

Prevention of Sexual Harassment Policy

(Prevention of Sexual
Harassment – Internal Complaints Committee)

Document Owner: Professional Institute for
Development and Socio
Environmental Management - PRISM

1st Released: 01 January 2019

1st Reviewed: 22 December 2024

Approved: 10 January 2024

W.E.F: 11 January 2024



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1.0 Preamble

Sexual harassment at workplace emerging from gender discriminatory attitudes is a complex interplay of gender, power and sexuality. Vibrant discussions on these aspects ought to be a starting point for a prevention initiative with employees. The Vishakha guidelines (1997) affirmed that sexual harassment of women was common and resulted in violation of their fundamental rights to life and liberty guaranteed by the Indian Constitution. The Apex court specified that the guidelines would be binding and enforceable on all employers until the Indian Parliament enacted suitable legislation to replace them. Looking at the dismal and faulty implementation of the Vishakha guidelines, fourteen years later a Joint Parliamentary Committee (2011) recommended a special law safeguarding rights of women at workplace.

The Committee concluded that given the patriarchal nature of Indian society, the number of women needing redress from sexual harassment at workplaces was high. Prolonged struggle and dialogue by the women's movement with the government for more than a decade resulted in enactment and enforcement of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 on 9th December 2013. As the title suggests it is a gender specific legislation recognizing unequal gender relations at workplaces. It is therefore an explicit form of affirmative action under Section 15(3) of the Indian Constitution, which allows the State to enact special laws for women. The ACT provides protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for the matters connected therewith or incidental thereto.

The guidelines explicitly state the following:

"It shall be the duty of the employer or other responsible persons in workplaces or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolutions, settlement, or prosecution of acts, of sexual harassment by taking all steps require."

Section 4 of the Act mandates constitution of an Internal Complaints Committee (ICC) by the employer at every workplace by a written order. Internal Complaints Committee is the principal mechanism having power and authority of a civil court for resolution of complaints through conciliation and inquiry. With such vast powers vested it is clear that the ICC has a crucial role to play in prevention and redress of sexual harassment.

The Professional Institute for Development and Socio Environmental Management - *PRISM* (hereinafter referred to as the "**Society**") is committed to provide equal opportunity and a harassment free workplace notwithstanding race, caste, religion, colour, ancestry, marital status, gender, sexual orientation, age, nationality, ethnic origin or disability, as the case may be. Thus in order to create such a safe and conducive work environment, this Policy has been framed, in line with the provisions of the "**Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**" of India (hereinafter referred to as the "**Act**"¹) and existing rules framed thereunder namely the "**Sexual Harassment of Women at**

¹ <http://wcd.nic.in/sites/default/files/Sexual-Harassment-at-Workplace-Act.pdf>

Workplace (Prevention, Prohibition and Redressal) Rules², 2013 (hereinafter referred to as the “Rules”).

2.0 Purpose & Scope

Purpose of this policy is to provide protection against sexual harassment of women at workplace and the prevention and redressal of complaints of sexual harassment and matters related to it.

This policy extends to all employees including individuals coming to the workplace for employment or for any other purpose whatsoever including but not limited to visitors, vendors, contractual resources, secondees and applies to any alleged act of sexual harassment against persons at workplace, whether the incident has occurred during or beyond office hours.

This policy does not prevent any aggrieved person from taking recourse to the law of the land.

3.0 Important definitions

(a) **“Aggrieved Individual”** means in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent and includes contractual, temporary employees and visitors; *us 2 (a) (i) of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”*.

(b) **“Complainant”** is any aggrieved individual (including a representative as more fully described under Rule 6 of the said Rules, if the aggrieved individual is unable to make a complaint on account of his/her physical or mental incapacity or death or otherwise) who makes a complaint alleging Sexual Harassment under this Policy.

(c) **“Employee”** as defined under the Act and means a person employed with the department for any work on permanent, temporary, part-time, ad-hoc or daily wage basis, either directly or through an agent, including a contractor, who with or without the knowledge of the Principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are expressed or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

(d) **“Employer”** means person who are responsible for management, supervision and control of the workplace including appointment/removal/termination of employees/ volunteers.

(e) **“Internal Committee”** means and include an Internal Complaints Committee (hereinafter referred to as the “ICC”); *us 4 (1) of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”*.

(f) **“Member”** means a member of the ICC.

(g) **“Presiding officer”** means the presiding officer of the ICC and shall be a woman employed at a senior level at the workplace amongst the employees; *us 4 (2) (a) of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”*.

(h) **“Respondent”** means a person against whom a complaint of alleging sexual harassment has been made under this policy.

(i) **“Parties”** means collectively the complainant and the respondent.

² <http://wed.nic.in/sites/default/files/Sexual-Harassment-at-Workplace-Rules.pdf>

(j) “**Sexual Harassment**” includes any one or more of the following unwelcome acts of behaviour (whether directly or by implication):

1. Any unwelcome sexually determined behaviour or pattern of conduct that would cause discomfort and/or humiliate a person at whom the behaviour or conduct was directed namely -

(i) Physical contact and advances;

(ii) Demand or request for sexual favours;

(iii) Making sexually coloured remarks or remarks of sexual nature about a person's clothing or body;

(iv) Showing pornography;

(v) Any other unwelcome physical, visual, verbal or non-verbal conduct of sexual nature including but not limited to cat-call, wolf/finger whistle, vulgar/indecent jokes, letters, phone calls, text messages, e-mails, gestures etc.

Sexual harassment can involve a series of incidents or it can be a one-off occurrence.

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

- Implied or explicit promise of preferential treatment in employment; or
- Implied or explicit threat of detrimental treatment in employment; or
- Implied or explicit threat about the present or future employment status; or
- Interference with work or creating an intimidating or offensive or hostile work environment for the person; or
- Humiliating treatment affecting any person's health or safety.

(k) “**Workplace**” means establishments, enterprises, institutions, offices, branches, premises, locations or units established, owned, controlled by the Society or places visited by the employees/ Volunteers out of or during the course of employment including accommodation, transportation provided by the employer for undertaking such journey.

4.0 Procedures & Guidelines

4.1 Composition of Internal Complaints Committee

Pursuant to the relevant provisions of the Act, an Internal Complaints Committee (ICC) has been constituted to prevent sexual harassment and to receive and effectively deal with complaints pertaining to the same. Below is the list of members of the ICC constituted by the Society.

SN	Name	Designation	Email id
01.	Ms Sutapa Ghosh	Presiding Officer	sutapaghosh55@gmail.com
02.	Ms Bhaswati Dey Kundu	Member	bhaswati.prismindia@gmail.com
03.	Mr Dilip Roy	Member	rdilip2013@gmail.com
04.	Ms Nita Dhar	Member	nita.jhuma@gmail.com
05.	Ms Dolon Ganguly	External Member	dolonganguly@gmail.com

▪Chairperson and other GB Members may be consulted by the ICC from time to time. Such consultation is purely discretionary.

4.2 Complaint of Sexual Harassment

4.2.1 Raising of complaint

(1) Any aggrieved individual may make in writing, a complaint of sexual harassment within a period of three (3) months from the date of incident and in case of more than one incident, within a period of three (3) months from the date of last incident.

(2) However, the ICC may, for reasons to be recorded in writing, extend such time limit of filing complaint up to further 3 months, if it is satisfied that bonafide circumstances prevented the aggrieved individual from filing complaint within the time limit mentioned in point (1) herein above. The complaint should clearly mention name and available details of both the aggrieved person and the respondent.

(3) Where the aggrieved woman is unable to make the complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint.

(4) Where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee shall render all reasonable assistance to the woman for making the complaint in writing.

(5) The complainant shall submit six copies of the complaint accompanied by available supporting documents and relevant details concerning the alleged act of sexual harassment(s) including names and address of witnesses, if any which the complainant believes to be true and accurate.

4.3 Redressal Process

4.3.1 Conciliation

(1) Before the ICC initiates an inquiry, the complainant may request the ICC to take steps to resolve the matter through conciliation provided no monetary settlement shall be made as basis of conciliation. If a settlement has been so arrived, the ICC shall record the same and forward the same to the Employer and provide copies of the settlement to the aggrieved individual and the respondent. In such cases, no further inquiry shall be conducted by the ICC.

(2) Where a settlement has been arrived at under sub-section (1) the Internal Committee shall record the settlement so arrived and forward the same to the employer to take action as specified in the recommendation.

(3) The Internal Committee shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

4.3.2 Inquiry

(1) Where a settlement is arrived, no further inquiry shall be conducted by the Internal Committee.

(2) Subject to the provisions of section 10, *US 4 (1) of the "Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013"* the Internal Committee shall, where the respondent is an employee/ volunteer, proceed to make inquiry into the complaint in accordance with the provisions of the personnel policy applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a casual worker or visitor, the Internal Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code.

(3) Provided further that where both the parties are employees/ volunteers, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

(4) In case where a settlement is not feasible or could not be arrived at through conciliation (ref clause 4.3.1 above), the ICC will conduct an inquiry into the complaint. Additionally an inquiry may also be initiated if the aggrieved person informs the ICC that any terms of settlement (ref clause 4.3.1 above) has not been complied with by the respondent.

(5) The ICC within 7 (seven) working days of receiving the complaint shall forward one copy thereof to the respondent for obtaining a response.

(6) The respondent within 10 (ten) working days of receiving the complaint shall file his/her reply to the complaint along with list of supporting documents, names and addresses of witnesses.

(7) The ICC shall consider the reply from the respondent and initiate an inquiry. The complainant or the respondent to the complaint shall not be allowed to bring any legal practitioner to represent them at any stage of the proceedings before the ICC. Internal Complaints Committee shall hear both the complainant and the respondent on date(s) intimated to them in advance and the principles of natural justice will be followed accordingly.

(8) In the event of failure to attend personal hearing before ICC by the complainant or the respondent on three consecutive dates (intimated in advance), the ICC shall terminate the inquiry proceedings or give an ex-parte decision. However, the ICC shall serve a notice in writing to the party (ies), 15 (fifteen) days in advance, before such termination or the ex-parte order.

(9) The inquiry process shall be completed maximum within the period of 90 (ninety) days from the date of receipt of the complaint.

(10) The ICC within 10 (ten) days from the date of completion of inquiry shall provide a report of its findings to the Chairperson of the Society and such report shall also be forthwith made available to the complainant and respondent.

(11) Where the conduct of Sexual Harassment amounts to a specific offence under the Indian Penal Code³ (45 of 1860) or under any other law; it shall be the duty of ICC to immediately inform the complainant of his/her right to initiate action in accordance with law with the appropriate authority, and to give advice and guidance regarding the same. Any such action or proceedings initiated shall be in addition to proceedings initiated and /or any action taken under this Policy.

4.3.3 Interim relief

During pendency of the inquiry, on a written request made by the complainant, the committee may recommend to the employer to:

- Transfer the aggrieved individual or the respondent to any other workplace; or
- Grant leave to the aggrieved individual of maximum 3 months, in addition to the leave he/she would be otherwise entitled; or
- Grant such other relief to the aggrieved individual as may found to be appropriate; or
- Restrain the respondent from reporting on the work performance of the complainant.

Once the recommendation of interim relief are implemented, the Chairperson shall inform the committee regarding the same.

4.3.4 Prohibition on disclosure of information

This policy and the law prohibits any person including ICC Members from publishing, communicating or making known to the public, press and media in any manner, contents of the complaint, the identity and addresses of the aggrieved person, respondent and witnesses, any information relating to conciliation and inquiry proceedings, or recommendations of the ICC during the proceedings under the provisions of the Act. Any violation thereto shall also be subject to applicable disciplinary action as outlined in the Personnel Policy. Further the Project Director shall impose monetary sanctions as per provisions of the Act and Rules.

4.3.5 Protection to Complainant

The employer is committed to ensuring that no employee/ volunteer who brings forward a harassment concern is subject to any form of reprisal. Any reprisal will be subject to disciplinary action. The employer will ensure that the victim or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment.

However, anyone who abuses the procedure (for example, by maliciously putting an allegation knowing it to be untrue and/or produces any forged or misleading document) will be subject to applicable disciplinary action.

4.3.6 Appeal

Any person aggrieved by the recommendation of ICC may prefer an appeal under the relevant provisions of the Act and Rules.

³ Please refer Annexure for sections dealing with sexual harassment under the Indian Penal Code

4.3.7 Disciplinary Proceedings

Pursuant to written recommendation of the Chairperson of the Society on the basis of report and findings of ICC and subject to the final outcome of the appeal proceedings, if any, (ref. clause 4.3.6 above) necessary disciplinary proceedings may be initiated against the respondent in terms of the applicable provisions of the Personnel Policy of the Society.

4.3.8 Savings and Repeal

Prevention of Sexual Harassment Policy hereby stands with effect from 01 January 2019. All existing inquiry proceedings and/or appeals initiated under the withdrawn policy will be deemed to have been made under this Policy and same shall continue accordingly.

4.3.9 Reporting

The Internal Committee shall prepare an annual report in the prescribed form and submit the same to the Chairperson.

5.0 Duties & Responsibilities of the Chairperson

- ✓ Provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- ✓ Display at any conspicuous place in the workplace, the penal consequences of sexual harassment; and the order constituting the Internal Committee under subsection (I) of section 4;
- ✓ Organize workshops and awareness programme at regular intervals for sensitizing the employees/ Volunteers with the provisions of the Act and orientation programme for the members of the internal Committee in the manner as may be prescribed;
- ✓ Provide necessary facilities to the Internal Committee for dealing with the complaint and conducting an inquiry;
- ✓ Assist in securing the attendance of respondent and witnesses before the Internal Committee;
- ✓ Make available such information to the Internal Committee as it may require having regard to the complaint made under sub-section (1) of section 9;
- ✓ Provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- ✓ Cause to initiate action, under the Indian Penal Code 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/ volunteer, in the workplace at which the incident of sexual harassment took place;
- ✓ Treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- ✓ Monitor the timely submission of report; by the Internal Complaints Committee.

Sections of the Indian Penal Code (IPC) – Sexual Harassment and Punishment for Sexual Harassment

Under the Indian Penal Code, the newly introduced Section (Section 354A) which deals with Sexual Harassment has made this a 'cognizable offense' i.e. a person charged with Sexual Harassment may be arrested **without a warrant**.

(1) A man committing any of the following acts:

- (i) physical contact and advances involving unwelcome and explicit sexual overtures; or (ii) a demand or request for sexual favours; or
- (iii) showing pornography against the will of a woman; or
- (iv) making sexually coloured remarks,

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) above, 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) above shall be punished with imprisonment of either description (i.e. either simple or rigorous) for a term which may extend to one year, or with fine, or with both.

In addition to Section 354A set out above, acts of Sexual Harassment may also constitute other offenses under Indian Penal Code (IPC) including Section 354 (assault or criminal force to woman with intent to outrage her modesty), Section 354C (Voyeurism), Section 354D (Stalking), Section 375 and 376 (Rape) and Section 509 (word, gesture or act intended to insult the modesty of a woman) of the IPC.
