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DRAFT GUIDELINES BY K.S.C.W. FOR COMPLAINTS COMMITTEES (CCs)

1. Procedure for lodging a complaint :

- a) The Complainant may file a written complaint to any of the members of the committee or the head of the Institution which may be forwarded to complaints committee. If a oral complaint is made, reduce the same in writing and obtain the signature of the complainant after reading it out.
- b) Before commencing the enquiry, a copy of the complaint shall be forwarded to the defendant and seven days time to be given submit a reply.
- c) If he fails to reply or the reply is found to be unsatisfactory, the CC can proceed with the enquiry.
- d) The CC shall hold proceedings after intimating the parties time, place and date of enquiry.
- e) Initial date of enquiry to be intimated in writing , subsequent date no need.

2. Place of enquiry:

As far as possible enquiry- should be held in the premises of the office/company.

3. Quorum:

- a) 2/3rd of the members will constitute quorum and the third party has to be present.
- b) If a complaint involves a member of the committee he should not be a party to the proceedings.

4. Time frame:

Enquiry should be completed within 90 days from the date of receipt of the complaint by the committee.

5. Actual Proceedings :

- a) Proceedings to be recorded in writing & relevant signatures obtained.
- b) CC not bound by strict formalities and rules of evidence, can adopt its own procedure for carrying out the enquiry having regard to the sensitive nature of the case.
- c) The proceedings may include examination-in -chief of the complainant to be done by complaints committee. Aggrieved woman may be given an opportunity to explain orally/in writing.

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- d) In case of cross-examination of complainant, the committee may allow/ disallow the questions posed by the defendant. The defendant to submit the intended questions to complainant in writing and the committee may allow/disallow the questions.
- e) Complainant be given the option to answer the same in writing during the proceedings.
- f) Witnesses on complainants behalf may be examined; but CC should take cognizance that all sexual crimes are committed in private, so there may not be eyewitnesses.
- g) To remember, she may not be able to lead evidence
- h) CC should not insist on detailed description of harassment. This could increase the complainants trauma
- i) CC should not permit any evidence or examination based on complainant's character, personal life, conduct, personal & sexual history.
- j) Delay in filing the complaint should not influence the Complaints Committee in arriving at the decision.

6. Right to information: The complainant & the defendant shall have the right to receive copies of the proceedings, documents or any other evidence produced during the course of enquiry.

7. Completion of Inquiry:

The CC shall complete its enquiry within 90 days from the date of complaint, record in writing its findings & take appropriate action on the basis of the findings.

- Proof beyond reasonable doubt is not required, strong probability is sufficient.
- 50% or more should arrive at a common conclusion. The third party will be given the option of dissenting vote.
- The CC should clearly conclude on the following :

* The Hon'ble Supreme Court in Apparel Export Promotion Counsel Vs A.K. Chopra (CA No.226-227 of 1999) has come down heavily on High Court for reinstating the defendant/perpetrator on the reason that the defendant had "tried to molest" & not "actually molested" the victim. It has noted that "The High Court was examining the disciplinary proceedings against the respondent and was not dealing with criminal trial of the respondent.... In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of a case and not get swayed by insignificant discrepancies or narrow technicalities or the dictionary meaning of the expression "molestation". They must examine the entire material to determine the genuineness of the complaint. The statement of the victim must be appreciated in the background of the entire case. Where the evidence of the victim inspires confidence, the courts are obliged to rely on it. Such cases are required to be dealt with great sensitivity. Sympathy in such cases in favour of the superior officer is wholly misplaced & has no relevance.... Any lenient action (by the disciplinary authority) is bound to have a demoralizing effect on working women. Sympathy in such cases is uncalled for & mercy is misplaced.

- a. to dismiss the complaint or
- b. find the complaint proven and if so pass the following orders
 - i. A direction that defendant has engaged in conduct rendered unlawful and should desist.
 - ii. Written apology from the defendant to the complainant.
 - iii. Direction to the employer to impose penalties as per service rules/standing orders.

8. Confidentiality:

Confidentiality to be maintained by the members of CCs. Any member found to have disclosed any information privy to the C.C. will be excluded from the subsequent proceedings.

9. Powers of Complaints Committee:

- a. The CC for the purposes of an enquiry under this shall have the power to summon witnesses or call for documents or any other information.
- b. Any interim order passed by CC recommending the transfer of the perpetrator or complainant as the case may be and suspension of the perpetrator to be considered favourably by the disciplinary authority.
- c. The CCs in matters of inquiry under sexual harassment will have the power & jurisdiction of a enquiry authority constituted under CCA rules / standing orders. The decision of CC to be accepted by the disciplinary authority as final and re enquiry to not be ordered. In Medha Kotwal Lele & others VS Union of India, the Hon'ble Supreme Court in its order dated 26.4.2004 has stated that " ... report of the Complaints Committee shall be deemed to be an inquiry report under CCs rules. Thereafter the disciplinary authority will act on the report in accordance with the rules.... Similar amendments shall also be carried out in The Industrial Employment (standing orders)Rules ".