

# बृहनमुंबई महानगर पालिका

## Policy for Prevention of Sexual Harassment at the Workplace

MUNICIPAL CORPORATION OF GREATER MUMBAI



As per Supreme Court Judgement dated 13th August, 1997, the policy adopted by M.C.G.M. for working of Committees formed for Prevention of Sexual Harassment to Women at Workplace in consistence with the enquiry procedure in M.C.G.M. duly verified by Chief Personnel Officer and approved by D.M.C.(G.A.) under No. MOM/5131 dt. 4.11.04, by A.M.C.(City) under No. AMC/C/7667/A dt. 8.11.04, by A.M.C.(Project) under No. AMC/P/5023 dt. 20.11.04 and by M.C. under No. MGC/F/3318 dt. 11.12.04.

## **I. PURPOSE**

The Supreme Court of India passed a landmark judgment on 13th August, 1997, recognizing sexual harassment at the workplace as systemic and gender based discrimination, violating fundamental rights of Gender Equality and the right to Life and Liberty. The Court in its verdict passed mandatory guidelines for prevention and resolution of sexual harassment incidences at the workplace, putting the responsibility on the employers to provide systems for prevention and redress on the issue. The aim was to focus attention towards finding suitable methods for realization of the true concept of gender equality and to prevent sexual harassment of working women in all work places.

These guidelines are legally binding and enforceable. Thus all government and private sectors organisations, hospitals, universities and unorganised sectors come under the purview of these guidelines.

To prevent and deter the commission of acts of sexual harassment at the workplace and to provide procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all the steps required.

The purpose of this policy is to facilitate the implementation of the Supreme Court guidelines on sexual harassment, address formal and informal resolution of such complaints, and ensure that the institution takes preventive steps. The policy emphasizes the importance of treating all complaints promptly and seriously, in confidence and with sympathy.

**The Municipal Corporation of Greater Mumbai (hereafter referred as MCGM) is committed to a workplace free of sexual harassment and has adopted the following policy for prevention of sexual harassment at workplace.**

The MCGM is committed to creating a work and educational environment in which employees/students/patients of all ward offices, central offices; all departments of MCGM, including hospitals, colleges, and schools can work and be treated in an atmosphere free from sexual harassment and discrimination. MCGM is committed to zero tolerance to sexual harassment and hostile workplace ensuring that every employee/patient/student has the “right to work and be treated in dignity,” and a “right to a safe working/educational environment.”

**Retaliation or victimization of the complainant, witnesses, committee members or anybody else involved in the process of prevention and resolution of sexual harassment at workplace under this policy will meet with zero- tolerance.**

## **II. COMMENCEMENT DATE:**

The policy becomes effective as of---

## **III. APPLICATION:**

This policy extends to all departments/offices/wards/work relations of MCGM. The provisions of the policy will apply to all employees by whatever name called, students, patients, and third parties to the extent specified in the policy, whether full time, part-time, consultant, contract, or casual.

#### **IV. POLICY SCOPE:**

All allegations of sexual harassment occurring in relation to employment and/or enrollment/admittance at the MCGM or is committed by or to any person affiliated with MCGM including but not limited to all students, patients, employees, or representatives of the management. It does not matter whether the sexual harassment is alleged to have taken place within or outside the establishment premises or at a notional extended location of the workplace so long as it has bearing on the employment/study/treatment/consultation/services etc at MCGM. Acts of sexual harassment occurring within working hours are relevant.

#### **V. THIRD PARTY HARASSMENT:**

Any conduct as described in this policy committed by a third party or outsiders on the institutional premises in relation to a student/employee/patient or vice-versa will be subject to action. The management will put up posters, distribute leaflets, use other forms of media to make known to all persons entering the premises or in any way having an employment relationship that there is zero tolerance towards this behavior. All employees/patients/students should report any incident of sexual harassment to people designated in this policy. This policy imposes a duty on these persons to take appropriate speedy action in accordance with its provisions.

#### **VI. DEFINITIONS:**

**A. SEXUAL HARASSMENT:** Any unwelcome sexually determined behavior (whether directly or by implication) as:

- i. physical contact and advances;
- ii. a demand or request for sexual favors;
- iii. sexually colored remarks;
- iv. showing pornography;
- v. any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

**B. A PERSON HAS BEEN SEXUALLY HARASSED IF:**

- i. There is submission to unwelcome sexual advances, requests for sexual favors, verbal or physical conduct of a sexual nature are made either explicitly or implicitly, a term or condition of employment, participation or evaluation of a person's work/education/treatment.
- ii. A demand for sexual favor(s) is made as a condition of getting or keeping a job benefit/treatment/marks/other benefit.
- iii. Co-worker/supervisor/any other person or persons covered by this policy engages in unwelcome and inappropriate sexually based behavior of the type described above, rendering the workplace atmosphere intimidating, hostile, or offensive.
- iv. Any form of sexual assault where a person uses the body or any part of it or any object as an extension of the body in relation to another person without the latter's consent or against the person's will.
- v. Loaded comments, remarks or jokes, letters, phone calls or e-mail, gestures, showing or display of pornography, lurid stares, physical contact or molestation, sounds or display of a derogatory nature.

**C. ILLUSTRATIONS**

- i. Staring at someone's body rather than looking her/him in the eye while talking.

- ii. Passing remarks about someone's physical appearance (either the person being spoken to or a third person's) during a conversation.
- iii. Staff touching/brushing against/massaging private parts of patients while shifting, moving or while being involved in their treatment.
- iv. Standing behind a seated co-worker and touching.
- v. Holding a handshake little longer than needed.
- vi. Brushing against a co-worker (while walking down the stairs, in a lift etc.)
- vii. Placing comments with sexual overtones on worktables, display boards etc.
- viii. Patients/their visitors making sexually colored remarks/innuendos about female staff, such as pointing out to female staff, sniggering, and asking each other "Whom do you want"?
- ix. Scribbling graffiti and comments with sexual overtones (on the walls of staircases, lifts, toilets etc.
- x. Requesting for accompaniment (dinners, movies, lifts).
- xi. Faculty using sexually explicit language/or other non-verbal communication.
- xii. To explain medical procedures, such as telling students "Don't you know how to hold a -----while explaining about the -----procedure/Sexually suggestive language used during Viva Voce.
- xiii. Administrative staff making lewd jokes in the presence of students with the intention to harass and intimidate.

**"SEXUAL HARASSMENT" SHALL INCLUDE (BUT NOT BE CONFINED TO) ALL THE ABOVE.**

**D. POOL OF EXPERTS AND NGO'S:**

Includes any Non-governmental Organization/Individual operating on a secular, non-profit basis and involved in work concerning amelioration of status of women and includes secular, gender sensitive individuals having expertise and experience in ameliorating the status of Women.

**E. EMPLOYEE:**

Any person on staff of MCGM whether the person is drawing a salary, honorarium, voluntary, temporary, teaching, non-teaching, part-time, consultant, employee by whatever name called and would include employees hired on a casual or project basis or employed through a contractor.

**F. STUDENT:**

Includes any person using institutional facilities run by MCGM or enrolled for undergraduate, graduate, post-graduate studies, research student, repeater, interns, or student by whatever name called.

**G. MANAGEMENT:**

The trustees or the managing or governing body by whatever name called, including the body or persons responsible for the functioning of the institution.

**VII. INSTIUTIONAL STRUCTURE FOR HANDLING COMPLAINTS**

**A. APEX COMMITTEE:** functioning as an advisory committee available for recommendations as requested by the Working Committee.

- i. Membership

This committee will be headed by Municipal commissioner. Rest of the members will be

- Two Assistant Municipal Commissioners
- Two Deputy Municipal Commissioners
- Chairperson of working committee
- Persons rising to level of position in MCGM relevant to the Apex Committee will automatically serve for the period of time in which they hold that title.
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ii. Quorum

- Fifty percent membership constitutes a quorum.
- If the quorum is not present at any meeting it shall be adjourned for not more than seven working days and if at the subsequent meeting a quorum is still not present, the meeting shall proceed with those who are present and the proceedings of such a meeting will not be challenged on the ground of absence of quorum.
- Meetings of Apex committee should be held once in six months.

iii. Training

- Members must receive training at the onset of this policy and receive six month periodic training in sexual harassment and its necessary sensitivities.

**B. WORKING COMMITTEE:** Reviews implementation of this policy by the Complaints Committees and serves as an appellate review board when appropriate.

i. Membership

This committee will be headed by D.M.C. (E) or any other female officer holding highest position in MCGM. One representative from each department, preferably Head of Department (HOD) will be a member. All departments where there are female staff members should be represented in the Working Committee. The Committee should have 50% women members.

- HOD Solid Waste Management Department
- Education Officer
- HOD.(Engineering)
- Exe. Health Officer
- Chief Medical Superintendent
- Dean - K.E.M. Hospital
- Law Officer
- Ward Officer
- W.O. (Planning)
- HOD Nursing staff
- N.G.O. representative working on women's issues
- Member Secretary as nominated by Chairperson

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- iii. Members must meet at least once a month to review bi-monthly reports presented by the Complaints Committee and may meet more often but not less.
- iv. Members must serve for three years and receive sexual harassment training at the onset with six month periodic training.
- v. All decisions by the Working Committee are final and binding.

**C. COMPLAINTS COMMITTEE:** Redresses sexual harassment grievances within the institution in which it monitors. It also looks after the prevention of sexual harassment at their premises. Must issue bi-monthly reports to the Working Committee. Committees must be set up on all major, peripheral, and central offices, schools, hospitals, etc and in respective ward offices. At the ward office, the Complaints Committee should have representations from all the departments (health/conservancy/ administrative/ engineering/central offices/accounts etc) including education department.

i. Membership

- The Chair of the Complaints Committee is the highest-ranking woman at the institution.
  - Her responsibilities include but may not be limited to convening the meetings, informing all members of a complaint, signing off on the reports sent to the Working Committee.
- There may not be less than 3 members on the Committee but no more than 15 as suited to meet the needs of the institution.
- Fifty percent of the Committee must be women. Where there is not adequate number of women staff (less than 10), a Complaints Committee should be formulated between two or more departments.
- Members are selected to represent every department in which there are female staffers.
- Training at the outset and periodic six month training is required.
- The members of the Complaints Committee may be identified by secret ballot, if necessary
- Disqualification: A person shall be disqualified for appointment/election/nomination/designation if there is a complaint regarding sexual harassment, moral turpitude, or any other charges (as per a particular matter e.g.: proximity to harasser).
- Vacancy of a post due to absence without permission: If a person designated to the Committee remains absent without permission from 4 consecutive meetings then her office shall thereupon become vacant.

- Resignation: A member can resign by tendering her resignation along with reasons to the Chairwoman. And such a person shall be deemed to have vacated the position as soon as the chairperson on discussion with the committee members has accepted the resignation. Replacement is at the Chairwoman's discretion.
  - Quorum: Eighty percent constitutes a quorum. If the quorum is not present at any meeting it shall be adjourned for not more than 7 working days and if at the subsequent meeting a quorum is still not present, the meeting shall proceed with those who are present and the proceedings of such a meeting will not be challenged on the ground of absence of quorum.
- ii. The Committee has the power to make enquiries and launch full investigations at its own discretion. However, the Committee must make an enquiry about the complaint within three days after a claim is brought.
- iii. Decisions at this level are recommendations, and therefore not binding. However, management must provide a written rationale for not adopting Committee recommendations.
- iv. The Committee is not a criminal court, and therefore cannot function like one by conducting a trial.

v. Confidentiality

- The entire proceedings of the Complaints Committee shall remain confidential.
- The complainant's identity shall remain confidential at all times, including the time of preparation and completion of report, unless the complainant expressly opts to disclose her/his identity. Such an option of the complainant shall be stated in writing.
- If action other than an informal warning must be taken against the accused then the name of the complainant along with the details of the complaint may be disclosed only to the accused.
- If the accused is not found guilty then the report of the proceedings must expressly state, "Accused not found guilty."
- Reports related to proceedings of the Complaints Committee are private documents and are not liable for public circulation.

vi. Malicious or False Complaints

- If the Complaints Committee is of the opinion based on the substantiated facts that the complaint of sexual harassment was made falsely and with malicious intent then such action will be considered misconduct.
- The Complaints Committee may recommend appropriate action.

vii. Disclosure of Reports

- Depending on the complexity of the investigation, the complainant should be contacted within 30 days about the status of her complaint.
- All copies of proceedings or action taken should be made available to the complainant and the accused.

viii. All Complaints Committees must follow the MCGM Guidebook.

## **VIII. BRIEF SUMMARY OF THE GRIEVANCE PROCEDURE**

The grievance procedure will consist of three stages. At the discretion of the complainant he/she may follow the procedure step by step or choose any one step in the procedure. The procedure has been developed with the intention of making sure that the complainant is put through minimal hardship, that confidentiality is maintained, that the persons responsible for implementing this policy are trusted people having the mandate of the staff of the institution to undertake this work, and that victimization of the complainant or witnesses will meet with zero-tolerance from the management. Care has also been taken to ensure that action taken as per this policy will not be open to legal challenges. All action taken by the Committees must be recorded.

**A. STEP 1: INFORMAL RESOLUTION**

- Intervention by member of the Complaints Committee, preferably by the member who has been approached by the complainant. On the approval by the complainant, there may be attempts made to resolve the matter informally, care will be taken to see that the complainant's identity is not revealed.
- If these attempts prove unsuccessful or if the complainant is dissatisfied with action taken then complainant may go to the third stage of formal enquiry.

**B. STEP 2: INFORMAL/FORMAL RESOLUTION**

- Depending on the facts and circumstances of the claim and the consent by the complainant this stage may involve mediation, counseling, investigation, interviews etc.
- The Committee has the power to protect the complainant by providing interim relief such as facilitating transfer, changing shifts etc (of either the complainant or accused) depending on the requirement and complexity of each matter and keeping in mind the needs of the complainant.

**C. STEP 3: FORMAL RESOLUTION**

- Requires full enquiry and investigation into claim. Witnesses may be used but proof in the technical sense is not required. The Complaints Committee must recommend to the management an appropriate resolution at the end of the enquiry/investigation.
- All proceedings of the Complaints Committee will be recorded. Together with the statement of witnesses shall be endorsed by both the parties in token of authenticity. The refusal to endorse the same by either party shall be endorsed by the convenor. All parties involved in the process are at liberty to place on record objections, observations, etc.
- The copies of the proceeding will be made available to the complainant and accused.
- If a complainant or the witnesses withdraw their statements or decide not to go through with the complaint then the Committee will record this. If there is evidence that the claim has been withdrawn based on outside pressure then the Committee may take action despite withdrawal by the complainant.

**D. STEP 4: APPEAL**

- If the complainant is not satisfied by the Committee recommendation or the action taken by the management is insufficient in handling the problem one may appeal to the Working Committee.



- A decision by the Working Committee is binding and final.

## **IX. TRAINING PROGRAMS/AWARENESS**

- NGOs will help establish training programs by holding training sessions, monitoring, crisis intervention, preparation and decimation of advocacy material. Thereafter it is the responsibility of the Complaints Committee along with the support of the management to organize refresher-training courses and take all steps necessary for effective monitoring and implementation of this policy.
- There must be regular orientation sessions for new staff, students, patients, etc in order to create awareness of the policy and educate on sexual harassment.
- The names/addresses along with office contact nos. /extensions of the Complaint Committee Members will be prominently displayed on a conspicuous part of each department. (Marathi + English and any other language used by staff members).
- Flyers, postings, emails, media must be used by management to create proper awareness of the policy.
- Important factors that must be stressed in training the Complaints Committee as reiterated in the MCGM Guidebook:
  - **Subjectivity:** A sexual act when unwelcome is sexual harassment; the unwelcome is the women's subjective reality. The Complaints Committee's first job is to believe in this reality (unless something on record completely negates her complaint). The presumption should be in favor of the woman who complains of Sexual Harassment. It is important to remember that "proof " in the typical sense of the word should not be insisted upon. Delay on her part in complaint should not be a reason to disbelieve her.
  - **Empathy:** It is critical that the Complaints Committee empathizes with the complainant and does not judge her by their moral standards. The most important question that must be answered in the affirmative while providing redress to a particular case is, "Do we believe her?"
  - The complainant has a career and personal life at stake.
  - There can be a long time interval between the harassment and the actual complaint.
  - Listening to the most desired outcome sought by the complainant often will provide a reasonable resolution to the problem.
  - Complainant's past sexual history/personal life will not be probed into or enquired about during proceedings before any Committee.
  - Consider the peculiar nature of the prohibited activity that is physically, psychologically, and emotionally impacting. Account for the various myths and facts in relation to sexual harassment so as to give a well-thought out resolution.

Recognition that such behavior is unwelcome, that it is personally offensive and debilitates morale, affects the dignity of a person and affects and interferes with study, treatment, and work. That sexual harassment usually involves the use and abuse of power and control. The entire complaints procedure both formal and informal must be sensitive to the social and cultural context of the complainant. It is important to remember that sexual harassment is generally an expression of power relations, most often against women by men. It is also a reflection of their relative positions in the hierarchy of the

- workplace and the inequalities of opportunity in the job market. The main reference point for the Complaints Committee must therefore be the word of the harassed person, i.e., the complainant.

## **X. COMPLAINANT'S RIGHTS**

### **A. ADDRESSING THE HARASSER**

- If complainant feels comfortable she may speak directly to the person responsible for the alleged harassment. This may be sufficient to stop the unwanted conduct.

### **B. RECORDING THE HARASSMENT**

- Documenting conversations with the harasser as well as incidents of harassment in a journal/file/diary is permitted. Complainant should enter dates, time, frequency, etc. Collect material given received, posted, emailed. Record timings of phone calls made and anything else that may constitute harassment.

### **C. REPORTING THE HARASSMENT**

- Make an informal or formal complaint to a member of the in-house Complaints Committee.
- If the harasser holds a position higher than the Chairwoman of the Complaints Committee the complainant may report directly to the Working Committee.

### **D. INVESTIGATION**

- If a full investigation is necessary the complainant shall have the right to lead evidence and the right to cross-examine witnesses presented by the accused.
- The complainant can take a co-worker, friend, and any other person with her during the interviewing process or for any other support during the investigation.

### **E. FURTHER ACTION**

- The complainant has the right to simultaneously pursue the matter through other legal means. The proceedings under this policy will not be stalled or postponed merely because the complainant is proceeding against the alleged harasser under any other provision of civil or criminal law.

## **XI. RIGHTS OF THE ACCUSED**

### **A. REPLY**

- Within 10 days after the accused receives the copies of the chargesheet the accused may tender any written explanation to the charges.
- He shall submit this to the Chairwoman of the Complaints Committee.

### **B. SUBMISSION OF DOCUMENTS**

- If a formal investigation is to take place the accused may submit any documentation as evidence to the Complaints Committee

### **C. INVESTIGATION**

- The accused shall have the right to be heard in person and introduce evidence.
- The accused shall have the right to cross-examine witnesses introduced on behalf of the complainant.

## **XII. PUNISHMENT FOR SEXUAL HARASSMENT:**

Any person found guilty of sexual harassment shall be liable for punishment. When imposing discipline on the accused, any forms short of discharge should be accompanied

by a warning that similar misconduct in the future may result in immediate discharge. If no discipline action is imposed there must be documentation of such reason.

### **XIII. PENALTIES FOR SEXUAL HARASSMENT:**

All persons guilty of sexual harassment may be subject to the following penalties:

#### **A. MINOR PENALTIES:**

- i. Written apology to the complainant clearly indicating that such behaviour will not be repeated and that no retaliatory steps will be taken by him/or others on his behalf.
- ii. Written reprimand, warning or censure.
- iii. Withholding of an increment of a period not exceeding one year.
- iv. Suspension for a period up to four days to a month.
- v. The employee concerned may also be fined up to Rs 5,000 which amount will be used by the management or committee for achieving the aims and objectives of this policy.

#### **B. MAJOR PENALTIES**

- i. Withholding of increment for more than a year.
- ii. Reduction in rank.
- iii. Termination of service.
- iv. Debarred from appearing for final exams for a year.
- v. Termination.

#### **C. COMMITTEE DISCRETION**

- The Complaints Committee will issue a penalty for sexual harassment proportionate to the claim of harassment.
- If management does not adopt the proscribed penalty then it must state in writing its reasons.
- If the complainant is unsatisfied with either the penalty issued by the Complaints Committee or the undertakings of the management then the complainant may appeal to the Working Committee.

### **XIV. PROTECTION AGAINST VICTIMIZATION:**

- When a student complainant accuses the person discharging the education then the Complaints Committee must also help with a transfer best suited for the situation.
- When the complainant and the accused are both employees the accused shall not write confidential reports of the complainant, supervise the work of the complainant, compel the complainant to report to him if he/she is otherwise so authorised until the Complaints Committee has made a recommendation.
- If the accused holds a higher position than the Chairwoman of the Complaints Committee then the complaint should be advised to go directly to the Working Committee.
- If the complainant is a patient, then the person against who the complaint has been made will not be involved in discharge of treatment, following the complaint.
- If the alleged harasser is an outsider, then he will not be allowed to enter the premises following the complaint.

### **XV. OBLIGATION OF THE MANAGEMENT**

#### **A. NOTICE**

- All employees must be on notice that this is policy may be effected in the case of any claims regarding sexual harassment.
- Management must provide a clear statement that sexual harassment at the workplace is unlawful and will not be tolerated by the organisation and that all allegations of sexual harassment will be taken seriously and responded to promptly.
- Employees must be trained in regards to what constitutes sexual harassment.
- Liability of any legal proceedings will be taken care by legal department of MCGM

#### **B. IMPLEMENTATION**

- Institutions shall provide assistance for the purpose of ensuring full, effective, and speedy implementation of the policy. This means supporting the Complaints Committee in every capacity.

#### **XVI. SAVINGS:**

- The provisions of this policy shall apply notwithstanding any contrary statute, law, directive or ordinance.
- The proceedings under this policy shall not be stalled or postponed merely because the complainant is proceeding against the accused under the provisions of the civil and criminal law.
- The provisions of this policy shall not restrict the powers of the management or the complainant to proceed against the alleged offender for any misconduct or pursue criminal or civil remedies.

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Note--

Annexure will contain all the premises where Complaints Committees are functioning.

#### **Reporting Format for reporting cases by Complaints Committees**

Name of the Institution  
Address of the Institution

Name of the Chairperson

Nature of the complaint

Name and department of the complainant

Name and department of the accused

Minutes of the inquiry conducted

(Date, venue, members present, proceedings)

If informal resolution then brief report of the same

Action proposed

Any other remarks

(If appealed, any remarks)