantiate a complaint or provide adequate proof does not make it false or malicious. Before recommending any disciplinary action for false accusation, the Internal Committee will need to ascertain that the complainant made the complaint with a malicious intent. For this purpose the Internal Committee will need to hold an inquiry as per principles of natural justice.

If during the inquiry, the Internal Committee concludes that the witness has given false evidence or produced fake or misleading documents, it may recommend appropriate disciplinary action to the disciplinary authority in Company/Establishment "Designation" (or Owner of the Company/Establishment depending on the case) against the witness.

6. Conflict of interest

As per principles of natural justice, every member of the IC will need to disclose to other members, if he/she has any conflict of interest or likelihood thereof, as a member of IC qua any complaint/ inquiry before the IC. This also includes if a member's name appears as accused or witness in the complaint. In such circumstances, the member will need to recuse himself/herself from being a part of the IC qua that particular complaint/inquiry.

7. Action under Indian Penal Code, 1860

At the request of the complainant, the IC may need to recommend to the disciplinary authority in the Company/"Designation" to take appropriate action under Indian Penal Code, 1860 or any other applicable law against the offender.

If after completion of the inquiry, the IC arrives at the conclusion that the allegation against the offender is proved, it shall recommend to the disciplinary authority in Company/"Designation" to initiate action under Indian Penal Code, 1860 or any other applicable law against the offender for sexual harassment.

Relevant sections under Indian Penal Code, 1860:

Section 354A - Sexual harassment and punishment for sexual harassment

1. If a man commits any of the following acts:
 - a. physical contact and advances involving unwelcome and explicit sexual overtures
 - b. demand or request for sexual favours; or
 - c. showing pornography against the will of a woman; or
 - d. making sexually coloured remarks,he shall be guilty of the offence of sexual harassment.

2. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.
3. Any man who commits the offence specified in clause (iv) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Section 509 - Word, gesture or act intended to insult the modesty of a woman

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture is seen by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.

8. Training

As a member of the IC, you will need to keep yourself regularly updated on all matters connected with prevention of sexual harassment at the workplace including developments in case laws in this area. Please ensure you have received adequate training to handle complaints of sexual harassment at the workplace. The Company/Establishment will approve any reasonable pre-approved expenses incurred by you for this purpose.

Note: In case the offender is an employee of public/private sector establishment, first conduct an inquiry as per service rules applicable and if found guilty, proceed with departmental inquiry as per Supreme Court ruling in Vishaka vs State of Rajasthan, 2020. In case of private company with no service rules, follow above guidelines to conduct inquiry.